

Proposals to exempt self-employed persons from section 3(2) of the Health and Safety at Work etc. Act 1974, except those undertaking activities on a prescribed list

This consultative document is issued by the Health and Safety Executive in compliance with its duty to consult under section 50(3) of the Health and Safety at Work etc Act 1974.

Comments should be sent to:

The self-employed team
Health and Safety Executive
1.3.78 Redgrave Court
Merton Road
Bootle
L20 7HS

Tel: 0151 951 4712

E-mail: selfemployed2014@hse.gsi.gov.uk

To reach there no later than **31st August 2014**

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultative document will be lodged in the Health and Safety Executive's Knowledge Centre after the close of the consultation period where they can be inspected by members of the public.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any information you provide, including personal information, as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data in accordance with the DPA. This means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Act.

Proposals to exempt self-employed persons from section 3(2) of the Health and Safety at Work etc. Act 1974, except those undertaking activities on a prescribed list.

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Consultation by the Health and Safety Executive

The Health and Safety Executive (HSE) consults stakeholders to seek their views on its proposals. It believes that public consultation provides an open and transparent approach to its decision-making. Following consultation, the HSE will make a recommendation to the Secretary of State on the best way forward.

How to respond

A summary of the proposal and the questionnaire can be found at www.hse.gov.uk/consult/live.htm

You are welcome to comment on any issue raised by this document.

You can:

- Complete the online questionnaire; or
- Respond by email to selfemployed2014@hse.gsi.gov.uk: or
- Respond on paper – you can do this either by:
 - Printing the online questionnaire; or
 - Making a written response in whatever format you wish.

Send your completed hard copy response to:

The self-employed team
Health and Safety Executive
1.3.78 Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

We would be grateful if you could send an e-mail address when you provide your hard copy response so that we can inform you of when the HSE intends to publish information concerning consultation responses on the HSE website. Responses must be received by **31st August 2014**.

If you require a more accessible format of this document please send details to creative@hse.gsi.gov.uk and your request will be considered.

What happens next?

We will acknowledge all responses and give full consideration to the substance of arguments in the proposals; we may contact you again if, for example, we have a query in respect of your response.

We will tell you when the HSE will publish information concerning the consultation responses. We will provide a summary of those responses and we will produce a summary of the views expressed to each question; this information will be placed on HSE's website. The Health and Safety Executive will then decide on how best to take the proposals forward based on an analysis of the consultation responses.

Queries and complaints

HSE follows the Government's Consultation Principles. These can be found at - <https://www.gov.uk/government/publications/consultation-principles-guidance> .If you have any comments or complaints about the way this consultation exercise has been conducted, please contact the HSE Consultation Co-ordinator, by writing to:

Teresa Farnan
Health and Safety Executive
7th Floor
Caxton House
6-12 Tothill Street
London
SW1H 9NA

Or send an email to – teresa.farnan@hse.gsi.gov.uk

We aim to reply to all complaints within 10 working days. If you are not satisfied with the outcome, you can raise the matter with HSE's Acting Chief Executive, Kevin Myers, at the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS. You can also write and ask your MP to take up your case with us or with Ministers. Your MP may also ask the Independent Parliamentary Commissioner for Administration (the Ombudsman) to review your complaint.

Purpose of this consultation

This consultative document (CD) sets out the principles of how self-employed persons, except those undertaking activities on a prescribed list will be exempted from section 3(2) of the Health and Safety at Work etc Act 1974 (HSWA).

The CD seeks views on:

- (i) the clarity of the definitions in the draft regulations (Annex 1);
- (ii) the costs and benefits of the proposed changes as set out in the Impact Assessment (Annex 2).

Background

1. In 2012 HSE undertook a consultation which focused on the general policy of exempting some self-employed and the general principles of prescribing those out of scope.¹
2. This proposed exemption arose following a recommendation made by Professor Ragnar Löfstedt in his report “Reclaiming health and safety for all: an independent review of health and safety legislation” published in November 2011.² He recommended that self-employed persons be exempt from health and safety law where they pose no potential risk of harm to others through their work activity.
3. After considering the responses to the public consultation and the Health and Safety Red Tape Challenge, HSE made recommendations to the Secretary of State for Work and Pensions and a clause was drafted for inclusion in the draft Deregulation Bill. The clause amended the existing duty in section 3(2) of HSWA to remove from scope those self-employed who pose no potential risk of harm to others.
4. The Bill was subject to scrutiny by a Pre-legislative Scrutiny Joint Committee chaired by Lord Rooker in 2013.³ The Government took note of the evidence to the Pre-legislative Scrutiny Committee and the subsequent report, which suggested that confusion could arise as a result of the way the clause was drafted. In particular, it was suggested the clause was unclear for those self-employed persons who retained duties under section 3(2). Evidence before the Joint Committee highlighted the uncertainty and

¹ <http://www.hse.gov.uk/consult/condocs/cd242.htm>

² <https://www.gov.uk/government/publications/reclaiming-health-and-safety-for-all-lofstedt-report>

³ <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftdereg/101/10108.htm>

inconsistency this created because self-employed persons may incorrectly assess the risk they pose, and may therefore incorrectly assess whether or not they had to comply with the law. As a result it was thought that a more specific list could better inform them as to whether or not they were now exempt. The clause has therefore been amended so that all self-employed persons will be exempt from the law unless they conduct an “undertaking of a prescribed description.” Paragraphs 7 to 15 below provide further information about this amendment.

The current position

5. The Great Britain (GB) regulatory framework for health and safety, in particular section 3(2) of HSWA, places general duties on everyone “at work” including the self-employed. Section 3(2) states:

“It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health and safety.”

6. Section 53 of HSWA gives a broad definition of a self-employed person. It states a “self-employed person means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others.” The meaning of a “contract of employment” (or contract of service) is not defined in HSWA. There is no proposal to amend this definition.

The proposed change

7. Section 3(2) of HSWA is to be amended in order to exempt self-employed persons from the general duty in respect of themselves and other persons (not being their employees), except those undertaking activities on a prescribed list.

8. “Prescribed” is defined in HSWA to mean “prescribed by regulations made by the Secretary of State”. The amendment to section 3(2) will enable the Secretary of State to make regulations for the purposes of bringing self-employed persons within the scope of section 3(2) where their undertaking poses a significant risk of harm to themselves or others.

9. The prescribed list is designed to strike a balance between the need to free self-employed persons from unnecessary perceived requirements, whilst still providing the important protections to those who need it.

10. In addition to the amendment to section 3(2), a further amendment is required to section 11(4) of HSWA. This currently prevents HSE from submitting proposals to the Secretary of State for the making of regulations for railway safety purposes. The amendment to section 11(4) will enable HSE to recommend a proposal to the Secretary of State to prescribe railway safety related activities conducted by a self-employed person. If prescribed, those

self-employed persons will remain within scope of the general duty under section 3(2).

11. Health and safety regulations that place duties on the self-employed may need to be consequentially amended to ensure that they remain consistent with the amended duty in section 3(2) and the list of prescribed undertakings. If amendments are required to existing regulations, the intention is that these changes will be made in readiness for when the Bill receives Royal Assent. Where appropriate, Approved Codes of Practice may also be amended to reflect the change.

Principles behind the proposed change

12. An undertaking will be prescribed if one of the following four criteria is met:

- there are high numbers of self-employed in a particular industry and high rates of injuries and/or fatalities (eg agriculture);
- there is a significant risk to members of the public (eg fairgrounds);
- there is the potential for mass fatalities (eg explosives); or
- there is a European obligation to retain the general duty on self-employed persons (eg construction - Council Directive 92/57/EEC imposes duties on the self-employed for safety and health requirements at temporary or mobile construction sites).

13. Self-employed persons undertaking any of the high hazard activities in the prescribed list will be expected to take the necessary safeguards when undertaking those activities to prevent risk of harm to themselves and others.

14. The draft regulations at Annex 1 detail those high hazard industries and activities which will not be exempt from section 3(2) of HSWA. Those activities undertaken by self-employed persons not included in the regulations will be exempt.

15. It should be noted that the proposed legislative amendment to section 3(2) of HSWA remains subject to the Parliamentary process. There is no guarantee that the proposed amendments will receive Royal Assent in their current form.

Consultation Questions

CD273 - Proposals to exempt self-employed persons from section 3(2) of the Health and Safety at Work etc. Act 1974, except those undertaking activities on a prescribed list.

This consultation is to ask people about the definitions of the activities and industries which will be prescribed to be within scope of section 3(2) of HSWA.

- The consultation will start on the 7th July 2014 and will close on the 31st August 2014 and is split into two sections.
- Section 1 asks some basic questions about you and the sector you work in.
- Section 2 asks 4 questions about the proposal.

**Answer the
Consultation
Questions**

**View the Consultation
Document**

**Glossary of
Regulations
providing definitions**

**View the draft
Regulations**

**View the
Impact Assessment**

Section 1 – You and the sector you work in

1. What describes your sector best?

- Academic
- Business
- Charity
- Consultancy
- Local Government
- Central Government
- Non Governmental Organisation (NGO)
- Trade Association
- Member of the public
- Non-departmental public body
- Pressure / Campaign Group
- Trades Union

2. **How would you describe your role?**

An employer

Please describe your role

An employee

Please describe your role

Health and safety professional / consultant

Self-employed person

Please describe your role

Trades Union Official

Safety Representative

Training provider

Employer body / Trade Association

Other

Please describe your role

Section 2 – Questions about the proposal

Work activities

Q1. In the Schedule to the draft Regulations at Annex 1, you will see a list of definitions for each of the work activities listed below set out at paragraphs 1 to 32 of the Schedule. These are the prescribed activities for which the self-employed will continue to have health and safety duties. It is important that the definitions are clear and accurate to ensure that a self-employed person could understand if the law applied to them. We would like you to consider the definition for the activity/activities you have an interest in and let us know if you agree that the definition is clear or not. If you disagree, you will have the opportunity to tell us why in the box that appears once you click the ‘disagree’ button. You can respond to any or all of the activities listed below.

The definitions often refer to other regulations and a glossary of these can be found at Annex 3

• **Agriculture and Forestry Paragraphs 1 – 4**

1. Any agricultural activity (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998).

Agree

Disagree

2. Gamekeeping, which means the management of game and the environment to provide a habitat conducive for the production of game through activities including —

- (a) vermin control;
- (b) land, plant and water management; or
- (c) the prevention of poaching.

Agree

Disagree

3. Landscaping and other amenity activities, including the creation, maintenance and management of hard and soft landscapes in parks, gardens and similar environments for aesthetic and leisure purposes.

Agree

Disagree

4. Any arboriculture activity, including the cultivation and maintenance of trees, shrubs and other woody plants.

Agree

Disagree

- **Construction and design – Paragraphs 5 – 6**

Agree

Disagree

- **Compressed air – Paragraph 7**

Agree

Disagree

- **Diving – Paragraph 8**

Agree

Disagree

- **Chemicals, explosives and other dangerous substances – Paragraphs 9(a) – 9(f)**

Here 'work activity' includes manufacturing, importing, exporting, supplying, managing, handling, storing, transporting, examining, testing and use.

Agree

Disagree

- **Dangerous substance (within the meaning of the Dangerous Substances and Explosive Regulations 2002) - Paragraph 9(g)**

Agree

Disagree

- **Biocidal product or treated article – Paragraph 9(h)**

Agree

Disagree

- **Acetylene – Paragraph 9(i)**

Agree

Disagree

- **Dangerous Substances in Harbour Areas – Paragraph 10**

Agree

Disagree

- **Explosives – Paragraph 11**

Agree

Disagree

- **Lead – Paragraph 12**

Agree

Disagree

- **Manufacture or refining of chemicals and petrochemicals – Paragraph 13**

Agree

Disagree

- **Carriage of Dangerous Goods and Use of Transportable Pressure Equipment – Paragraph 14**

Agree

Disagree

- **Control of Major Accident Hazards – Paragraph 15**

Agree

Disagree

- **Asbestos – Paragraph 16**

Agree

Disagree

- **Electricity – Paragraph 17**

Agree

Disagree

- **Equipment and plant – Paragraph 18**

Agree

Disagree

- **Pressure systems – Paragraph 19**

Agree

Disagree

- **Mining and quarrying - Paragraphs 20 and 21**

Agree

Disagree

- **Pipelines - Paragraph 22**

Agree

Disagree

- **Railways and other guided transport - Paragraph 23**

Agree

Disagree

- **Health and social care – Paragraph 24**

Agree

Disagree

- **Waste management - Paragraph 25**

Agree

Disagree

- **Amusement – Paragraph 26**

Here:

“hazardous thrill seeking activity” includes activities such as bungee jumping and zip wires.

“hazardous production activity” includes circus acts and stunts.

“event, exhibition or venue” includes concerts and fairs.

Agree

Disagree

- **Gas – Paragraph 27**

Agree

Disagree

- **Genetically modified organisms – Paragraph 28**

Agree

Disagree

- **Nuclear and ionising radiation - Paragraphs 29 and 30**

Agree

Disagree

- **Offshore - Paragraph 31**

Agree

Disagree

- **Advice - Paragraph 32**

Agree

Disagree

Q2. From the definitions for work activities in the Regulations; do you think someone who is self-employed would know if the law applied to them or not?

