

Health and Safety Executive Board		HSE/ 12 /66	
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Outcome of the Consultation on proposals to replace the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (the Order) with a new 2013 Order.

Purpose of Paper

1. This paper informs the Board of the outcome of the consultation on HSE's proposals to replace the Health and Safety at Work etc. 1974 (Application outside Great Britain) Order 2001 (the Order) with a new 2013 Order. Following analysis of the consultation responses the Board is asked to note:
 - The outcome of the consultation (Annex 1);
 - The final stage Impact Assessment (IA) will be submitted to the Regulatory Policy Committee (RPC) for its consideration mid- August; and
 - Pending a positive opinion from the RPC, HSE will seek Ministerial and Reducing Regulation Committee (RRC) approval to implement the new Order with effect from the 6th April 2013.

Background

2. In January 2012, the Board agreed to the publication of the consultation package on the proposals to replace the 2001 Order and 2011 Variation Order with a new 2013 Order (HSE/12/13), to take effect from the 6th April 2013.
3. A new Order is required because the 2011 Variation Order contains sunset provisions which expire on the 6th April 2013, which would mean from that date HSE would lose regulatory jurisdiction for energy structures beyond UK territorial waters (which extends to 12 miles from the UK coast).
4. The new Order will:
 - Ensure the statutory protection for workers involved in offshore work activities on energy structures (e.g. wind farms) beyond our territorial waters is maintained;
 - Provide legal clarity for duty holders that HSE has the power to regulate offshore work activities associated with new emerging energy technologies (e.g. combustible gas storage, carbon dioxide storage and underground coal gasification); and
 - Clarify various definitions within the Order, based on the lessons learnt from operational experience.

5. Following a green opinion on the IA from the RPC in March 2012, HSE obtained Ministerial and RRC approval to proceed with the consultation. This included an agreement for a waiver from the micro-business and start up moratorium for this regulatory measure.
6. The public consultation ran for 12 weeks ending on the 4th July 2012. HSE received 22 responses from a wide range of individuals and organisations. An analysis of the consultation responses is provided at **Annex 1**.
7. Of the 22 consultation responses all but one were entirely in favour of or unopposed to the proposals and none of the comments received raised any areas of contention. Key comments from respondees included:
 - Support for the consolidation of the 2001 Order and 2011 Variation Order to reduce administrative burdens on industry;
 - Support for maintaining worker safety offshore; and
 - Agreement that micro businesses undertaking offshore oil and gas activities which have major hazard potential should fall within scope of the Order

Argument

8. The implementation of a new 2013 Order will meet HSE's commitment to the Merits Committee to consolidate the current Order and the 2011 Variation Order by 2013 (when the 2011 Variation Order sun setting provisions take effect). This will maintain legal health and safety protections and is also in line with the government's regulatory policy to streamline legislation. HSE has also taken the opportunity to simplify the Order and to take account of operational lessons (e.g. clarifying what activities are and are not, included within the definition of an offshore installation).
9. The work activities currently covered by the Order either have major hazard potential (e.g. work associated with oil and gas offshore installations and the construction of wells and pipelines where the Order enables the major hazard suite of regulations to apply) or are intrinsically high risk (e.g. the construction and maintenance of wind farms which would be outside of scope of the HSWA altogether but for the Order). New offshore emerging energy work activities may also be high risk and when combustible gas is involved (i.e. underground coal gasification) they may even have major hazard potential. A new Order must be in place by 2013 to ensure statutory protection is extended to relevant offshore workers and HSE has legal certainty that it has the jurisdiction to regulate all aspects of these offshore work activities.

Presentation

10. We will support the introduction of the new Order with a communication package aimed at alerting and informing key stakeholders and the public. HSE is also required to produce a summary of stakeholder's consultation responses and this will be available on the HSE website by October 2012 and will enable HSE to confirm its final policy proposals associated with the 2013 Order.

Costs and Benefits

11. The IA indicates that the equivalent annual net cost to business associated with this legislative proposal is £2,000, meaning that an OUT of equal value will have to be found (Paragraphs 90 – 92 of IA). HSE will balance this out from the work HSE is undertaking following the Löffstedt review and Red Tape Challenge.

12. The final stage IA is currently being updated following analysis of the consultation responses and in response to RPC initial feedback. HID Policy Unit is planning to send the IA to the RPC for their final opinion mid August.

Financial/Resource implications for HSE

13. By including new EET activities within the scope of the Order, HSE can recover some costs for its work in these areas under fee for intervention. In the longer term, HSE will need to consider what, if any, offshore EETs need to be within scope of major hazard regulatory regimes and hence subject to full cost recovery.

Action

14. The Board is invited to note the results of the consultation and that:

- The final stage IA will be submitted to the RPC for its opinion mid August and;
- Pending a positive opinion from the RPC on the IA, HSE will seek Ministerial and RRC approval (September 2012) to implement the new Order from the 6th April 2013.

Paper clearance

Gordon MacDonald

Analysis of responses to the public consultation to replace the Health and Safety at Work etc. 1974 (Application outside Great Britain) Order 2001, with a new 2013 Order

A summary of the responses to each question raised within the consultation document is set out below. The numbers and percentages included below relate to the 22 who responded to the questions. Not all respondents answered all of the questions set in the consultation.

In addition to making the consultation document publically available via the HSE website, over 250 offshore related stakeholders / Govt. Depts. were notified of the consultation.

Analysis background information

HSE received 22 replies to this consultation. 14 of these responses had a marking of 'Public' and 8 had a privacy marking of 'Confidential'.

