

**EXPLANATORY MEMORANDUM TO**  
**THE NOTIFICATION OF CONVENTIONAL TOWER CRANES (AMENDMENT)**  
**REGULATIONS 2010**

**2010 No. 811**

1. This Explanatory Memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions, and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments (JCSI).

2. **Purpose of the instrument**

These Regulations amend the Notification of Conventional Tower Cranes Regulations 2010<sup>1</sup> (“the Principal Regulations”). These Regulations correct a drafting error in the Principal Regulations by limiting the exception from the notification requirement in regulation 3(4) to a person who supplies a conventional tower crane by way of sale, agreement for sale or hire-purchase. The amendment provided for in regulation 2 of these Regulations will automatically replace regulation 3(4) of the Principal Regulations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The JCSI wrote to the Department requesting further information on 10 March 2010 and queried:

“Is regulation 3(4) intended to exclude from the requirements of the Regulations any conventional tower crane not used by its manufacturer or should the words “by that person” have been included after the word “supplied”?”

- 3.2 The Department has responded and explained that the regulation should have included the words set out in the JCSI’s letter. These Regulations insert the words “by that person” into regulation 3(4).

- 3.3 The Department had endeavoured to meet the 21 day rule and had prepared the Regulations to be made and laid on 16 March. Unfortunately the Regulations were not laid on that date. The documents reached the House of Lords on the afternoon of 16 March, but the House of Lords had risen earlier than anticipated and regrettably the documents could not be laid. It is important that these Regulations come into force at the same time as the Principal Regulations so that the exception in regulation 3(4) is amended to reflect the policy aim. If these Regulations do not come into force at the same time, there will be a period when the exception in regulation 3(4) would apply to persons, other than those who were intended to be caught, (namely manufacturers). The effect would be that a broader category of person would not be required to notify HSE, which would defeat the objective of the Principal Regulations. The Department regrets that the 21 day rule will be breached by one day

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<sup>1</sup> S.I. 2010/333

in order to ensure that the correct exception is applied from the date the Principal Regulations come into force.

3.4 Copies of these Regulations will be supplied free of charge to all known purchasers of the Principal Regulations.

#### **4. Legislative context**

The Principal Regulations provide that HSE should be notified when a conventional tower crane is installed on a construction site. Exceptions to the notification requirement are contained in regulation 3 of the Principal Regulations. Regulation 3(4) was intended to make an exception for a person who supplies a conventional tower crane by way of sale, agreement for sale or hire-purchase, such as a manufacturer. However, regulation 3(4) as currently drafted does not achieve this as the exception applies to a much broader category of person. These Regulations amend regulation 3(4) to rectify this error.

#### **5. Territorial extent and application**

These Regulations apply to Great Britain.

#### **6. European Convention on Human Rights**

As the Regulations are subject to negative resolution procedure and they do not amend primary legislation, no statement is required.

#### **7. Policy background**

##### *What is being done and why*

7.1 These Regulations are made under the Health and Safety at Work etc. Act 1974 which is intended to secure the health, safety and welfare of persons at work, and to protect the health and safety of others who may be affected by work activities.

7.2 Tower crane accidents in recent years, some involving fatalities, have heightened general awareness of these cranes and the risks to worker and public safety that they can pose. The difficulty of obtaining information on tower crane installations can hinder the health and safety enforcing authority in its investigation of incidents involving cranes, and has drawn criticism from those seeking reassurance on behalf of the public.

7.3 The information relating to a tower crane required by the Principal Regulations to be notified to the health and safety enforcing authority will enable the authority to respond to enquiries it receives from those seeking reassurance as to the management of health and safety risks from the crane, such as concerned members of the public, and assist the authority in its investigation of any incidents involving the crane.

7.4 There are a number of different types of tower crane and they may be found being used in a variety of occupational sectors, but notification is being restricted to the type and use involved in the accidents mentioned above, i.e. conventional tower cranes (which are assembled from parts on site) used on construction sites. It is estimated that there are around 1800 conventional tower cranes in Great Britain and the requirements of the regulations will result in around 2500 notifications a year.

7.5 The policy intention was to make an exception from the requirement to notify HSE for persons who supply a conventional tower crane by way of sale, agreement for sale or hire-purchase, (for example the manufacturer), since the employer or self employed person is under a requirement to notify. The Principal Regulations were intended to achieve that aim in regulation 3(4). However, the error, as explained in paragraph 4 above, means that the aim has not been achieved. These Regulations will amend the Principal Regulations to ensure that the exception in regulation 3(4) reflects the policy intention.

## **8. Consultation outcome**

8.1 A wide range of organisations responded on the consultation for the Principal Regulations, including trades unions, construction contractors, and crane owners/hirers. Very few comments were received from sectors other than construction. There was broad support from respondents on the proposed form of regulation; the identity of the duty-holder; and the administrative arrangements for the register. No consensus emerged on the proposed scope of the regulations (which types of crane and which occupational sectors) and the range of information to be notified.

8.2 The amendment to regulation 3(4) provided for by these Regulations reflects the wording which was included in that consultation (before the drafting error was made).

## **9. Guidance**

9. HSE has made available on its website relevant information and a database allowing direct notification by duty-holders; there will also be arrangements made to allow notification mediated by HSE staff, i.e. via non-electronic means. Interrogation of the database by interested parties including members of the public will be enabled via HSE's public information service, Infoline. The production and distribution of a short guidance leaflet for duty-holders will also take place, a publicity campaign aimed at the duty-holders (principally through the trade press) and a publicity campaign aimed at the public (principally locally-based, e.g. posters on sites). The effect of these Regulations does not require any change to the information which has already been made available.

## **10. Impact**

10.1 These Regulations correct a drafting error which had unintended consequences in regulation 3(4) of the Principal Regulations. These Regulations will ensure that the original policy intention is reflected in the Principal Regulations. The impact of these Regulations will therefore be the same as the Principal Regulations. The impact of the Principal Regulations on business, charities or voluntary bodies is minimal. The duty to notify will fall on a relatively small group of duty-holders, crane-owners and principal contractors. The information required to be notified is already gathered for thorough examination purposes. A fee of £20 per notification will be levied; the cost of notification is insignificant when compared with the cost of crane hire and use.

10.2 The impact on the public sector is modest, mainly resulting from the HSE resource devoted to maintaining the electronic database and dealing with those notifications made via non-electronic means.

10.3 Impact Assessments are not attached to this memorandum because there will be no new impact on business beyond that contained in the Principal Regulations.

#### **11. Regulating small business**

11.1 The legislation applies to small business. These Regulations amend the Principal Regulations to ensure that they give effect to the original policy intention. The impact on small business of these Regulations is the same as the Principal Regulations, which is set out in the paragraphs below.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to make the notification requirements and process as straightforward and user-friendly as possible. The proportionality of the impact is not expected to be affected by the size of the company in itself; the impact of the regulations will depend directly on the number of cranes operated by a company.

11.3 The basis for the final decision on what action to take to assist small business was the findings from consultation with relevant stakeholders.

#### **12. Monitoring and review**

The success criteria are the same for these Regulations as for the Principal Regulations, which are: (a) duty-holders have a clear understanding of their obligations, and fulfil them; and (b) the information notified proves of use to both HSE and interested parties including members of the public seeking reassurance as to the management of health and safety risks from tower cranes. Work to review the working of the Regulations will be commenced within one year of implementation.

#### **13. Contact**

Laurence Golob at the Health and Safety Executive (tel: 020 7556 2238 or email: [laurence.golob@hse.gsi.gov.uk](mailto:laurence.golob@hse.gsi.gov.uk)) can answer any queries regarding the instrument.