Yes

No

Please comment here

Q3. In the Impact Assessment (available on the consultation homepage) we have made a number of assumptions. Do you have comments about any of these? If so, please enter them below.

Yes

No

Please comment here

Q4. Self-employed people will need to know if the law applies to them or not. How best do you think HSE can achieve this clarity (e.g. web based guidance etc)

Please comment here

ANNEX 1

DRAFT STATUTORY INSTRUMENTS

20XX No. 000

HEALTH AND SAFETY

The Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 20**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 3(2) and 82(3) of the Health and Safety at Work etc Act 1974 (“the 1974 Act”)(¹).

These Regulations give effect without modification to proposals submitted to the Secretary of State by the Health and Safety Executive under section 11(3) of the 1974 Act(²).

Before submitting those proposals to the Secretary of State, the Health and Safety Executive consulted the Office for Nuclear Regulation and such other bodies that appeared to it to be appropriate as required by section 50(3) of the 1974 Act(³).

Citation and commencement

1.—(1) These Regulations may be cited as the Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 20**.

(2) These Regulations come into force on *[date]*.

Prescribed descriptions of undertakings

2. An undertaking is of a prescribed description for the purposes of section 3(2) of the Health and Safety at Work etc. 1974 (*general duties of self-employed to persons other than their employees*) if and to the extent that it involves the carrying out of any of the activities listed in the Schedule.

(¹) 1974 c.37.

(²) Section 11(3) was inserted by S.I. 2008/960.

(³) Section 50(3) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 16(3); it was further amended by the Health and Social Care Act 2012 (c.7), Schedule 7, paragraph 6.

Review

- 3.—(1) Before the end of each review period, the Secretary of State must—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate, and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

Signed by authority of the Secretary of State for Work and Pensions

Date

Name
Minister of State
Department of Work and Pensions

SCHEDULE ACTIVITIES

Regulation 2

Agriculture and forestry

1. Any agricultural activity (within the meaning given in regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998⁽⁴⁾).

2. Gamekeeping, which means the management of game and the environment to provide a habitat conducive for the production of game through activities including—

- (a) vermin control;
- (b) land, plant and water management; or
- (c) the prevention of poaching.

3. Landscaping and other amenity activities, including the creation, maintenance and management of hard and soft landscapes in parks, gardens and similar environments for aesthetic and leisure purposes.

4. Any arboricultural activity, including the cultivation and maintenance of trees, shrubs and other woody plants.

Construction and design

5. Construction work (within the meaning given in regulation 2(1) of the Construction (Design and Management) Regulations 2007⁽⁵⁾) (“the 2007 Regulations”).

⁽⁴⁾ S.I. 1998/494.
⁽⁵⁾ S.I. 2007/320.

6.—(1) Any other activity conducted by any of the following persons, and which gives rise to a duty under the 2007 Regulations—

- (a) a designer;
- (b) a client;
- (c) a contractor;
- (d) a principal contractor; or
- (e) a CDM co-ordinator.

(2) In this paragraph, “designer”, “client”, “contractor”, “principal contractor” and “CDM co-ordinator” have the meanings given in regulation 2(1) of the 2007 Regulations.

Compressed air

7.—(1) Work in compressed air.

(2) Any activity conducted in accordance with the Work in Compressed Air Regulations 1996⁽⁶⁾ (“the 1996 Regulations”) by a compressed air contractor.

(3) In this paragraph, “work in compressed air” and “compressed air contractor” have the meanings given in regulation 2(1) of the 1996 Regulations.

Diving

8.—(1) Any activity conducted by any of the following persons, and which gives rise to a duty under the Diving at Work Regulations 1997⁽⁷⁾ (“the 1997 Regulations”)—

- (a) a diving contractor;
- (b) a supervisor;
- (c) a diver;
- (d) a person who, to any extent, is responsible for, has control over or is engaged in a diving project; or
- (e) a person whose acts or omissions could adversely affect the health and safety of persons engaged in a diving project.

(2) In this paragraph, “diver”, “diving contractor”, “supervisor” and “diving project” have the meanings given in regulation 2(1) of the 1997 Regulations.

Chemicals, explosives and other dangerous substances

9.—(1) Any work activity involving any—

- (a) carcinogen (within the meaning of regulation 2(1) of the Control of Substances Hazardous to Health Regulations 2002⁽⁸⁾ (“the 2002 Regulations”)).
- (b) mutagen (within the meaning of regulation 2(1) of the 2002 Regulations).
- (c) biological agent (within the meaning of regulation 2(1) of the 2002 Regulations).
- (d) substance hazardous to health (including a mixture or solution of two or more substances) for which the Health and Safety Executive has approved a workplace exposure limit (within the meaning of regulation 2(1) of the 2002 Regulations).
- (e) substance hazardous to health (including a mixture or solution of two or more substances)—
 - (i) which is listed in Table 3.2 of part 3 of Annex VI of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures⁽⁹⁾; and

⁽⁶⁾ S.I. 1996/1656.

⁽⁷⁾ S.I. 1997/2776.

⁽⁸⁾ S.I. 2002/2677.

- (ii) for which an indication of danger specified for the substance is—
 - (aa) very toxic;
 - (bb) toxic;
 - (cc) corrosive;
 - (dd) harmful, with the exception of substances carrying only a risk phrase of R20, R21 or R22.
- (f) substance (not being a substance falling within sub-paragraphs (a) to (e)) for which a risk assessment conducted in accordance with regulation 6 of the 2002 Regulations has shown to be a potential cause of occupational asthma.
- (g) dangerous substance (within the meaning of regulation 2 of the Dangerous Substances and Explosive Atmospheres Regulations 2002⁽¹⁰⁾).
- (h) biocidal product or treated article within the meaning of Article 3(1)(a) or Article 3(1)(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products⁽¹¹⁾.
- (i) acetylene (within the meaning of regulation 2(1) of the Acetylene Safety Regulations 2014⁽¹²⁾).

(2) In this paragraph—

- (a) “work activity” includes manufacturing, importing, exporting, supplying, managing, handling, storing, transporting, examining, testing and use.
- (b) “risk phrase” has the meaning given in Annex III of Commission Directive 2001/59/EC of 6 August 2001 adapting to technical progress for the 28th time Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances⁽¹³⁾.

10. Any activity giving rise to a duty under the Dangerous Substances in Harbour Areas Regulations 1987⁽¹⁴⁾.

11. Any activity giving rise to a duty under the Explosives Regulations 2014⁽¹⁵⁾.

12. Any activity which could result in exposure to lead (within the meaning given in regulation 2(1) of the Control of Lead at Work Regulations 2002⁽¹⁶⁾).

13.—(1) Manufacture or refining of chemicals and petrochemicals.

(2) In this paragraph, “petrochemical” means a chemical or preparation obtained either directly or indirectly from the chemical processing of petroleum oil or natural gas.

14. Any activity giving rise to a duty under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009⁽¹⁷⁾.

15.—(1) Any activity conducted on an establishment where that activity may cause, or have a detrimental impact on the severity of the consequences of, a major accident.

(2) In this paragraph, “establishment” and “major accident” have the meanings given in regulation 2(1) of the Control of Major Accident Hazards Regulations 1999⁽¹⁸⁾.

⁽⁹⁾ O.J. No L353, 31.12.08, p.1.

⁽¹⁰⁾ S.I. 2002/2776.

⁽¹¹⁾ O.J. No L167, 26.06.12, pp. 1-123.

⁽¹²⁾ Due to come into force on 1 October 2014.

⁽¹³⁾ O.J. No L225, 21.08.2001, p.0001-0333.

⁽¹⁴⁾ S.I. 1987/37.

⁽¹⁵⁾ Due to come into force on 1 October 2014.

⁽¹⁶⁾ S.I. 2002/2676.

⁽¹⁷⁾ S.I. 2009/1348.

⁽¹⁸⁾ S.I. 1999/743.

Asbestos

16.—(1) Any work with asbestos within the meaning given in regulation 2(2) of the Control of Asbestos Regulations 2012⁽¹⁹⁾ (“the 2012 Regulations”).

(2) Any activity giving rise to a duty under regulation 4 of the 2012 Regulations (duty to manage asbestos in non-domestic premises).

Electricity

17.—(1) Construction, operation or maintenance of a system, which gives rise to a duty under the Electricity at Work Regulations 1989⁽²⁰⁾ (“the 1989 Regulations”).

(2) Any activity giving rise to a duty under regulation 14 of the 1989 Regulations (work on or near live conductors).

(3) In this paragraph, “system” has the meaning given in regulation 2(1) of the 1989 Regulations.

Equipment and plant

18. Examination, maintenance or testing—

(a) of fairground equipment; or

(b) conducted for the purposes of the following Regulations—

(i) the Provision and Use of Work Equipment Regulations 1998⁽²¹⁾.

(ii) the Lifting Operations and Lifting Equipment Regulations 1998⁽²²⁾.

(iii) the Control of Substances Hazardous to Health Regulations 2002.

Pressure systems

19. Any activity giving rise to a duty under the Pressure Systems Safety Regulations 2000⁽²³⁾.

Mining and quarrying

20. Any work conducted on, in or in relation to—

(a) a mine (within the meaning given in section 180(1) of the Mines and Quarries Act 1954⁽²⁴⁾); or

(b) a quarry (within the meaning given in regulation 3(1) of the Quarries Regulations 1999⁽²⁵⁾).

21. Any activity giving rise to a duty under the Borehole Sites and Operations Regulations 1995⁽²⁶⁾.

Pipelines

22.—(1) Operation of a pipeline.

(2) Any modification, maintenance or other work conducted on or in relation to a pipeline.

⁽¹⁹⁾ S.I. 2012/632.
⁽²⁰⁾ S.I. 1989/635.
⁽²¹⁾ S.I. 1998/2306.
⁽²²⁾ S.I. 1998/2307.
⁽²³⁾ S.I. 2000/128.
⁽²⁴⁾ 1954 c.70.
⁽²⁵⁾ S.I. 1999/2024.
⁽²⁶⁾ S.I. 1995/2038.

(3) Any activity giving rise to a duty under regulation 15 of the Pipe lines Safety Regulations 1996⁽²⁷⁾ (“the 1996 Regulations”).

(4) In this paragraph, “pipeline” has the meaning given in regulation 3 of the 1996 Regulations.

Railways and other guided transport

23.—(1) The operation of a railway (within the meaning of regulation 2 of the Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006⁽²⁸⁾ (“the 2006 Regulations”).

(2) The operation of a tramway (within the meaning of regulation 2 of the 2006 Regulations); or

(3) The operation of any other system of guided transport (within the meaning of regulation 2 of the 2006 Regulations).

Health and social care

24.—(1) Provision of health or social care.

(2) Provision of any premises where the main use of those premises is for the purpose of providing health or social care.

(3) In this paragraph—

(a) healthcare includes any services provided to any person in hospitals or clinics, or by the ambulance services, community services, mental health services and other similar institutions (including by registered healthcare professionals).

(b) social care includes any services provided to any person in care homes or in premises where assessment, treatment or care is provided in the community (including in domestic premises).

Waste management

25.—(1) The management of waste, which means—

(a) the collection, transport, recovery or disposal of waste (including hazardous, chemical or solvent waste);

(b) the supervision of such operations; or

(c) the after-care of disposal sites.

(2) In this paragraph:

(a) “waste” means any substance or object which the holder discards or intends or is required to discard;

(b) “collection” includes the gathering of waste, the preliminary sorting of waste and the preliminary storage of waste for the purposes of transport to a waste treatment facility;

(c) “recovery” means any operation, the principal result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function.

(d) “disposal” means any operation other than recovery even where the operation has as a secondary consequence the reclamation of substances or energy.

Amusement

26. Organisation, operation or conduct of any—

(a) adventure activity within the meaning given by regulation 2(1) of the Adventure Activities Licensing Regulations 2004⁽²⁹⁾.

⁽²⁷⁾ S.I. 1996/825.

⁽²⁸⁾ S.I. 2006/557.

- (b) hazardous thrill-seeking activity.
- (c) hazardous production activity.
- (d) event, exhibition or venue attended by members of the public for entertainment purposes.
- (e) fairground, amusement park, theme park or other premises where any part of the premises is for the time being used wholly or mainly for the operation of any fairground equipment.
- (f) fairground equipment.
- (g) public firework display in any place to which at the material time the public have or are permitted access, whether on payment or otherwise.
- (h) zoo (within the meaning given by section 1(2) of the Zoo Licensing Act 1981⁽³⁰⁾).

Gas

27. Any activity giving rise to a duty under the Gas Safety (Installation and Use) Regulations 1998⁽³¹⁾.

Genetically modified organisms

28. Contained use within the meaning given in regulation 2(1) of the Genetically Modified Organisms (Contained Use) Regulations 2014⁽³²⁾.

Nuclear and ionising radiation

29. Any activity carried out on premises which are, or are on—

- (a) a GB nuclear site (within the meaning of section 68 of the Energy Act 2013⁽³³⁾); or
- (b) an authorised defence site (within the meaning of regulation 2(1) of the Health and Safety (Enforcing Authority) Regulations 1998).

30. Work with ionising radiation (within the meaning given in regulation 2(1) of the Ionising Radiation Regulations 1999⁽³⁴⁾).

