

Health and Safety Executive Board		HSE/12/28	
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Type of Paper:	By correspondence	Exemptions:	
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Outcome of the consultation on proposals to revoke seven Statutory Instruments

Purpose of the paper

1. This paper:
 - informs the Board of the outcome of the consultation on the proposal to revoke seven Statutory Instruments; and
 - invites the Board to make a recommendation to the Secretary of State.

Background

2. On 6 January 2012 the Chair agreed, on behalf of the Board, that HSE should undertake a shortened statutory consultation on the proposal to revoke seven Statutory Instruments (SIs). The consultation document (CD) sought views on this proposal and details to inform the Impact Assessment (IA).
3. This work forms part of HSE's programme of reforms to help employers understand quickly and easily what they need to do to manage workplace risks.
4. The seven SIs proposed for revocation are the:
 - a. Anthrax Prevention Order 1971 etc (Revocation) Regulations 2005;
 - b. Employment Medical Advisory Service (Factories Act Orders etc Amendment) Order 1973;
 - c. Health and Safety (Foundries etc) (Metrication) Regulations 1981;
 - d. Non-ferrous Metals (Melting and Founding) Regulations 1962;
 - e. Pottery (Health and Welfare) Special Regulations 1950;
 - f. Pottery (Health etc) (Metrication) Regulations 1982;
 - g. Regulations for use of locomotives and waggons on lines and sidings in or used in connection with premises under the Factory and Workshop Act 1901 (1906).

Argument

Summary of the consultation responses

5. Full details of the responses are summarised in the Annex 1 tables. Thirty three responses were received. Twenty seven of these answered the questions set out in the CD with a further three offering text comments. There were three nil responses.
6. Table 1 gives a summary of the organisations that responded and the capacity of the respondents within these organisations. Seven organisations who answered the questions were consultants, four were from Local Government and three from

Industry. Nine respondents either didn't answer the question or didn't specify their affiliation when offering comments.

7. Table 2 summarises the responses to the specific questions in the CD. The results were that:
 - all 27 respondents who answered the question "Do you agree with the proposal to revoke the seven statutory instruments?" were in favour; and
 - all of the 27 who answered the question "Are any of these Regulations used in practice in the relevant sector/industry?" said No.
8. Of the three further respondents who offered text comments only, one supported the removal of the two sets of potteries Regulations and another supported the approach.
9. There were no answers submitted for the question relating to costs and only two general comments on benefits.
10. There was, therefore, overwhelming agreement from respondents to the proposals to revoke seven SIs and confirmation that these regulations were not used in practice.

Summary of additional comments and issues raised in responses

11. Table 2 also gives details of the comments provided. In brief:
 - a. several respondents noted that health and safety was covered by more recent regulation;
 - b. some were concerned that this did not really help British businesses and others questioned the importance of focusing on these Statutory Instruments, likening this to a minor housekeeping exercise. However there was also some recognition that this is the start of a number of changes to the health and safety landscape which should begin to simplify the regulatory burden for small businesses; and
 - c. some comments were offered on specific Regulations and these are examined in more detail at Annex 2.

Impact Assessment

12. A post consultation Impact Assessment (IA) has been prepared. HSE's assessment, based on consultation (formal and informal), analysis of enforcement activity and internal sector experts knowledge, is that these sets of regulations are not used by business or HSE enforcement. Therefore, the removal of them will not impose any cost to business, including any familiarisation costs.
13. One respondent felt that the lack of an IA with the CD was a missed opportunity to communicate fully about the financial aspects of the proposal. The CD did explain that HSE did not have sufficient information on which to base an IA and that the

consultation sought data for this purpose. There was no specific information received from the consultation relating to cost or benefits.

Equality Impact Assessment

14. An Equality Impact Assessment has been prepared and confirms that no groups are likely to be impacted by these changes.

Presentational issues

15. There was some stakeholder and media interest following the publication of the consultative document which included question about the costs and benefits, enforcement action, and links to Löfstedt and the Red Tape Challenge.

Next steps

16. Following a targeted consultation amongst relevant industry and Trade Unions there is clear support from respondents for these proposals.
17. If the Board agrees and recommends to the Secretary of State that the seven SIs listed above should be revoked, we will move quickly to seek the relevant Government approval so that the revoking Regulations can be laid before Parliament before the summer recess and come into force on 1 October 2012. A draft SI is attached at Annex 3.

Action

18. The Board is invited to:
 - a. agree, on the basis of the consultation responses, that these seven SIs are no longer required; and if so,
 - b. recommend to the Secretary of State that they should be revoked.