Respondents represented the following Industry sectors: - Trade Associations (14%), Consultancy (14%), Central Government (5%), Industry (41%), Trade Unions (9%) and Other (18%). Replies were received from Employers (19%), Employees (10%), Safety Representatives (24%), Consultants (14%) and Other (33%). The 'Other' category included HSE Advisors, Industrial Safety Advisors and Trade Association representatives.

(NB. the 'rounding up' of these percentages have accounted for the 101% total)

Responses to the questions

Replacing the 2001 Order

Question 1:- Do you support HSE's proposal to replace the 2001 Order with a new 2013 Order?

Option	Total	%
Yes	21	95
No	1	5

Respondent's comments

The one respondent, who did not agree, did not provide any comments to support his answer.

Extending coverage beyond the territorial sea

Question 2:- Are you aware of or can you suggest any other activities that would take place offshore beyond 12 miles that are not already covered by Articles 4 - 11 in the new 2013 Order?

Respondent's comments

Several respondents provided examples of activities that could take place offshore, but did not provide details of any activities that are currently being undertaken.

Offshore storage of Combustible Gas, storage of Carbon Dioxide and Underground Coal Gasification (UCG)

Question 1:- Do you agree that the wording in the proposed Article 8 (covering gas importation and storage) specifically covers activities connected with both Combustible Gas and Carbon Dioxide storage?

Option	Total	%
Yes	19	95
No	1	5

Question 2 a) Is HSE right to include them in the same article (Article 8)?

Option	Total	%
Yes	18	95
No	1	5

Respondents comments

The respondent who disagreed was of the opinion that the hazards were different. This response will be addressed in HSE's response to the consultation.

b) Do you think HSE should address Combustible Gas and Carbon Dioxide activities in two separate articles?

Option	Total	%
Yes	5	29
No	12	71

Respondents comments

Of the respondents who disagreed they were of the opinion that they were different technologies and the hazards were different. These responses will be addressed by HSE's response to the consultation.

Question 3:- Do you agree that all work activities associated with Combustible Gas and Carbon Dioxide are covered by Article 8? If not please give reasons why and explain how you think HSE should address this?

Option	Total	%
Yes	16	84
No	3	16

Respondents Comments

Respondents raised questions about ship to ship unloading of LNG and water production from an aquifer. These responses will be addressed by HSE's response to the consultation.

Question 4:- Do you believe that Article 10 which is specific to Underground Coal Gasification, is sufficient to give HSE the jurisdiction to regulate all activities associated with UCG?

Option	Total	%
Yes	14	82
No	3	18

Respondents Comments

Respondents who disagreed commented that they did not have any expertise in this area to answer the question or their comment was unsupported.

Question 5:- Given the limited information available about the storage of carbon dioxide and UCG, do you agree with HSE that the most appropriate way to regulate these activities in the short term is by applying the general provisions of the HSWA?

Option	Total	%
Yes	19	100
No		

Respondents Comments

There was broad support from respondents for the approach being taken by HSE, however several respondents commented that HSE look to revise legislation as knowledge and experience develops in this area.

Regulating decommissioning and demolition of an offshore installation

Question 1:- Can you think of any situation where an offshore installation would ever be used for anything other than activities connected with oil and gas exploitation or exploration, or the storage and recovery of gas (as outlined within the definition of an offshore installation)?

Option	Total	%
Yes	10	50
No	10	50

Respondents comments

Respondents comments ranged from possible use for accommodation for offshore workers, military purposes, wind farm use and breeding sanctuaries for fish.

Question 2:- Do you think HSE needs to take these steps to ensure it can regulate high risk decommissioning and dismantling activities associated with offshore installations using its offshore major hazard regulations?

Option	Total	%
Yes	19	95
No	1	5

Respondents comments

The respondent who did not agree with this question did not provide any comments to support his answer.

Updating the definition of an offshore installation

Question 1:- Do you agree with HSE's proposals to clarify the structures that HSE will regulate as offshore installations under the HSWA and offshore regulations?

Option	Total	%
Yes	19	100
No		

Respondents Comments

There was full support for this question. Any questions raised will be addressed by HSE's response to the consultation.

Ensuring micro businesses and start ups are covered by offshore legislation

Question 1:- Do you agree with HSE's view that micro businesses and 'start ups' need to be covered by, and comply with, the 2013 Order?

Option	Total	%
Yes	20	100
No		

Question 2:- Please give your reasons for agreeing, or not agreeing, that micro-businesses and 'start ups' need to be covered by the Order.

Respondents Comments
Respondents commented that Health and Safety should apply to all, the size of the business does not matter.

Questions relating to the Impact Assessment

Question 1:- Do you agree with the analysis presented in the Impact Assessment specifically;
a) That it has been assumed that there will be no extra compliance costs to industry from these proposals?

Option	Total	%
Yes	16	84
No	3	16

Respondents Comments
Some respondents felt that there would be extra compliance costs, but provided no evidence to support their answer.

b) That the assumptions on how long it will take industry to familiarise themselves with the 2013 Order are correct?

Options	Total	%
Yes	17	89
No	2	11

Respondents Comments
Respondents commented that they disagree with the assumptions around familiarisation, but did not provide any comments to support their response.

Question 2:- What do you think would happen to health and safety performance in the sector if a new Order is not introduced?

Respondents Comments
Health and Safety performance would deteriorate and some members of the workforce could be left at risk, standards would slip. Potential for increased incidents, injuries and fatalities.