Offshore

31.—(1) Any activity, to the extent not already prescribed in this Schedule, conducted from premises outside Great Britain to which the prescribed provisions of the 1974 Act apply outside Great Britain pursuant to article 3 of the Health and Safety at Work etc. Act 1974 (Application outside of Great Britain) Order 2013⁽³⁵⁾ (“the 2013 Order”).

(2) In this paragraph, “prescribed provisions” has the meaning given in article 2 of the 2013 Order.

Advice

32.—(1) Provision of advice by a competent person in relation to the carrying out of any of the activities set out in this Schedule.

(2) A person is a competent person for the purposes of this paragraph if that person has sufficient training and experience or specialist knowledge in the area(s) on which they advise.

⁽²⁹⁾ S.I. 2004/1309.

⁽³⁰⁾ 1981 c.37.

⁽³¹⁾ S.I. 1998/2451.

⁽³²⁾ Due to come into force on 1 October 2014.

⁽³³⁾ 2013 c.32.

⁽³⁴⁾ S.I. 1999/3232.

⁽³⁵⁾ S.I. 2013/240.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify the circumstances in which self-employed persons will be required to comply with their duty under section 3(2) of the Health and Safety at Work etc Act 1974 to conduct their undertakings in such a way as to ensure, so far as reasonably practicable, that they themselves and other persons (not being their employees) who may be affected by their work activities are not exposed to risks to their health and safety. Every self-employed person continues to hold a duty in respect of their employees under section 2 of the Health and Safety at Work etc Act 1974.

Regulation 2 introduces the Schedule. The Schedule specifies those undertakings of a prescribed description whereby self-employed persons will continue to hold a duty under section 3(2) of the Health and Safety at Work etc Act 1974.

Regulation 3 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke these Regulations or to amend them.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Health and Safety Executive, Redgrave Court, Merton Road, Merseyside, L20 7HS and is available in the libraries of both Houses of Parliament, and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk

Annex 2- Impact Assessment

<p>Title: Implementation of Professor Löfstedt's recommendation to exempt from health and safety law some self-employed individuals</p> <p>IA No: HSE0071</p> <p>Lead department or agency: Health and Safety Executive</p> <p>Other departments or agencies: -</p>	<p>Impact Assessment (IA)</p> <p>Date: 11/06/14</p> <hr/> <p>Stage: Consultation</p> <hr/> <p>Source of intervention: Domestic</p> <hr/> <p>Type of measure: Primary legislation</p> <hr/> <p>Contact for enquiries: Sarah.Wadham@hse.gsi.gov.uk Maria.Ottati@hse.gsi.gov.uk</p>
Summary: Intervention and Options	RPC Opinion: Not required

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
-£6.7m	-£6.7m	-£0.63 m	Yes	OUT

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

The UK regulatory framework for health and safety, in particular the Health and Safety at Work etc Act 1974 places general duties on everyone "at work" including the self-employed. Professor Ragnar Löfstedt, in his independent review of health and safety legislation recommended "exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others." The Government has accepted this recommendation and has committed to reducing the health and safety burden on self-employed individuals who do not undertake certain high-risk activities.

What are the policy objectives and the intended effects?

The policy objective is to exempt from health and safety law self-employed individuals who do not undertake certain high-risk activities. The intended effect is to remove the burden of implementing health and safety legislation for those self-employed, and to remove the fear of inspections and possible prosecutions. This would remove unnecessary expenditure and contribute to an improved perception of HSE's regulatory activity, showing it to be sensible and proportionate.

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

A number of options were considered and consulted on at an earlier stage¹. The present impact assessment (IA) reflects proposed changes to the original preferred option. These emerged during parliamentary scrutiny.

Option 1: Exempting from health and safety law the self-employed who do not undertake certain high-risk activities.

Option 2: Do nothing

Option 1 is the preferred 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		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	MicroYes	< 20 No	SmallNo	MediumNo	LargeNo
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)			Traded:		Non-traded:

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:

¹ See: <http://www.hse.gov.uk/consult/condocs/cd242.htm>

Summary: Analysis & Evidence

Policy Option 1

Description: Exempting from health and safety law the self-employed who do not undertake certain high-risk activities

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High: Optional	Best Estimate: 6.7

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	-	1st	Optional	Optional
High	Optional-		Optional	Optional
Best Estimate	3.6			3.6

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

In the first year there would be one-off familiarisation costs of £3.6 million to the self-employed. They would have to spend time becoming aware of and understanding the changes to Regulations, determining whether the exemption applies to them and, for those concluding that they are exempted, deciding what actions to take as a result.

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

As explained in the evidence base, we are assuming in this IA that the exempted self-employed would not reduce the precautions they are currently taking. Under this assumption, there would be no adverse effects on health and safety.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	-	1st	-	-
High	-		-	-
Best Estimate	0		1.2	10.3

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

There would be cost savings of £220 thousand a year for individuals newly setting up as self-employed, who might otherwise have spent time familiarising themselves with their obligations under health and safety law. There will also be cost savings of £980 thousand a year for established self-employed individuals from not having to keep up-to-date with health and safety requirements.

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

This is one of a number of deregulatory proposals taken forward by HSE. We would expect it to contribute to an improved perception of health and safety as proportionate and sensible.

Key assumptions/sensitivities/risks

Discount rate

3.5

Evidence regarding potential changes in behaviour of some groups of self-employed is lacking at this point, and will be improved during the consultation period. If current assumptions are wrong, adverse health and safety impacts could result from this proposal. We are also assuming self-employed individuals will correctly assess whether they undertake the activities on the list of prescribed activities.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: (2009 prices)	In scope of	Measure qualifies
Costs: 0.34	Yes	OUT
Benefits: 0.97		
Net: 0.63		

Summary: Analysis & Evidence

Policy Option 2

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	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
High	Optional-	Optional	Optional
Best Estimate	0		0

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

This option continues with the status quo and would lead to no additional costs or benefits

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

This option continues with the status quo and would lead to no additional costs or benefits

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

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

This option continues with the status quo and would lead to no additional costs or benefits

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

This option continues with the status quo and would lead to no additional costs or benefits

Key assumptions/sensitivities/risks	Discount rate (%)
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BUSINESS ASSESSMENT (Option 4)

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

Impact assessment of the proposals to exempt some self-employed from health and safety law

Introduction

1. The proposal is to exempt from health and safety law those self-employed who do not undertake certain high-risk activities.

Background

2. The Health and Safety at Work etc Act 1974 (HSWA) currently imposes a general duty on self-employed people to conduct their work in such a way that they and other persons affected by their work are not exposed to risks to their health and safety, so far as is reasonably practicable¹. The Management of Health and Safety at Work Regulations 1999 requires the self-employed to make an assessment of the risks to their health and safety as well as the health and safety of others arising from their work.

3. In March 2011, the Rt Hon Chris Grayling MP, then Minister for Employment asked Professor Ragnar Löfstedt, Director of the King's Centre for Risk Management at King's College London, to conduct an independent review of health and safety regulations to identify opportunities to simplify the rules. Professor Löfstedt produced a report in November 2011 "Reclaiming health and safety for all: An independent review of health and safety legislation"². One of the key recommendations from his review was to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others.

4. The following extract from Professor Löfstedt's report explains the reasons for this recommendation.

"There is a case for following a similar approach to other countries and exempting from health and safety law those self-employed people (i.e. those who do not have any employees) whose workplace activities pose no potential risk of harm to others.

This would benefit approximately 1m people. The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations and the limited prospect of these being enforced but it will help reduce the perception that health and safety law is inappropriately applied. This will complement HSE's recently revised guidance on home-workers.

I therefore recommend exempting from health and safety law those self-employed whose work activities pose no potential risk of harm to others.

This change should not affect the duties that others have towards a self-employed person.

It is vital that this change is accompanied by clear guidance to ensure that the limited scope of the change is clearly understood and that not all the self-employed will be exempt."

¹ An explanation of what is meant by "so far as is reasonably practicable" is provided here: <http://www.hse.gov.uk/risk/theory/alarp glance.htm>

² See: <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

5. The Government accepted the recommendation in November 2011 and in the Government response to the report³ stated:

“The Government will ask HSE to take urgent action to draw up proposals for changing the law to remove health and safety burdens from the self-employed in low-risk occupations, whose activities represent no risk to other people. This will bring Britain in line with other European countries, who have taken a more proportionate approach when applying health and safety law to the self-employed, and will free around one million people from red tape without impacting on health and safety outcomes.

In practice, we do not expect enforcement agencies to carry out many visits to self-employed people involved in low risk activities following the introduction of a new inspection regime announced in March 2011. However, it is clear that the fear of inspection and possible prosecution for minor transgressions of the law is a cause of unnecessary concern for the self-employed and – where the individual is carrying [out] low risk activity such as office-type work- delivers no real benefit to the wider population. Where the activities of self-employed people could pose a risk to themselves or others, for example in the building trades, the law will continue to apply.”

6. In addition to the Löfstedt Report, a previous report by Lord Davidson⁴, which had reviewed some areas of the health and safety system, had identified the extension of health and safety law to the self-employed as a particular example of gold-plating of EU directives that may not be justified in all cases. Lord Davidson concluded that HSE should consider exempting the self-employed in low-risk sectors from the legislation. At present, the law in the UK covers self-employed persons in all occupations.

7. In 2012 HSE undertook a consultation⁵ which focused on the general policy of exempting self-employed who posed no potential risk of harm to others. After considering the responses to the public consultation, HSE made recommendations to the Secretary of State for Work and Pensions and a clause was drafted for inclusion in the draft Deregulation Bill. The clause amended current duties in order to remove from scope those self-employed who posed no potential risk of harm to others.

8. The Bill was subject to scrutiny by the Pre-legislative Joint Scrutiny Committee (JSC) in 2013. The Government took note of the evidence to the JSC (described in the subsequent report⁶), which suggested that confusion may arise as a result of the way the Clause is currently drafted. In particular, it was suggested the clause was unclear for those self-employed persons who retained duties. Evidence before the JSC highlighted concerns about the uncertainties and inconsistencies the amendment might create, such that self-employed persons may incorrectly assess whether or not they had to comply with the law. The Clause has therefore been amended so that all self-employed persons will be exempt from the law unless they conduct an “undertaking of a prescribed description”.

Policy objectives and intended effects

9. The policy objective is to exempt from health and safety law those self-employed individuals who do not undertake certain high-risk activities. The intended effect is to remove

³ See: <http://www.dwp.gov.uk/docs/lofstedt-report-response.pdf>

⁴ Davidson Review, Final Report, 2006: www.bis.gov.uk/files/file44583.pdf

⁵ See here: <http://www.hse.gov.uk/consult/condocs/cd242-responses.pdf>

⁶ See: <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtdraftdereg/101/101.pdf>

the burden of implementing health and safety legislation for those self-employed persons, and to remove the fear of inspections and possible prosecutions. This would contribute to an improved perception of HSE's regulatory activity, showing it to be sensible and proportionate.

Alternatives to Regulation

10. This is a deregulatory measure, and therefore, no alternatives to regulatory activity have been considered.

Current position

11. The UK regulatory framework for health and safety, in particular Section 3 of HSWA, places general duties on everyone “at work” including the self-employed. Section 3(2) states :

“It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health and safety.”

12. Section 53 of HSWA gives a broad definition of a self-employed person. It states a “self-employed person means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others.” The meaning of a “contract of employment” (or contract of service) is not defined in HSWA.

13. The Section 3(2) duty applies to ensuring both the personal safety of the self-employed person and to the safety of other people who may be affected by the work of the self-employed person.

14. Health and safety legislation places duties on those who create risks and are best placed to control them whether as “employers,” “employees,” “self-employed persons” or “persons in control.” Some regulations apply to the self-employed as if they were both employer and employee, e.g. The Control of Lead at Work Regulations 2002. In some legislation, duties are placed on “any person” or phrased so that “no person” may carry out certain activities. There are approximately 50 sets of regulations that apply to the self-employed, either explicitly referring to self-employment or contained within a broader category of “person”. These include regulations designed to deal with specific risks to others from any person’s work activity, such as the Gas Safety (Installation and Use) Regulations 1998, that place restrictions on those who may carry out work on gas installations in domestic premises, as well as more general regulations such as the Reporting of Injuries Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). The list in “Regulations that apply to the self-employed” below details the Regulations where duties apply to those who are self-employed.

15. The Framework Directive on Health and Safety (89/391/EC) was designed to put in place a consistent structure of Community law on health and safety for workers across all European Union (EU) Member States. Its “daughter directives” include the Display Screen Equipment Directive (90/270/EC) and the Temporary Work at Heights Directive (2001/45/EC). The self-employed are not within the scope of the directives due to the treaty base under which European health and safety legislation is made. A variety of different approaches are taken across EU Member States. For example, some Member States, such as Germany, do not apply health and safety law to the self-employed except where their work may affect the safety of employees. Other Member States, such as the Netherlands, choose to apply a limited number of health and safety regulations to the self-employed where activities are considered particularly hazardous or if they present risks to others. Other Member States, such as Ireland and Spain, have extended health and safety law to include the self-employed.

16. One exception to this general approach is Council Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites, where Member States are required to impose duties on the self-employed for the protection of employees. This reflects the fact that construction is viewed as a high risk sector and the working arrangements common within this industry, where employees of different employers or self-employed contractors work alongside each other.