Paper clearance

19. The paper has been cleared by Geoffrey Podger.

Summary of responses

Table 1 - General information

a) Type of organisation

Option	Total	Percentage of total (%)
Consultancy	7	21
Local government	4	12
Industry	3	9
Trade association	3	9
National government	1	3
Non-departmental public body	1	3
Charity	1	3
Academic	1	3
Trade union	-	
Non-governmental organisation	-	
Member of the public	-	
Pressure group	-	
Other (please specify)	3	9
Not stated ¹	9	27
Total	33	

b) Capacity of respondent

Option	Total	Percentage of total (%)
Health and safety professional	20	61
An employer	2	6
An employee	-	
Trade union official	-	
Training provider	-	
Other (please specify)	3	9
Not stated	8	24
Total	33	

¹ This figure is made up of 3 respondents who did not answer this question, 3 who offered text comments only and 3 nil responses.

Table 2 – Summary of responses to questions

Question 1 - Do you agree with the proposal to revoke the seven Statutory Instruments?

Option	Total	%
Yes	27	100
No	-	

If no what are your objections?

No answers have been submitted for this question

Question 2 - To the best of your knowledge are any of these Regulations used in practice in the relevant sector/industry?

Option	Total	%
Yes	-	
No	27	100

Supplementary questions

a) What costs do you estimate they impose e.g. in terms of time spent by businesses?

No answers were submitted for this question.

b) What benefits do you believe they bring e.g. in terms of improved health and safety?

Where used with other legislation they may bring benefits, but it is likely that it will be covered by more recent legislation

Provided the risks are adequately addressed in other pieces of legislation, reducing the number of regulations has to be a benefit to business.

Question 3 - Are there any further comments you would like to make on the issues raised in this consultation document that you have not already responded to in this questionnaire?

Those relating to industries with which I have involvement are covered by more recent regulations.

Totally agree with this new progress

Could have been addressed at an earlier stage

Hope that nobody is suggesting that revoking these regulations is in any way helping British businesses. By all means do it, but this is not even scratching the surface of the problem.

This amounts to a minor housekeeping exercise and typical of the climate today in being spun both by Government and HSE to demonstrate some great step in lessening the 'burden on business'. I would be surprised if any of these SI were actually enforced for years - therefore costing nothing and their removal will save nothing - the only cost being in yours and my time in creating and administering this consultation! I despair if future housekeeping by the HSE has to have similar.

I am not sure how important it is to focus on these statutory instruments when most organisations apply more relevant legislation and a pragmatic approach to compliance. I can see the relevance if it means liability lawyers can't add it to the list of duties employers are supposedly in breach of when a claim is made. Question the need to look at this legislation - most people use more recent regulations and have a practical attitude to compliance. Might be appropriate to avoid use by liability lawyers.

This is a bit like clearing out old junk in the attic that you did not know you still had. It will enable the anti-H&S government to brag about destroying pointless over-burdensome legislation when it won't make a jot of difference to business. Nothing wrong in a bit of a spring clean but I see no benefit to workplace.

Pottery (Health and Welfare) Special Regulations 1950 (S.I. 1950/65)

This SI has an extant provision regarding a maximum working temperature in particular parts of pottery factories. There is therefore something significant that is lost by its revocation. Whilst later legislation provides alternative means of addressing temperature issues in such workplaces, there is not a maximum working temperature prescribed anywhere else in law.

It is likely that the particular need for this provision in terms of protection of workers in specified parts of pottery factories in the 1950's has been much diluted or completely lost by changes in factory design and working practices. Hence the CIEH does not seek to make any point in this respect.

However, there is an issue that is increasingly being raised regarding maximum (as opposed to minimum) working temperatures in workplaces. This issue is largely driven by climate change effects and certainly the number of deaths linked to a heat wave across Western Europe in 2003 is a salutary warning of the risk we must address in response to rising temperatures globally.

This issue goes well beyond the retention or revocation of a single provision for a maximum working temperature in one old SI, but the CIEH trusts that it is one that the Health and Safety Executive will take seriously going forward.

The SI about locomotives and wagons is very old (1906) and only Regulations 4,8 and 20 are extant. However, the Consultation document is unable to cite precise provisions in more recent legislation equating to some of the protections there referred to (for example in respect of walkways and capstans). It is probable that this is simply because more modern legislative provisions cover workplace settings more comprehensively and holistically and the CIEH is satisfied that all the relevant matters are covered such that this SI can be revoked.

HSE sector guidance for the non-ferrous industry sector should be reviewed to determine whether any of the requirements of the Non-Ferrous Metals (Melting and Founding) Regulations are still relevant to the non ferrous metals industry

Support the removal of old and out of date legislation as long as any future further revocations do not erode current standards of protection for people at work.