17. Health and safety law in Great Britain (GB) places duties on persons who create risks, including the self-employed. As a result, where that law transposes EU directives that do not include the self-employed, GB law has at times extended that scope to impose duties on the self-employed. Such extensions have been broadly risk-based: for example the Health and Safety (Display Screen Equipment) Regulations 1992 do not place any duties on the self-employed, on the grounds that there is no risk to third parties.

Proposed Changes – Options considered

18. A broad range of options were considered initially at the start of the policy development process. Some were ruled out on practical grounds but 3 (plus a 'Do nothing' option) were analysed in detail in the Impact Assessment (IA) prepared for the consultation that took place starting August 2012⁷.

19. The options analysed in detail in that IA were:

- Option 1 (2012): Exempting from health and safety law the self-employed who do not put others at risk at any point in the normal course of their work.
- Option 2 (2012): Exempting from health and safety law the self-employed who do not put others at risk at any point in the normal course of their work, except if they work in certain industries.
- Option 3 (2012): Exempting from health and safety law the self-employed who do not put others at risk at any point in the normal course of their work and do solely office-type work.
- Option 4 (2012): Do nothing

20. Option 2 (2012), which was identified as the preferred option, excluded workers in certain industries, sectors, sites or activities from the exemption. These (described as the "prescribed industries" in the consultation document), were all high-hazard, high-risk sectors. They were:

- (i) construction;
- (ii) agricultural activities;
- (iii) quarries;
- (iv) mining;
- (v) diving;
- (vi) COMAH⁸ sites;

⁷ See Annex A in: <http://consultations.hse.gov.uk/gf2.ti/f/16802/442789.1/PDF/-/CD242%20Complete.pdf>

⁸ This refers to sites covered by the Control of major accident hazards (COMAH) Regulations 1999. Please see: <http://www.hse.gov.uk/comah/>

- (vii) offshore activities;
- (viii) nuclear installations
- (ix) explosives
- (x) gas fitting and installation
- (xi) railways

21. HSE has published both an analysis of the responses to that consultation⁹ and an updated IA¹⁰ taking them (as well as some qualitative research, which will also be incorporated into the present IA) into account. That updated IA was scrutinised by the Regulatory Policy Committee, which gave it a Green rating (marking it as ‘fit for purpose’).

22. The present IA analyses a change to the preferred option. This change emerged during Parliamentary scrutiny. The principle will be to exempt all self-employed, unless they conduct an “undertaking of a prescribed description”. High-risk work activities will be prescribed if one of the following four criteria is met:

- There are high numbers of self-employed in a particular industry, and a high rate of injuries and/or fatalities (e.g. agriculture).
- There is a significant risk to members of the public (eg fairgrounds);
- There is the potential for mass fatalities (e.g. explosives).
- There is an European obligation to retain the general duty on self-employed persons (e.g. construction, where the Council Directive 92/57/EEC imposes duties on the self-employed for safety and health requirements at temporary or mobile construction sites).

23. The options considered in this IA, are therefore the following:

- Option 1: Exempting from health and safety law those self-employed who do not undertake certain high-risk activities.
- Option 2: Do nothing

24. The high-risk activities mentioned in Option 1 are detailed in the following table (which we will refer to in the rest of the document as the “list of prescribed activities”):

Table 1 – List of prescribed activities

⁹ See here: <http://www.hse.gov.uk/consult/condocs/cd242-responses.pdf>

¹⁰ See: <http://www.hse.gov.uk/consult/condocs/cd242-update.pdf>

**PRESCRIBED ACTIVITIES WHERE THE SELF-EMPLOYED
WILL RETAIN DUTIES UNDER
SECTION 3(2) HEALTH AND SAFETY AT WORK ETC ACT 1974**

High risk activities (risks to both workers and public)

Agriculture and Forestry

Construction *(including clients (non-domestic), CDM coordinators, designer, principal contractors and contractors under the Construction (Design and Management) Regulations 2007 and principal contractors, compressed air contractors and persons under the Work in Compressed Air Regulations 1996)*

Waste Management *(waste collection, treatment and disposal, and materials recovery and remediation activities)*

Mining and Quarrying *(including owners, mine managers, rescue team captains, rescue officers and surveyors under various Mines Acts and Regulations, operators, competent individuals, shottfirsers and persons under the Quarries Regulations 1999) and owners and operators under the Borehole Sites and Operations Regulations 2005*

Diving (non-recreational) *including diving contractors, diving supervisors, divers and every/ no person under the Diving at Work Regulations 1997*

High risk activities (public safety)

Organisation and operation of exhibitions, fairgrounds, amusement parks, theme parks, zoos, circuses, public fireworks displays and adventure activities *(including inspectors under the Amusement Devices Inspection Procedures Scheme)*

Health and social care

Major hazards activities

Manufacture of petrochemicals (including oil refineries), chemicals, pharmaceuticals and agrochemicals

Chemical and solvent waste industries

Chemical warehousing including fuel storage (bulk liquid and gas)

Road transport of hazardous chemicals

Operation of Pipelines

Nuclear

Offshore *(including operators, owners, installation managers, well operators and any persons under various Offshore Regulations)*

Railways

High risk work activities when and if performed by any self-employed person

Removal, Repair or Disturbance of Asbestos including Ancillary Work *(including every person, owners, occupiers, architects, surveyors, managing agents and building contractors with duties under the Control of Asbestos Regulations 2012)*

Activities involving Carcinogens, Mutagens, Biological Agents, and a variety of substances hazardous to health, including those that are Very Toxic, Toxic, Corrosive and some that are Harmful

(including exporters and importers under the Export and Import of Dangerous Chemicals Regulations 2008)

Handling, Storage, Transport and Use of Dangerous Substances as defined by the Dangerous Substances and Explosive Atmospheres Regulations 2002

<u>Installation, Modification and Maintenance of Electrical systems as defined by the Electricity at Work Regulations 1989</u>
<u>Manufacture and Storage of Explosives as defined by the Manufacture and Storage of Explosives Regulations 2005</u> <i>(including any person who manufactures, stores, disposes, decontaminates)</i>
<u>Work on Gas appliances and Gas Fittings as defined by the Gas (Installation and Use) Regulations 1998</u> <i>(including landlords and managing agents as defined)</i>
<u>Work with Genetically Modified Organisms as defined by the Genetically Modified Organisms (Contained Use) Regulations 2000</u> <i>(including persons, notifiers and students)</i>
<u>Work with Ionising Radiation as defined by the Ionising Radiations Regulations 1999</u> <i>(including radiation protection advisers, radiations protection supervisors, outside workers and trainees as defined and operators and carriers under the Radiation (Emergency Preparedness and Public Information) Regulations 2001)</i>
<u>Installation, Modification and Maintenance of Pressure systems as defined by the Pressure Systems Safety Regulations 2000</u> <i>(including any person who designs, manufactures, imports or supplies pressure systems)</i>
<u>Inspection and maintenance of systems, plant and equipment for use at work</u> including statutory examination and testing of plant and equipment specified under various H&S regulations, e.g. lifting equipment <i>(including persons who have control and appointed competent persons (power presses) under Provision and Use of Work Equipment Regulations 1998)</i>
<u>Provision of advice to businesses to assist them to manage the above work activities</u>

25. Option 1 would require changes to HSWA and may require consequential amendments to a number of regulations which mention the self-employed, either explicitly or contained within a broader category of “person.” These Regulations are listed in the “Regulations that apply to the self-employed” section below.

Option 2 is the status quo option which sets out the baseline that we will compare other options against. Under option 2 there would be no exemptions for self-employed persons and as such, their current duties (as broadly described in the “Self-employed current duties” section below) would remain.

Sources of information used

26. A number of sources of statistical information have been used in this IA. These include the Office for National Statistics’ Annual Population Survey and Annual Survey of Hours and Earnings, as well as their Business Demography statistics. We have also used the Department for Business, Innovation and Skills’ Business Population Estimates.

27. The best information sources to understand the existing behaviour of self-employed individuals and estimate how this behaviour might change due to the proposed exemption, are

those used for our analysis of the earlier proposals. This includes the responses to the public consultation, as well as from representatives from Local Authorities and the insurance industry. It also includes bespoke qualitative research commissioned by HSE.

28. This qualitative research was undertaken because the evidence available a priori suggested many of the individuals we sought to exempt had very little awareness of health and safety requirements. Formal consultation therefore seemed unlikely to elicit many responses from the individuals themselves who would be exempted (which turned out to be the case).

29. In order to gather more first-hand information about the views of the self-employed in question, we commissioned research from the Health and Safety Laboratory. This involved 60 telephone interviews with self-employed individuals in occupations where we would expect them to be exempt under the proposal then under consideration¹¹. Half of those interviews were with individuals in office-based occupations (for instance, writers, editors, graphic designers, accountants), and the remaining half with self-employed people whose occupation involved manual work (such as dressmakers, and people who produced jewellery, furniture and beauty products).

30. The interviews explored their awareness of health and safety requirements, actions they currently took to comply and how these actions might change if they became exempt from health and safety law.

31. Because of the timescales involved in the production of this consultation-stage IA, we have only been able to update the statistical sources. For those, we have used the latest data available. For the behavioural issues, we have had to rely on the qualitative research done for the earlier proposals. Almost all of the self-employed who would have been exempted under the earlier preferred option would still be exempted under the current Option 1, but there are approximately 900 thousand additional individuals in occupations/industries that would not have been exempt under those earlier proposals but would be exempted under the new proposal. For now, we have based our assumptions for them on our available research, but we are planning to repeat the work described above for these new groups. This work will take place during the consultation period and will inform the final-stage IA.

Coverage: estimates of who would be exempted

32. According to the ONS's Annual Population Survey (APS) 2012, there are approximately 3.4 million self-employed individuals who have no employees in the UK. We estimate that some 2 million self-employed individuals would be exempted under Option 1. No self-employed would be exempted under Option 2.

33. The section on "Numbers of self-employed workers to be exempt in Option 1" below describes the methodology used to arrive at the estimate of the numbers that would be covered by the exemption, and identifies the main occupations where the self-employed would be expected to be exempt.

34. In Option 1, at an aggregate level, about a quarter of those exempted were classified as being in "Associate professional and technical occupations". The following groups comprised a

¹¹ Contact details were obtained through a number of online databases of freelancers and small businesses. Researchers were instructed to confirm each individual was self-employed and did not have employees before proceeding with the interview.

further 15%-20% each: “Professional occupations”, “Process, plant and machine operatives” and “Managers and senior officials”¹².

35. The annex provides information at a more detailed occupation level, reflecting the types of occupations we would expect would be exempted. It should be noted, however, that the lists of occupations presented are NOT lists of occupations that would definitely be exempted, and are not meant to be used for this purpose. The self-employed would still be required to assess whether they undertake any of the activities on the list of prescribed activities before being certain of whether they are exempt, even if they work in one of the occupations mentioned in the annex.

Costs and savings

(A) Cost savings to the self-employed

(i) New businesses

36. An exemption would generate cost savings to individuals newly setting up as self-employed, who might otherwise have spent time familiarising themselves with their obligations under health and safety law. Savings will depend on how many individuals who would be covered by the exemption set up as self-employed every year, what proportion of them actually spend time on familiarisation, and for those who do, how much time they spend on that activity.

37. According to 2012 data from ONS on business demography, approximately 255 thousand new businesses are established every year¹³. The Department for Business, Innovation and Skills’ Business Population Estimates¹⁴ for the past few years show that some 75% of businesses have no employees, which would roughly correspond to the self-employed¹⁵. Applying this proportion, we estimate there are some 190 thousand new self-employed individuals starting business each year (although this is likely to be an underestimate, as new businesses are more likely to be smaller, so we might expect a higher proportion of self-employed amongst new businesses than amongst established ones).

38. Under option 1, approximately 60% of the self-employed with no employees would be exempt, which would mean some 115 thousand new self-employed per year need not familiarise themselves with health and safety law.

39. For the previous proposals, we sought information, both at formal consultation and in the qualitative research carried out with self-employed individuals (described in paragraphs 28 to 30), on how much time an individual who would be covered by the exemption might spend on reading about and understanding health and safety requirements. This would involve seeking out and reading the different pieces of guidance available to determine whether they apply to them, as well as understanding them and planning how to implement them. It could also

¹² We have considered the potential incongruity of someone being at the same time a manager and genuinely self-employed. It should be noted that in spite of its official title in SOC 2000, the category includes “working proprietors in small businesses” and, in fact, the most numerous occupation in this category is “Managers and proprietors in other services (not elsewhere classified)”. Additionally, the data relies on how people describe themselves, so people who say they are both self-employed and managers are probably not managers in the way it is often understood. Therefore, this category clearly includes self-employed people who are not in traditional management roles.

¹³ See: <http://www.ons.gov.uk/ons/rel/bus-register/business-demography/index.html>. 255 thousand is the average of the last 5 years available.

¹⁴ See: <https://www.gov.uk/government/collections/business-population-estimates>

¹⁵ The category is defined as comprising sole proprietorships and partnerships comprising only the self-employed owner-manager(s), and companies comprising only an employee director.

potentially involve them getting outside help (such as a health and safety consultant), which would have a financial cost to the self-employed.

40. Estimates varied widely. The small number of relevant individuals we identified amongst formal consultation respondents provided estimates that ranged from very long (e.g. three months, 2 or 3 days) to much shorter (“an hour or so”, “almost none”). The small number of participants in the qualitative research who stated they were aware of requirements coincided in providing very low estimates: a few minutes, “very little time”. One of them, however, mentioned that they had found out about their obligations via a health and safety consultant, which would have had a cost.

41. Taking account of all the available evidence, we will use an estimate of 1 hour per individual.

42. Assuming an average opportunity cost per hour of £20, based on the average salary for the UK¹⁶, this would represent savings of £20 for every individual who would have undertaken familiarisation.

43. When analysing the previous proposals, we examined a number of sources which could throw some light on the issue of current compliance of the self-employed with health and safety law, which would include familiarisation. Evidence from those sources suggested it is very low, as described in the next few paragraphs.

44. At the time, HSE undertook initial consultation with representatives from several Local Authorities (LAs) regarding this issue, as the vast majority of those who would be exempted under all the options we were considering work in areas where the enforcement of health and safety is carried out by LAs¹⁷. The experience of all the LA representatives we spoke to was that very few of the self-employed in the mostly low-risk occupations we referred to would have much awareness of health and safety law, as many do not even know the law applies to them. They also confirmed that to their knowledge, LAs do not tend to proactively enforce in the types of areas we described, and the only reasons they would come into contact with the self-employed in these areas were in visits regarding other issues (e.g. complaints about drainage problems, or noise).

45. We also checked our own enforcement records starting in 2006/07, and confirmed that in those years, there has been no significant enforcement by HSE in these areas, either.

46. Additionally, we examined several on-line resources for the self-employed, and in all of them, the focus of the advice was on issues like tax, finance and insurance, with health and safety issues very much marginal, and often not even mentioned.

47. Finally, we also considered the possibility that the self-employed might comply with health and safety law due to demands arising from their insurance policies. We consulted with a representative from the Association of British Insurers (ABI) to explore this issue. The only common type of insurance policy relevant to health and safety that a self-employed person might buy would be personal accident and sickness insurance. These policies pay

¹⁶ Source: Annual Survey of Hours and Earnings, ONS, 2013 (provisional). Includes an additional 30% to account for non-wage costs.

¹⁷ Health and safety interventions are undertaken by both HSE and Local Authorities. The Health and Safety (Enforcing Authority) Regulations 1998 allocate the enforcement of health and safety legislation at different premises between HSE and Local Authorities. Further guidance on how work activities are allocated between HSE and Local Authorities can be found on the HSE website: <http://www.hse.gov.uk/lau/lacs/23-15.htm>

compensation when the self-employed person is unable to work due to an illness or injury. However, the ABI representative confirmed that premiums would depend solely on general factors like occupation and age, not on anything to do with risk management, or require any form of evidence from the self-employed to prove they were managing risks in a particular way. Furthermore, these policies would not make demands of the self-employed in terms of compliance with health and safety law.

48. One of the first questions asked during the qualitative research we commissioned was whether the individual thought they had any legal obligations regarding their own health and safety. Only 5 out of the 60 people interviewed thought they had any health and safety obligations. The remaining 55 either said that they did not (the majority), or that they were not sure.

49. Based on this, we will again assume that a very low proportion of individuals setting up as self-employed will seek to understand their health and safety duty, and we will use a compliance rate of 10%. As mentioned earlier, we will repeat the work described in the previous paragraphs for the groups of self-employed persons who would be exempt under the new proposal but would not have been under the previous proposals, in order to understand whether they are significantly different in this respect. If we find they behave in a different way, we shall amend this compliance rate for the final-stage IA.

50. The assumptions detailed above would result in savings of £220 thousand a year to new businesses under Option 1, with a 10-year present value of £1.9 million. There would be no savings under Option 2.

(ii) Existing businesses

51. There would also be potential cost savings for any self-employed individuals currently complying with health and safety law and who would stop or decrease their compliance as a result of the exemption.

52. Regarding what the self-employed are currently required to do to comply with health and safety law, the “Self-employed current duties” section below provides a broad summary of the regulations that would be expected to apply to the different groups of the self-employed. The main general duty they all have is to carry out an assessment of the risks to themselves and others that are relevant to their work, and to take action to control any risks based on the findings. Whether individual regulations apply depends on what risks are identified. The self-employed need not record their findings, being within the category of businesses with fewer than 5 employees, which are exempt from doing so. The assessment of risk (even if not recorded) needs to be kept up to date and updated if circumstances change.

53. It is very difficult to estimate the costs of this process to the average self-employed person. The process itself of carrying out a risk assessment (RA) could be estimated to take at most 15 minutes, based on user testing of a recently-released HSE tool¹⁸ which helps businesses which operate in an office environment carry out and record their RA (approximately 40% of those potentially exempted under Option 1 do solely office-type work). The reason we consider 15 minutes would be a maximum is that testing was for RAs involving offices with employees, which would almost certainly be larger and more complex than the environment and work that would be assessed by an average self-employed person, and involved recording the RA as it was undertaken, which the self-employed need not do.

¹⁸ The tool can be found at <http://www.hse.gov.uk/risk/office.htm>

54. A major difficulty in understanding what an average self-employed person's health and safety duties are is that the RAs of different individuals amongst the 2 million considered will have different findings, and will require them to do different things. Even in a similar office environment, one self-employed person might, for instance, have to deal with heavy boxes of paper, which might require a reorganisation of the office (e.g. moving heavy boxes from high shelves to a more appropriate height) or the purchase of a trolley to handle the boxes, while another self-employed individual might not have this issue in their office and would therefore not have to spend time and/or money dealing with it.

55. There is also the issue that many of the obligations, such as carrying out a RA, have a larger one-off cost when the self-employed first does them (carrying out the RA itself), and then smaller costs in subsequent years (when all that is required is updating the RA, mentally or in written form, if anything changes). For a self-employed person who is already established, an exemption from carrying out RAs would only remove the small burden of keeping their already existing RA up-to-date.

56. Real savings generated by the exemption would be based on what the self-employed would actually stop doing as a result of the exemption, not on the removal of the regulatory requirement. It is not at all certain that they would stop taking all actions that happen to comply with health and safety law. Many of their actions will be done to protect their own health and safety. For instance, to use the same example as in paragraph 54, a self-employed individual who works in an office and has heavy boxes with files stored around the office might identify risks related to manual handling from manipulating those boxes. The individual might decide to store them at an appropriate height, instead of on high shelves, in order not to hurt their back when bringing them down. This would be the sort of thing that would be required to comply with health and safety law at the moment, but it is unclear that without the law requiring this individual to control risks, they would not have taken the same action, or that they would suddenly decide to start storing the boxes on high shelves just because they have become exempt and the regulatory requirement has been removed.

Conclusions for the self-employed who would have been exempted under the previous proposals

57. In the qualitative research we carried out for the earlier proposals, respondents were asked what motivates them to take health and safety precautions. No respondents said that regulatory requirements were a factor. The most common motivations mentioned were that they wanted to protect themselves and their livelihood, and that precautions were "common sense".

58. Some also mentioned issues of insurance and indemnity. As described in paragraph 47, it does not appear in fact that insurance companies are currently placing any requirements regarding health and safety on the self-employed persons exempted by the previous proposals. The ABI representative we spoke to confirmed that exempting them from complying with health and safety laws would therefore not lead to any changes in insurance companies' requirements. However, a history of claims would increase a particular individual's premiums, so this might be behind their quoting insurance issues as a motivation to take precautions (as lack of precautions might lead to having to claim on their insurance, thus increasing their premiums). This would not be affected by being exempted from regulatory requirements.

59. Interviewees who took part in the qualitative research were asked directly whether they thought the removal of health and safety obligations would make any difference to them. The response was unanimous, with all 60 stating it would not. Many respondents indicated that they would just continue to work as they always did. Several said that they would not change their behaviour because they thought they did not have any obligations in the first place, and that the precautions they took were just "common sense practice".

60. Feedback from the formal consultation from the few individuals identified as those who would be covered by the exemption provided answers consistent with the results from the qualitative research. They spoke of the low risk attached to the occupations covered by the proposal and the fact that most individuals had no awareness of requirements, anyway, and characterised proposals as not making any difference (although a few spoke of easing paperwork requirements).

61. We therefore conclude that there would be no savings to existing self-employed who would have been exempt under the previous proposals from changes in working practices, as we do not expect behaviour to change as a result of the exemption. This also affects our conclusions regarding the health and safety consequences of the proposals, and these will be explored further on in this document.

62. Our conclusion is consistent with the evidence that led to Professor Löfstedt making his recommendation, as he said in his report that “The actual burden that the regulations currently place upon these self-employed may not be particularly significant due to existing exceptions in some regulations and the limited prospect of these being enforced”.

63. That said, there is some evidence that there are actions some self-employed are taking regarding health and safety which are not directly related to taking precautions. Several respondents spoke of keeping up-to-date with requirements and changes in health and safety law, which suggests they regularly spend some time on this activity (this would include activities such as seeking out and reading HSE guidance or specialised publications). They also state that this would not be necessary any longer (and the evidence regarding motivations for taking precautions, described in paragraph 57 supports this).

64. One of the questions asked of interviewees in the qualitative research was how much time they spent each year ensuring they were compliant with health and safety law, which would include activities such as those described in the previous paragraph. The 5 respondents who were aware that legal requirements in this area applied to them provided estimates centred around 30 minutes. We will assume that those who are aware of and compliant with health and safety requirements (an estimated 10% of all the exempted self-employed, as explained in paragraph 49) would in future spend about half that time on keeping up-to-date with requirements. We are reluctant to assume they will spend no time on this activity, as even though they will now have no obligation to comply with legal requirements, they might still choose to keep up-to-date with best practice in their areas.

Conclusions for the self-employed who would not have been exempted under the previous proposals but would be exempted under current proposals

65. We estimate that approximately half of the self-employed exempted under current proposals would not have been exempted under the previous proposals (in the preferred option). Table 3, in “Numbers of self-employed workers to be exempt in Option 1”, details the main occupations for which this would be the case.

66. For the great majority, the reason why they would not have been exempted under the previous preferred option is because they do work that can put others at risk (mainly members of the public, but possibly also other workers in the vicinity). For a minority, it is because although their occupation is one that does not put others at risk, they work in an industry that

was on the prescribed list for the earlier proposal (e.g. a bookkeeper working in the Agriculture sector)¹⁹.

67. We expect many of the factors discussed in the previous section will apply for these individuals as well. We would expect a low awareness of health and safety duties, and that, in most cases, the actions they are taking to protect themselves will not be motivated by the law, but by the desire to protect their own health and safety. As such, we would not expect behaviour to change.

68. Regarding measures taken to protect others (especially members of the public –for instance, a shopkeeper ensuring spills are mopped up immediately to stop clients from slipping and falling), the picture is less clear. Initial anecdotal evidence suggests that actions taken to protect members of the public are driven by a desire to protect their businesses, whether to provide a pleasant environment for clients or because of insurance concerns / fear of litigation. This would not be changed by the exemption from health and safety law, so we would not expect changes in behaviour in this area, either.

69. We acknowledge that we need to know more about the self-employed in these occupations and how comparable they are with the groups examined in the previous section. We aim to do similar qualitative research during the consultation period and collect as much information as possible from respondents to the formal consultation. In the meantime, however, we will make the same assumptions as described in the previous section.

Total savings to existing self-employed

70. Assuming the same opportunity cost of their time as in paragraph 42 and that 10% of exempted self-employed will spend 15 minutes less a year on keeping up-to-date with requirements, that would result in annual savings to business of £980 thousand for Option 1. This has a 10-year present value of £8.4 million. Option 2 would not generate any savings to business.

(B) Costs to the self-employed

71. In Option 1, costs to the self-employed would arise from having to spend time becoming aware of and understanding the changes to Regulations, determining whether the exemption applies to them and, for those who have determined they are exempt, deciding what actions to take as a result.

72. Although Option 1 would result in only a proportion of the self-employed becoming exempt, a larger number could potentially think the exemption might apply to them, and spend time understanding whether it does or not. In theory, all 3.4 million self-employed who have no employees in the UK might think the exemption could apply to them, if they hear about it casually.

73. However, as described in the previous section, initial evidence suggests that very few self-employed are aware of health and safety issues, so we would expect only a small proportion to spend time on this activity. We will use the same assumption as in paragraph 49, which is 10%.

74. This would result in an estimated 340 thousand individuals seeking to understand the exemption. This would involve reading the guidance that will be prepared, which will seek to be

¹⁹ Note that the current list is of prescribed *activities* (e.g. Agricultural activities), while the one on the earlier proposals included several prescribed *sectors*, as well as activities.

as clear and simple as possible, including examples / case studies. Because of the timescale to which this IA has to be prepared, this guidance is still a work in process, and estimates presented below of how long it would take individuals to use it are not definitive.

75. For Option 1, we have divided these 340 thousand individuals into 4 groups based on the following:

		Does the individual undertake an activity on the list of prescribed activities?	
		Yes	No
Is it straightforward to determine whether the activities the individual undertakes are on the list of prescribed activities?	Yes	Group I	Group III
	No	Group II	Group IV

76. Group I are:

a) those who undertake activities on the list of prescribed activities, and

b) those activities are such that it should be straightforward for the self-employed to determine that they are on the list.