Question 4 - Is there anything you particularly liked or disliked about this consultation?

Two respondents liked its brevity
The ease of comment
No. It is very well explained
Yes – This is a good consultation in that it is to the point.
Disliked the pointlessness of it all.
Well explained with legislation that has replaced or revoked the proposed seven Statutory Instruments to be revoked.
Politically driven with an insignificant outcome that will no doubt be spun to sound significant
Straightforward exercise on the need to revoke specific redundant legislation as part of an overall programme of streamlining.
Normally an Impact Assessment is provided to help clarify the purpose of actions proposed by HSE. This stage is probably the last opportunity in the consultation process to see government thinking around this issue, from a financial perspective. In terms of transparency the HSE and government are missing the opportunity to communicate fully, which could help smooth the later more complex Legislation revoking proposals to come. The submission form is made more difficult to work with by only allowing input of text on to a dark grey background. Previous consultations allowed typing onto a white background.

Additional comments received

No issues with the revocation of the two pottery regulations and agree that temperature and its control should form an integral part of a risk assessment undertaken under the Management Regs and Welfare Regs
Never encountered these seven SIs in thirty years as an HSE manager in the chemical industry but would not expect to. Consultation should be concentrated on managers and safety representatives in the relevant industries, not diluted by inviting views from people who will never be affected by the regulations.
The FSB welcomes these proposals which follow recommendations made in the Independent 'Lofstedt Review'. We recognise that this is the start of a number of changes to the health and safety landscape which should begin to simplify the regulatory burden for small businesses. Due to the large and diverse membership of the FSB we are not able to comment on the specifics of these regulations. However, it is understood that these recommendations are to revoke regulations that are now redundant and therefore this move will have limited affects on small businesses. It is important that this process continues to ensure real burdens are reduced.

Comments on responses relating to specific Regulations

Pottery (Health and Welfare) Special Regulations 1950

1. One professional body noted that the provision regarding a maximum working temperature in particular parts of pottery factories would be something significant that is lost by its revocation and that “Whilst later legislation provides alternative means of addressing temperature issues in such workplaces, there is not a maximum working temperature prescribed anywhere else in law.” However the response went on to note that “the particular need for this provision in terms of protection of workers in specified parts of pottery factories in the 1950’s has been much diluted or completely lost by changes in factory design and working practices”. Hence the CIEH does not seek to make any point in this respect.
2. The only operative provision in these Regulations imposes a requirement for meeting specific temperatures in the workplace generally and in ovens specifically. HSE’s rationale, as set out in the consultative document, is that evidence from other industries to which specific temperature requirements do not apply, but where high temperature plant is in use, e.g. glass, suggests adverse health effects from high temperature can be controlled via other legislation such as the Workplace (Health, Safety & Welfare) Regulations 1992, Management of Health and Safety at Work Regulations 1999 and Section 2 of the Health and Safety at Work Act 1974. Although these do not specify temperatures, they could deal with workroom temperature requirements. Employers are required to undertake a risk assessment for their workplace and this should include risks of working in heat and thermal comfort. In deciding the appropriate measures to put in place, employers should take into account a range of factors, including humidity, air movement, air temperature, radiant temperature, solar gain and the nature of the work being undertaken.
3. This view was shared by a trade association who noted it had “no issues with the revocation of the two pottery regulations and agree that temperature and its control should form an integral part of a risk assessment undertaken under the Management Regulations and Welfare Regulations”.
4. The Board may also wish to note that the Workplace (Health, Safety and Welfare) Approved Code of Practice (ACOP), which includes references to workplace temperature, will be reviewed as part of HSE’s wider review of ACoPs that was recommended in the Löfstedt review.

Non-Ferrous Metals (Melting and Founding) Regulations

5. Another trade association commented that "HSE sector guidance for the non-ferrous industry sector should be reviewed to determine whether any of the requirements of the Non-Ferrous Metals (Melting and Founding) Regulations are still relevant to the non ferrous metals industry".

6. HSE believes that the only remaining substantive duty (which states that 'All dressing operations shall be carried out inside a weather-proof building') is redundant. The Regulation was probably originally intended to address concerns when some tasks were carried on outside to reduce exposure to dusts by working in the open air (but which could lead to hand arm vibration concerns especially at lower temperatures). HSE is convinced that workers are now covered by more up to date legislation. In particular regulation 7 of the Control of Substances Hazardous to Health Regulations requires controlling exposure (to the dusts generated during fettling) and adequate Local Exhaust Ventilation is expected during fettling operations. Furthermore HSE are not aware that any foundry fettling is done in the open air anymore.