77. We have analysed the list and estimate that approximately 130 thousand individuals would be in Group I. We assume that it would take them 15 minutes to read the list and determine to their satisfaction that they are not exempt.

78. Group II are:

a) those who undertake activities on the prescribed list, and

b) those activities are such that it might not be straightforward for the self-employed to determine that they are on the list.

79. We estimate that approximately 9 thousand individuals would be in group II. Mainly, they are those whose work activities involve the use of certain chemicals and of dangerous substances. We have considered that it will require some work for many of these people to determine the exact nature of the substances they commonly use. This might require checking labelling, and/or possibly doing some research online. HSE already has some guidance available²⁰, to which individuals can be directed from the list itself, and it is expected the final guidance for this proposal will provide enough clarity (for instance, with examples and case studies) so that this work can be minimised. For now, however, we will estimate it will take individuals on this group approximately 1 hour to read the list and determine to their satisfaction that they are not exempt.

²⁰ See, for instance: <http://www.hse.gov.uk/skin/professional/causes/agentstable1.htm>

80. Group III are:

a) those who do not undertake activities on the list of prescribed activities, and

b) the activities they undertake are such that it should be straightforward for the self-employed to determine that they are not on the list.

81. We estimate that approximately 75 thousand individuals would be in Group III. For the sake of simplicity, we have assumed that those in this group would be the self-employed whose work is solely office-based. We assume that it would take them 15 minutes to read the list, determine to their satisfaction that they are exempt and decide if they will change their working practices.

82. Group IV are:

a) those who do not undertake activities on the list of prescribed activities, and

b) the activities they undertake are such that it might not be straightforward for the self-employed to determine that they are not on the list.

83. We estimate that approximately 125 thousand individuals would be in Group III. We have assumed that those in this group would be the self-employed whose work is *not* solely office-based, as we think those would be the most likely to be using substances such that their work activity might involve the use of certain chemicals and of dangerous substances. As in group II, many will need to do more work to determine the nature of the substances they use, and we will assume the same time to do this. We assume that it would take them 1 hour to read the list, determine to their satisfaction that they are exempt and decide if they will change their working practices.

84. In total, based on those numbers and assuming the same opportunity cost of their time as in paragraph 42, we estimate a one-off cost to business of £3.6 million for Option 1. Under option 2, business would incur no costs.

Summary and position under One-In, Two-Out (OITO)

85. The following summarises costs and savings for each option:

- Option 1: One-off costs to the self-employed of £3.6 million in the first year and yearly savings of £220 thousand to new businesses and £980 thousand to existing businesses (with a total 10-year present value of savings of £10.3 million). The 10 year net present value of these impacts is net savings of £6.7 million.
- Option 2: No costs or savings to business.

86. Under current guidance for OITO, all three categories of costs and savings described in the previous sections are direct impacts on business and therefore in scope for OITO²¹.

²¹ Savings to new businesses, such as those considered here, have previously caused issues regarding whether they are direct or indirect. The Better Regulation Framework Manual (paragraph 1.9.36) is explicit about how they should be considered: "Categorisation of direct and indirect impacts should be the same for existing business and new entrants. Direct and indirect impacts should be determined with reference to the existing business. Subsequently, the same categories of impacts (e.g. familiarisation costs) should be applied to new entrants"

87. Based on the methodology for calculating the Equivalent Annual Net Cost to Business, which is expressed in 2009 prices, the figure to use for OITO is £630 thousand.

Health and safety effects and risks

88. The effects of Option 1 on health and safety would depend on whether and how the behaviour of those exempted would change as a result of the exemption. If the self-employed would stop taking actions that are currently protecting their health and safety and that of others, we would expect health and safety to deteriorate for those groups.

89. As explained in the previous section (see paragraphs 57 to 64), for those who would have been exempted under previous proposals, we were able to draw conclusions on this issue from analysis of the evidence gathered during the consultation period, both from bespoke qualitative research involving interviews with self-employed to whom the exemption would apply, and from formal consultation. This analysis led us to conclude that we do not expect those exempted self-employed to reduce the precautions they are currently taking, as a result of the exemption. We would therefore expect no adverse health and safety impacts for them from this proposal. Given how earlier proposals were defined, these self-employed pose no risk to others, so we would not expect adverse health and safety impacts for any other workers nearby or for members of the public.

90. We currently know less about the groups who would be exempted under the new proposals, but would not have been exempted under earlier ones. The statistics show that some of the occupations that we would expect would fall in that category have injury rates that are statistically significantly higher than the average for all occupations²². These include: motor mechanics and auto engineers; van drivers; sports coaches, instructors and officials; heavy goods vehicle drivers; furniture makers, other crafts and woodworkers; animal care occupations (other); and metal working production & maintenance fitters.

91. However, for deterioration in health and safety outcomes to occur would require these individuals to change their behaviour in terms of the precautions they take. Initial consideration suggests that similar lack of awareness of legal requirements and similar drivers to those analysed in the previous paragraph might apply with regards to their own safety. This would suggest that we should not expect adverse health and safety impacts for the workers themselves.

92. Where these self employed workers newly brought into the exemption are different is that their work activities have the potential to pose a risk of harm to others. Again, initial consideration suggests that factors other than legal requirements might be driving any actions taken to protect the health and safety of members of the public (for instance, fear of litigation / insurance concerns). This would suggest behaviour would not change due to the exemption, and we should not expect adverse health and safety impacts for members of the public. However, this is something we are not certain of, and we aim to explore this issue with current dutyholders during the consultation period. Any conclusions will be incorporated into the final-stage IA.

93. We also do not know how the behaviour of these groups of exempted self-employed individuals might change with regards to risks posed to other workers who might be in the vicinity or on the same site. If the site is one controlled by someone else who is an employer, this person would still have health and safety responsibilities, and therefore the self-employed

²² Data from the Labour Force Survey (LFS): estimated rates of all self-reported workplace injury sustained in current or most recent job, by occupation, for people working in the last 12 months, averaged 2001/02 – 2012/13.

person who had been contracted to work on that site would still have conditions placed on their work activities.

94. If, however, the site is controlled by no one in particular, or by an exempted self-employed person, and there is another self-employed person present on the site, the situation changes. It is not clear what the driver would be to take precautions regarding the other person's safety, other than a general desire not to harm another person. In those cases, behaviour could potentially change, and this could lead to adverse health and safety impacts. This issue will also be explored in the work we are planning to do during the consultation period, and, again, any conclusions will be incorporated into the final-stage IA.

95. For now, and while we have no evidence to the contrary, we will assume that there would be no significant changes in behaviour amongst any of the self-employed who would be exempted, but this could be revised in the final-stage IA after taking account of the work planned for the consultation period.

96. The analysis in the previous paragraphs assumes that individuals would correctly assess whether they undertake work activities on the list of prescribed activities, when determining whether they are exempt or not. There is a possibility, however, that some individuals might not assess this correctly. This would be an unintended consequence of the proposal. It is possible that, even after the changes made from previous proposals, the new proposal would still introduce confusion and that some self-employed would find it difficult to accurately assess whether their work activities were on the list of prescribed activities.

97. An incorrect assessment of whether they undertake work activities that are on the list of prescribed activities could lead to two potential types of error: individuals who do not undertake high-risk work activities on the list, but think they are not exempt, and individuals who do undertake high-risk work activities on the list, but think they are exempt. In terms of health and safety, it is the latter group of individuals that concerns us, as they might take actions that result in adverse effects on the health and safety of themselves and/or others.

98. In order to minimise the possibility that self-employed individuals reach the wrong conclusion on whether the exemption applies to them, as mentioned earlier, HSE plans to issue guidance that is as clear as possible, possibly including a variety of examples and case studies.

99. Option 2 would not have any effects on health and safety, as it continues with the status quo.

Other benefits

100. As quoted earlier in this document, Professor Löfstedt did not expect the exemption he proposed to lift a significant burden off the self-employed. The main benefit he identified from the exemption was that "it will help reduce the perception that health and safety law is inappropriately applied."

101. Our analysis of the benefits that would arise concurs with Professor Löfstedt's conclusions. In addition to the savings calculated earlier, Option 1 would potentially contribute to improve the perception of health and safety law as proportionate and reasonably applied. It would also remove the fear of inspections and potential prosecutions for a large group of self-employed, to the extent that such a fear exists.

102. Option 2 would not lead to any benefits, as it continues with the status quo.

Other risks and uncertainties

103. If the exemption does result in significant changes in behaviour amongst those exempted, and this leads to significant savings, this could create a disincentive for the self-employed in these groups to take on an employee, if this means that they would then have to take on those burdens again. As mentioned earlier, however, based on the evidence gathered for earlier proposals, we have tentatively assumed in this IA that this is not likely to happen.

104. Similarly, if the exemption led to significant savings, this would give the self-employed a competitive edge with respect to small businesses who are employers. This risk was noted by the Forum of Private Business' Health and Safety Panel in one of their reports²³. Again, given the currently available evidence, we have assumed in this IA that this is unlikely.

105. When analysing costs, we assumed a very low level of compliance with health and safety law amongst some groups of self-employed (especially those who would be exempt under the options analysed). This assumption was supported by the evidence collected for the earlier proposals. It is possible that, if this proposal receives a significant amount of publicity, a larger number of self-employed than expected would spend time familiarising themselves with the proposals. This would lead to higher-than-estimated familiarisation costs, and, among those who would not be exempt under the final proposal, increased awareness of their health and safety duties could lead to increased compliance with them. This would potentially result in higher costs to themselves and higher benefits to themselves and others.

²³ Forum of Private Business – Health and Safety Panel Report, May 2012. See: http://www.fpb.org/images/PDFs/research/HS_Panel_3_report.pdf

Regulations that apply to the self-employed

No	Regulations which refer expressly to the self-employed
1	Boreholes Sites and Operation Regulations 1995
2	Confined Spaces Regulations 1997
3	Construction Design and Management Regulations (CDM) 2007
4	Control of Asbestos Regulations 2012
5	Control of Lead at Work Regulations 2002
6	Control of Noise at Work Regulations 2005
7	Control of Substances Hazardous to Health Regulations (COSHH) 2002
8	Control of Vibration at Work Regulations 2005
9	Dangerous Substances and Explosive Atmospheres Regulations 2002
10	Diving at Work Regulations 1997
11	Electricity at Work Regulations 1989
12	Gas Safety (Installation and Use) Regulations 1998
13	Health and Safety (Display Screen Equipment) Regulations 1992 (Reg 2 places a duty on a self-employed person employing others)
14	Health and Safety (First Aid) Regulations 1981
15	Ionising Radiation Regulations 1999
16	Lifting Operations and Lifting Equipment Regulations 1998
17	Loading and Unloading of Fishing Vessels Regulations 1988
18	Management and Administration of Safety and Health at Mines Regulations 1993
19	Management of Health and Safety at Work Regulations 1999
20	Manual Handling Operations Regulations 1992
21	Mines Miscellaneous Health and Safety Provisions Regulations 1995
22	Personal Protective Equipment at Work Regulations 1992
23	Pressure Systems Safety Regulations 2000
24	Provision and Use of Work Equipment (PUWER) 1998

25	Quarries Regulations 1999
26	Radiation (Emergency Preparedness and Public Information) Regulations 2001
27	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
28	Work at Height Regulations 2005
29	Work in Compressed Air Regulations 1996
30	Workplace (Health, Safety and Welfare) Regulations 1992
	Regulations which refer to a broader category of people and pose a potential risk of harm to others
31	Agriculture (Tractor Cabs) Regulations 1974
32	Biocidal Products Regulations 2001
33	Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007
34	Chemicals (Hazard information and Packaging for Supply) Regulations 2009
35	Classification and Labelling of Explosives Regulations 1983
36	Control of Explosives Regulations 1991
37	Control of Major Hazards Regulations 1999
38	Dangerous Substances in Harbour Area Regulations 1987
39	Dangerous Substances (Notification and Marking of Sites) Regulations 1990
40	Explosives Act 1875 (exemptions) Regulations 1979
41	Freight Containers (Safety Convention) Regulations 1984
42	Export and Import of Dangerous Chemicals Regulations 2008
43	Genetically Modified Organisms (Contained Use) Regulations 2000
44	Identification and Traceability of Explosives Regulations 2010
45	Manufacture and Storage of Explosives Regulations 2005
46	Marking of Plastic Explosives for Detection Regulations 1996
47	Notification of Cooling Towers and Evaporative Condensers Regulations 1992
48	Pipelines Safety Regulations 1996
49	Placing on the Market and Supervision of Transfers of Explosives Regulations 1993
50	Prevention of Accidents to Children in Agriculture Regulations 1998

Numbers of self-employed workers to be exempt in Option 1

106. This annex sets out the methodology used to estimate the number of self-employed workers that would be exempt from health and safety laws under Option 1. The categories of workers thus identified are then described.

107. The data used for this exercise come from the Office for National Statistics' Annual Population Survey (APS). The APS combines results from the Labour Force Survey (LFS) and the English, Welsh and Scottish LFS boosts²⁴. This provided information on occupation and industry for the approximately 3.4 million self-employed individuals who do not have employees. 2010 APS data was used as the main data source (since the estimate was building on earlier work, for which 2010 data was at that point the latest data available). However, the estimate derived from the 2010 APS data was updated to reflect the growth in the self-employed numbers between 2010 and 2012 (between this time, APS data showed a 9% increase in the number of self-employed with no employees). **The derived estimate is therefore 2012 specific.**

108. The methodology involved going through the list of Prescribed Activities and determining whether self-employed individuals in different combinations of occupation and industry sector would be expected to undertake such activities as part of their work. This was done in consultation with HSE experts in several subject matters. We took care to count individuals only once (for instance, some individuals whose work involves the 'Removal, Repair of Disturbance of Asbestos' might also be counted as undertaking 'Construction' activities).

109. The estimated number of self-employed whom the proposal would exempt was arrived at by counting those individuals in combinations of occupation and industry who would not be expected to engage in any of the activities on the Prescribed list as part of their work.

110. **P'YUgY'bcHf:** The purpose of this exercise is purely to estimate the numbers involved and to have an idea of the types of workers who might be exempt. The table presented below is therefore **bcha** list of occupations that would definitely be exempt, and is not meant to be used as a guide.

111. Under any of the *occupations* in the table presented in this Annex, specific (albeit very uncommon) examples may exist of cases in which the self-employed person is undertaking one or some of the *activities* on the Prescribed list as part of their work, and would therefore not be exempt. This means that even if the individual is self-employed and in an occupation included in the list, they would still have to consider whether they undertake any of the activities on the list. Only then would they be able to conclude they are exempt.

112. Our analysis shows that approximately 2 million self-employed individuals would be exempted from health and safety law. This would be approximately 60% of all self-employed with no employees.

113. The SOC (Standard Occupational Classification) allows us to classify workers by occupation at different levels of aggregation. Analysing the data at an aggregate level, we can see that of the self-employed expected to be exempt, almost a quarter were classified as being in "Associate professional and technical occupations". This would include occupations such as authors and writers (which includes translators) and financial advisors.

²⁴ Please note that the APS data is based on a sample survey, so all estimates are subject to sampling error.

114. The following groups comprised a further 15%-20% each: “Professional Occupations”, “Process, Plant and Machine Operatives” and “Managers and senior officials” category. Regarding the latter, we have considered the potential incongruity of someone being at the same time a manager and genuinely self-employed. It should be noted that in spite of its official title in SOC 2000, the category includes “working proprietors in small businesses” and, in fact, the most numerous occupation in this category is “Managers and proprietors in other services (not elsewhere classified)”. Additionally, the data relies on how people describe themselves, so people who say they are both self-employed and managers are probably not managers in the way it is often understood. Therefore, this category clearly includes self-employed people who are not in traditional management roles.

115. Table 2 shows the detailed occupations with the largest numbers of self-employed expected to be exempt under option 1. It should be noted that we have used the official SOC categories, but this does not mean that we expect the exemption would cover all occupations listed in every category. For instance, in category “2411 Solicitors & lawyers, judges & coroners”, since judges and coroners will not be self-employed, our numbers would include only solicitors and lawyers.

Table 2 – Occupations where we would expect most self-employed would be exempted under Option 1

Occupation	Proportion of exempted self-employed workers
8214 Taxi, cab drivers and chauffeurs	8%
2319 Teaching professionals (other)	3%
6221 Hairdressers, barbers	3%
9233 Cleaners, domestics	3%
1234 Shopkeepers, wholesale & retail dealers	3%
3412 Authors, writers	2%
2423 Management consultants, actuaries, economists & statisticians	2%
8215 Driving instructors	2%
1239 Managers and proprietors in other services	2%
3411 Artists	2%
4122 Accounts wages clerks, bookkeepers	2%
3534 Financial & investment analysts & advisers	2%
3434 Phot & audio-visual equipment operators	2%
1132 Marketing and sales managers	2%
2131 IT strategy and planning professionals	2%
3421 Graphic designers	2%
6222 Beauticians and related occupations	2%
3413 Actors, entertainers	2%
5231 Motor mechanics, auto engineers	2%
3415 Musicians	1%
2132 Software professionals	1%
1163 Retail and wholesale managers	1%
2411 Solicitors & lawyers, judges & coroners	1%
9231 Window cleaners	1%
3422 Product, clothing & related designers	1%
8212 Van drivers	1%

4150 General office assistants or clerks	1%
1221 Hotel and accommodation managers	1%
3442 Sports coaches, instructors & officials	1%
1136 Information & communication technology managers	1%
1131 Financial managers & chartered secretaries	1%
3542 Sales representatives	1%
3431 Journalists, newspaper & periodical editors	1%
3432 Broadcasting associate professionals	1%
7111 Sales and retail assistants	1%
1121 Production, works & maintenance managers	1%
2421 Chartered and certified accountants	1%
8211 Heavy goods vehicle drivers	1%
3443 Fitness instructors	1%
3563 Vocational & industrial trainers & instructors	1%
3416 Arts officers, producers and directors	1%
4215 Personal assistants & other secretaries	1%
5492 Furniture makers, other crafts and woodworkers	1%
3539 Business & related associate professionals (other)	1%
6139 Animal care occupations (other)	1%
1223 Restaurant and catering managers	1%
5434 Chefs, cooks	1%
5223 Metal working production & maintenance fitters	1%
7129 Sales-related occupations (other)	1%
3543 Marketing associate professionals	1%
7124 Market and street traders and assistants	1%
2129 Engineering professionals (other)	1%
Others	24%
Total	100%

About 55% of these 1.9 million self-employed would have been exempt under the earlier proposals. The following table presents the main occupations that would not have been covered by earlier proposals but are expected to be exempted under our current Option 1.

Table 3 – Occupations where we would expect most self-employed would be exempted under our current Option 1, but not under previous proposals

Occupation	Proportion of exempted self-employed workers
8214 Taxi, cab drivers and chauffeurs	8%
2319 Teaching professionals (other)	3%
6221 Hairdressers, barbers	3%
9233 Cleaners, domestics	3%
1234 Shopkeepers, wholesale & retail dealers	3%
8215 Driving instructors	2%
3434 Photo & audio-visual equipment operators	2%
6222 Beauticians and related occupations	2%

5231 Motor mechanics, auto engineers	2%
9231 Window cleaners	1%
8212 Van drivers	1%
1221 Hotel and accommodation managers	1%
3442 Sports coaches, instructors & officials	1%
1121 Production, works & maintenance managers	1%
8211 Heavy goods vehicle drivers	1%
3443 Fitness instructors	1%
3563 Vocational & industrial trainers & instructors	1%
5492 Furniture makers, other crafts and woodworkers	1%
6139 Animal care occupations (other)	1%
1223 Restaurant and catering managers	1%
5223 Metal working production & maintenance fitters	1%
7124 Market and street traders and assistants	1%
2129 Engineering professionals (other)	1%
Others	10%
Total	49%

Self-employed current duties

The following annex considers the current duties on self-employed dutyholders from the main cross-cutting health and safety regulations. It initially sets out the applicable regulations by their Standard Occupational Classification grouping as defined by ONS²⁵ then the current duties on the self-employed are discussed with reference to the relevant regulations.

The Standard Occupational Classification consists of the following major groups:

1. Major group 1: Managers and Senior Officials
2. Major group 2: Professional Occupations
3. Major group 3: Associate Professional and Technical Occupations
4. Major group 4: Administrative and Secretarial Occupations
5. Major group 5: Skilled Trades Occupations
6. Major group 6: Personal Service Occupations
7. Major group 7: Sales and Customer Service Occupations
8. Major group 8: Process, Plant and Machine Operatives
9. Major group 9: Elementary Occupations

1. Major group 1: Managers and Senior Officials

Dutyholders that fall within occupational group 1 are likely to have duties under the following regulations:

- The Management of Health and Safety at Work Regulations 1999
- Provision and Use of Work Equipment Regulations 1998.
- The Manual Handling Operations Regulations 1992
- Health and Safety (First-Aid) Regulations 1981
- The Control of Noise at Work Regulations 2005
- Electricity at Work Regulations 1989
- RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
- The Work at Height Regulations 2005

2. Major group 2: Professional Occupations

Major group 3: Associate Professional and Technical Occupations

Major group 4: Administrative and Secretarial Occupations

Major group 6: Personal Service Occupations

Major group 7: Sales and Customer Service Occupations

Major group 9: Elementary Occupations

1. ²⁵ See: [Standard Occupational Classification 2000 \(SOC2000\)](#)

Dutyholders that fall within occupational groups 2, 3, 4, 6, 7 and 9 are likely to have duties under the following regulations:

- The Management of Health and Safety at Work Regulations 1999
- Provision and Use of Work Equipment Regulations 1998.
- The Manual Handling Operations Regulations 1992
- Health and Safety (First-Aid) Regulations 1981
- The Control of Noise at Work Regulations 2005
- Electricity at Work Regulations 1989
- RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

3. Major group 5: Skilled Trades Occupations

Major group 8: Process, Plant and Machine Operatives

Dutyholders that fall within occupational group 5 and 8 are likely to have duties under the following regulations:

- The Management of Health and Safety at Work Regulations 1999
- Provision and Use of Work Equipment Regulations 1998.
Lifting Operations and Lifting Equipment Regulations 1998
- The Manual Handling Operations Regulations 1992
- Health and Safety (First-Aid) Regulations 1981
- The Control of Noise at Work Regulations 2005
- Electricity at Work Regulations 1989
- RIDDOR - Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995
- The Personal Protective Equipment at Work Regulations 1992
- Control of Substances Hazardous to Health (COSHH) Regulations 2002
- The Control of Vibration at Work Regulations 2005
- Pressure Systems Safety Regs 2000

The Management of Health and Safety at Work Regulations 1999

The Management of Health and Safety at Work Regulations 1999 (the Management Regulations) generally make more explicit what employers are required to do to manage health and safety under the Health and Safety at Work Act. The main requirement on employers is to carry out a risk assessment.

The legislation applies to self-employed in that:

- (2) Every self-employed person shall make a suitable and sufficient assessment of—*
(a) the risks to his own health and safety to which he is exposed whilst he is at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking, for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or self-employed person who made it if—

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates; and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.

In terms of the Management of Health and Safety at Work Regulations, the self-employed have a duty to carry out a sufficient risk assessment with the purpose of identifying the steps they need to take to comply with duties in other regulations (some of which are covered within the paragraphs below). There is no explicit duty to document the assessment and in the majority of cases, it is not likely that self-employed dutyholders would do so.

Provision and Use of Work Equipment Regulations 1998

The Provision and Use of Work Equipment Regulations 1998 (PUWER) deal with the work equipment and machinery used every day in workplaces: factories, offices, shops, hospitals, construction sites, farms – wherever equipment and machinery is used at work.

Regulation 3(3)(a) expressly applies to the self-employed:

(3) The requirements imposed by these Regulations on an employer shall also apply (a) to a self-employed person, in respect of work equipment he uses at work;

Under PUWER self-employed dutyholders from all occupational groups are responsible for the safety of “equipment they control or use”. They would be expected to select equipment that is suitable for its use and ensure it is maintained and inspected as necessary. They would need to ensure that the risks created by the equipment are eliminated where possible or controlled. Maintenance may require a regular service and/or inspection of any work equipment used.

Office based work equipment such as filing and use of storage cabinets is generally low hazard. The self-employed are required to select equipment that conforms to relevant standards, familiarise themselves with instructions on how to use that equipment safely and ensure that they use that equipment properly. For example, when using filing cabinets, they must file material in cabinet drawers in a way that does not make the cabinet unstable when top drawers are opened, and that they follow instructions on how to use and maintain the cabinet so it continues to operate properly.

The Manual Handling Operations Regulations 1992 (MHOR)

MHOR requires a risk assessment on all manual handling tasks that pose an injury risk. It is also *advised* to document the assessment and to reduce risk to the lowest level that is ‘reasonably practicable’.

For self-employed dutyholders “Any duty imposed on an employer in respect of his employees shall also be imposed on a self-employed person in respect of himself”. Therefore, current

duties under MHOR would require a risk assessment and subsequent risk reduction that is deemed as reasonably practicable.

The self-employed within occupations such as estate agents, architects, surveyors etc may deal with unwieldy or awkward loads on a regular basis and would be expected to take any necessary precautions to reduce the risks associated with handling these.

It is expected that there is less of a burden with respect to manual handling for office based work, the self-employed would be expected to perform a mental risk assessment when moving heavy items, for example, lifting boxes of paper correctly to avoid injury to their back. Risk assessment would also be appropriate when setting up an office space (e.g. moving and unpacking new computer equipment)

The Control of Noise at Work Regulations 2005

By law, an employer, must assess and identify measures to eliminate or reduce risks from exposure to protect the hearing of their employees as far as is reasonably practicable. Assessment should take place at regular intervals. The Control of Noise at Work Regulations do not apply to members of the public exposed to noise from their non-work activities, or when they make an informed choice to go to noisy places or from nuisance noise.

The legislation applies to self-employed as it does to an employer and an employee “*as if [he were] both an employer and an employee*”

Self-employed who are involved in process which create noise would be expected to do a risk assessment and ensure that noise levels do not exceed the stated acceptable limits.