Regulations for use of locomotives and waggons on lines and sidings in or used in connection with premises under the Factory and Workshop Act 1901 (1906)

7. A professional organisation noted that the SI is very old and only Regulations 4,8 and 20 are extant but commented that the CD "is unable to cite precise provisions in more recent legislation equating to some of the protections there referred to (for example in respect of walkways and capstans). It is probable that this is simply because more modern legislative provisions cover workplace settings more comprehensively and holistically and the CIEH is satisfied that all the relevant matters are covered such that this SI can be revoked."
8. The extant regulations (4, 8 and 20(a) & (b)) deal with work on and around gantries (raised structures used to load and unload locomotives), the maintenance of capstans and the testing of their controls, and the area around such capstans and systems for their safe operation, respectively.
9. HSE believes that these requirements can be effectively dealt with by current legislation, hence the argument for the revocation of the remaining Regulations. The current Regulations that would be relevant are as follows;
 - Regulation 4 covers the proper construction of such gantries and their being kept in proper repair; fixed structures and edge protection (and its location) to prevent falls, and suitable footways. Such requirements would now be dealt with under, for example, the Workplace (Health, Safety & Welfare Regulations) 1992 (Regs 5, 12 and 17 refer); the Work at Height Regulations 2005 (Regs 6, 7, 8, 11, etc.); the Management of Health & Safety at Work Regulations 1999 (Reg 3, etc.) and the Health & Safety at Work etc. Act 1974 (Section 2(2), etc.).
 - Regulation 8 covers the maintenance of capstans (drum-like winches used for moving rolling stock around a yard) and testing of their operating treadles.

- Regulation 20(a) & (b) deal with the working area around such capstans, and signals needing to be sent for their safe operation. These requirements would now be covered by the Provision and Use of Work Equipment Regulations 1998 (Regs 5, 17 and 24); The Workplace (Health, Safety & Welfare) Regulations 1992 (Reg 12 and ACOP para 93); The Health and Safety (Safety Signs and Signals) Regulations 1996; and the Health & Safety at Work etc. Act 1974 (Section 2(2), etc.).

 STATUTORY INSTRUMENTS

2012 No.

HEALTH AND SAFETY**The Health and Safety (Miscellaneous Revocations) Regulations 2012***Made* - - - - ***2012*Laid before Parliament* ***2012*Coming into force* - - 1st October 2012

The Secretary of State makes these Regulations —

(a) in exercise of the powers conferred by sections 15(1) and (3)(a) and 49(1) and (4) of the Health and Safety at Work etc. Act 1974^(a) (“the 1974 Act”); and

(b) for the purpose of giving effect without modification to proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act after carrying out consultations in accordance with section 50(3) of the 1974 Act.

Citation and commencement

1. These Regulations may be cited as the Health and Safety (Miscellaneous Revocations) Regulations 2012 and shall come into force on 1st October 2012.

Revocation

2. The following instruments are revoked:

- (a) Regulations, dated August 24th, 1906, made by the Secretary of State for Use of Locomotives and Waggon on Lines and Sidings in or used in connexion with Premises under the Factory and Workshop Act, 1901^(b);
- (b) the Pottery (Health and Welfare) Special Regulations 1950^(c);
- (c) the Non-ferrous Metals (Melting and Founding) Regulations 1962^(d);
- (d) the Employment Medical Advisory Service (Factories Act Orders etc. Amendment) Order 1973^(e);
- (e) the Health and Safety (Foundries etc.) (Metrication) Regulations 1981^(f);
- (f) the Pottery (Health etc.) (Metrication) Regulations 1982^(g); and

^(a) 1974 c. 37; section 11 is substituted by S.I. 2008/960; sections 15(1) and 50(3) are amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively and section 50(3) is further amended by the Health Protection Agency Act 2004 (c. 17), Schedule 3, paragraph 5(1) and (3) and by S.I. 2008/960.

^(b) S.R. & O. 1906/679, to which there are amendments not relevant to these Regulations.

^(c) S.I. 1950/65, to which there are amendments not relevant to these Regulations.

^(d) S.I. 1962/1667, to which there are amendments not relevant to these Regulations.

^(e) S.I. 1973/36.

^(f) S.I. 1981/1332.

^(g) S.I. 1982/877.

(g) the Anthrax Prevention Order 1971 etc. (Revocation) Regulations 2005^(a).

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

Address	<i>Name</i>
Date	Minister of State Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. The Regulations revoke seven legislative instruments. Most of the instruments are old and the provisions of some have been revoked in large part by other instruments or contain amendments to instruments which have been subsequently revoked or have been superseded by more modern legislation.

2. 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 published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.

Draft

^(a) S.I. 2005/228.