Electricity at Work Regulations 1989

The Electricity at Work Regulations set out the duties with respect to the use of electrical systems. The definition of ‘system’ includes equipment which, although not energised, may be electrically connected to a common source of electrical energy.

Self-employed dutyholders must ensure that electrical installations in their workplace are safe, electrical equipment they use is suitable for its purpose and standards of safety are maintained. If they use portable appliances, they should check these from time to time to ensure there are no faults, the legislation applies, for example the use of a maintained power washer by a self-employed person cleaning cars.

Assessment should also take place before disposal of electrical equipment and take effective steps to ensure that equipment is dead and cannot become inadvertently re-energised or charged by induction or capacitance effects (i.e. cannot become “live”). For example, in an office when repairing any office equipment, the self-employed person (who must be competent to work on the equipment) would need to make sure it was unplugged from the mains first and that no-one around is likely to plug it back in.

Work at Height Regulations 2005

Regulations apply to all work at height where there is a risk of a fall liable to cause personal injury.

They place duties on employers, the self-employed, and any person that controls the work of others (for example facilities managers or building owners who may contract others to work at height).

As part of the Regulations, dutyholders must ensure that; all work at height is properly planned and organised and those involved in work at height are competent. This could potentially take the form of formal training. Furthermore, dutyholders are responsible for ensuring that the risks from work at height are assessed and appropriate work equipment is selected and used, the risks from fragile surfaces are properly controlled; and equipment for work at height is properly inspected and maintained. This would require a risk assessment and appropriate measures resulting from the assessment to be taken, for example where a self-employed office worker uses a ladder to change the bulb in their security light outside their office.

The Personal Protective Equipment at Work Regulations 1992 (PPE)

The main requirement of the PPE at Work Regulations 1992 is that personal protective equipment is to be supplied and used at work wherever there are risks to health and safety that cannot be adequately controlled in other ways.

The Regulations also require that PPE is properly assessed before use to ensure it is suitable and is maintained and stored properly. Self-employed dutyholders would be required to do a risk assessment to determine whether PPE is appropriate and if so, ensure that it suitable used, stored and maintained.

Control of Substances Hazardous to Health (COSHH) Regulations 2002

COSHH requires employers to control [substances that are hazardous to](#) health. Self-employed dutyholders would be required to undertake a risk assessment, where necessary, provide suitable control measures to reduce harm to health and keep these controls in good working order.

Depending on risk assessment, dutyholders may be required to monitor risks and plan for emergencies.

The Control of Vibration at Work Regulations 2005

The Control of Vibration at Work Regulations aim to protect persons against risk to their health and safety arising from exposure to vibration at work. The duty on employers:

1) An employer who carries out work which is liable to expose any of his employees to risk from vibration shall make a suitable and sufficient assessment of the risk created by that work to the health and safety of those employees and the risk assessment shall identify the measures that need to be taken to meet the requirements of these Regulations.

(2) In conducting the risk assessment, the employer shall assess daily exposure to vibration by means of–

(a) observation of specific working practices;

(b) reference to relevant information on the probable magnitude of the vibration corresponding to the equipment used in the particular working conditions; and

(c) if necessary, measurement of the magnitude of vibration to which his employees are liable to be exposed

The Control of Vibration at Work Regulations apply to self-employed as it does to an employer and employee “*as if [he were] both an employer and an employee*”

Self-employed who are liable to exposure to risk from vibration would therefore need to assess exposure. Office activities are unlikely to expose the self-employed to any risk from exposure to vibration.

Pressure Systems Safety Regulations 2000

The Pressure Systems Safety Regulations place duties on an employer including the owner of a mobile system such as an air compressor taken from site to site or user of an installed system. Any requirement or prohibition imposed ‘*an employer in respect of the activities of his employees shall also extend to a self-employed person in respect of his own activities at work*’.

As a user of a pressure system, the self-employed are required to provide safe and suitable equipment, know the operating conditions, fit suitable protection devices and ensure they function properly, and arrange for suitable maintenance or examination by a competent person. Pressure systems include fixed and portable compressed air systems, for example, as may be used in graphic design offices.

Annex 3 - Glossary of Regulations providing definitions

No in Regs	Activity	Regulation
1	Agriculture and Forestry	Health and Safety (Enforcing Authority) Regulations 1998, Regulation 2(1) http://www.legislation.gov.uk/uksi/1998/494/regulation/2/made
5 and 6	Construction and Design	Construction (Design and Management) Regulations 2007, Regulation 2(1) http://www.legislation.gov.uk/uksi/2007/320/regulation/2/made
7	Compressed Air	Work in Compressed Air Regulations 1996 http://www.legislation.gov.uk/uksi/1996/1656/made
8	Diving	Diving at Work Regulations 1997 http://www.legislation.gov.uk/uksi/1997/2776/made
9	Chemicals	
9(1)(a)	carcinogen	Control of Substances Hazardous to Health Regulations 2002 (COSHH), Regulation 2(1) http://www.legislation.gov.uk/uksi/2002/2677/regulation/2/made Schedule 1 to COSHH http://www.legislation.gov.uk/uksi/2002/2677/schedule/1/made
9(1)(b)	mutagen	Control of Substances Hazardous to Health Regulations 2002, Regulation 2(1) <i>“mutagen” means a substance or preparation which if classified in accordance with the classification provided for by regulation 4 of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 would be in the category of danger, mutagenic (category 1) or mutagenic (category 2) whether or not the substance or preparation would be required to be classified under those Regulations.</i>
9(1)(c)	biological agent	Control of Substances Hazardous to Health Regulations 2002, Regulation 2(1) http://www.legislation.gov.uk/uksi/2002/2677/regulation/2/made
9(1)(d)	substances hazardous to health with a workplace exposure limit	Control of Substances Hazardous to Health Regulations 2002, Regulation 2(1) <i>“workplace exposure limit” means for a substance hazardous to health means the exposure limit approved by the Health and Safety Executive for that substance in relation to the specified reference period when calculated by a method approved by the Health and Safety Executive, as contained in HSE publication ‘EH/40 Workplace Exposure Limits 2005’ as updated from time to time.</i>
9(1)(e)	substances hazardous to health including a mixture of substances for which an indication of danger	Table 3.2 of part 3 of Annex VI of Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures. See page 927 at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:353 Annex III of Directive 2001/59/EC states: <ul style="list-style-type: none"> • Risk phrase R20 means harmful by inhalation;

	<p>specified for the substance is:</p> <ul style="list-style-type: none"> (a) very toxic; (b) toxic; (c) corrosive; (d) harmful with the exception of substances carrying only a risk phrase of R20, R21 or R22 	<ul style="list-style-type: none"> • Risk Phrase R21 means harmful in contact with skin; • Risk phrase R22 means harmful if swallowed
9(1)(f)	substance not falling into 9(1)(a) – (e) for which a risk assessment has shown there to be a potential cause of occupational asthma	Control of Substances Hazardous to Health Regulations 2002, Regulation 6 http://www.legislation.gov.uk/ukxi/2002/2677/regulation/6/made
9(1)(g)	dangerous substance	Dangerous Substances and Explosive Atmospheres Regulations 2002, regulation 2 http://www.legislation.gov.uk/ukxi/2002/2776/regulation/2/made
9(1)(h)	biocidal product or treated article	Article 3(1)(a) or Article 3(1)(1) of Regulation (EU) no 528/2012 of the European Parliament and of the Council concerning making available on the market the use of biocidal products. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:167 (definitions start at page 9)
9(1)(i)	Acetylene	Acetylene Safety Regulations 2014, regulation 2(1) http://www.hse.gov.uk/consult/condocs/cd257.htm (see page 15 of the Consultation Document)
9(2)	risk phrase	Annex III of Directive 2001/59/EC states: <ul style="list-style-type: none"> • Risk phrase R20 means harmful by inhalation; • Risk Phrase R21 means harmful in contact with skin; • Risk phrase R22 means harmful if swallowed
10	Any activity giving rise to a duty under the Dangerous	Dangerous Substances in Harbour Areas Regulations 1987 http://www.legislation.gov.uk/ukxi/1987/37/made

	Substances in Harbour Areas	
11	Any activity giving rise to a duty under Explosives Regulations	Explosives Regulations 2014 http://www.hse.gov.uk/consult/condocs/cd256.htm (see page 60 of the Consultation Document)
12	Any activity which could result in exposure to lead	Control of Lead at Work Regulations 2002 http://www.legislation.gov.uk/uksi/2002/2676/regulation/2/made
14	Any activity giving rise to a duty under the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009	Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2009 http://www.legislation.gov.uk/uksi/2009/1348/made
15(1) – (2)	Any activity conducted on an establishment where that activity may cause, or have a detrimental impact on the severity of the consequences of, a major accident	Control of Major Accident Hazards Regulations 1999, regulation 2(1) http://www.legislation.gov.uk/uksi/1999/743/regulation/2/made
16(1)	Work with asbestos	Control of Asbestos Regulations 2012, regulation 2(2) http://www.legislation.gov.uk/uksi/2012/632/regulation/2/made
16(2)	Duty to manage asbestos	Control of Asbestos Regulations 2012, regulation 4 http://www.legislation.gov.uk/uksi/2012/632/regulation/4/made
17(1)	Construction, operation or maintenance of an electrical system	Electricity at Work Regulations 1989 http://www.legislation.gov.uk/uksi/1989/635/made
17(2)	Work on or near live conductors	Electricity at Work Regulations 1989, regulation 14 http://www.legislation.gov.uk/uksi/1989/635/regulation/14/made

17(3)	Electrical System	Electricity at Work Regulations 1989, regulation 2(1) http://www.legislation.gov.uk/ukxi/1989/635/regulation/2/made
18	Examination, maintenance and testing of equipment and plant	<i>“Fairground equipment” means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public.</i> Provision and Use of Work Equipment Regulations 1998 http://www.legislation.gov.uk/ukxi/1998/2306/made Lifting Operations and Lifting Equipment Regulations 1998 http://www.legislation.gov.uk/ukxi/1998/2307/made Control of Substances Hazardous to Health Regulations 2002 http://www.legislation.gov.uk/ukxi/2002/2677/made
19	Pressure Systems	Pressure Systems Safety Regulations 2000 http://www.legislation.gov.uk/ukxi/2000/128/made
20(a)	Mine	Mines and Quarries Act 1954 section 180(1) http://www.legislation.gov.uk/ukpga/Eliz2/2-3/70/section/180
20(b)	Quarry	Quarries Regulations 1999, regulation 3(1) http://www.legislation.gov.uk/ukxi/1999/2024/regulation/3/made
21	Boreholes	Borehole Sites and Operations Regulations 1995 http://www.legislation.gov.uk/ukxi/1995/2038/made
22(3)	Pipeline	Pipelines Safety Regulations 1996, regulation 15 http://www.legislation.gov.uk/ukxi/1996/825/regulation/15/made
22(4)	Definition of pipeline	Pipelines safety Regulations 1996, regulation 3 http://www.legislation.gov.uk/ukxi/1996/825/regulation/3/made
23(1)	Railways	Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, regulation 2 http://www.legislation.gov.uk/ukxi/2006/557/regulation/2/made
23(2)	Tramway	Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, regulation 2 http://www.legislation.gov.uk/ukxi/2006/557/regulation/2/made
23(3)	Any system of guided transport	Health and Safety (Enforcing Authority for Railways and Other Guided Transport Systems) Regulations 2006, regulation 2 http://www.legislation.gov.uk/ukxi/2006/557/regulation/2/made
26(a)	Adventure activity	Adventure Activities Licensing Regulations 2004, regulation 2(1) http://www.legislation.gov.uk/ukxi/2004/1309/regulation/2/made
26(h)	Zoo	Zoo Licensing Act, section 1(2) http://www.legislation.gov.uk/ukpga/1981/37/section/1
27	Gas	Gas Safety (Installation and Use) regulations 1998 http://www.legislation.gov.uk/ukxi/1998/2451/made
28	Genetically modified organisms	Genetically Modified Organisms (Contained Use) Regulations 2014, regulation 2(1) http://www.hse.gov.uk/consult/condocs/cd263.htm (see page 30)

		of the Consultation Document)
29(a)	Nuclear site	Energy Act 2013, section 68 http://www.legislation.gov.uk/ukpga/2013/32/section/68
29(b)	Defence site	<i>“authorised defence site” means a site in England and Wales or Scotland-</i> <i>(a) that is used for any purpose which, if section 1 of the Nuclear Installations Act 1965 applied to the Crown, would require the authority of a nuclear site licence in respect of that site; and</i> <i>(b) for which there is in force an authorisation granted by or on behalf of the Secretary of State having responsibility for defence authorising it to be used for that purpose.</i> The Energy Act 2013 has amended the Nuclear Installations Act 1965 see http://www.legislation.gov.uk/ukpga/2013/32/schedule/12/part/2/enacted
30	Ionising radiation	Ionising Radiation Regulations 1999, regulation 2(1) http://www.legislation.gov.uk/uksi/1999/3232/regulation/2/made
32	Offshore	Health and Safety at Work etc Act 1974 (Application outside of Great Britain) Order 2013, article 3 http://www.legislation.gov.uk/uksi/2013/240/made

Proposals for the new regulatory framework for the control of asbestos in the workplace

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