

Health and Safety Executive Board		HSE/13/49	
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Type of Paper:	Below the line	Exemptions:	
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## Proposal to repeal two Acts and revoke ten sets of amending Regulations

### Purpose of the paper

1. To obtain the Board's approval to publish the Consultative Document (CD) attached as Annex 1. This sets out proposals to repeal the Factories Act 1961 (FA61), the Offices, Shops & Railway Premises Act 1963 (OSRPA) and ten sets of amending and modifying Regulations.

### Background

2. As part of HSE's research for Red Tape Challenge (RTC), twelve sets of Regulations were identified as suitable candidates for revocation, subject to more detailed consideration of any legal issues. In addition, the Factories Act 1961 (FA61) and the Offices, Shops & Railway Premises Act 1963 (OSRPA) were identified as being largely redundant, the FA61 becoming more so if some of the Regulations in HSE's other ongoing consultations were revoked (eg. Regulations on shipbuilding & ship-repairing, etc). Their repeal was therefore proposed as part of HSE's 'tidying up' of its legislation, again subject to consideration of any legal issues.

3. Of these fourteen pieces of legislation, two were made under the Deregulation and Contracting Out Act 1994. HSE would not be able to achieve their removal using its own powers under the Health & Safety at Work etc. Act 1974 (HSWA), and this is now being sought via the Government's third Session Bill. Removal of the remaining ten Statutory Instruments (SIs) and the two Acts is now proposed via the vehicle of an amending SI made under the HSWA. The HSWA requires that HSE consult on such a proposal.

### Argument

4. Currently, HSE believes that the remaining substantive duties within the FA61 are adequately covered by more modern legislation. Detailed arguments in support of this position are set out in the CD.

5. HSE therefore believes that the FA61 can be repealed without risk, subject to any necessary saving provisions. If this Act is repealed, then

repealing/amending SIs that have themselves modified it can also be revoked without risk. This would include a number of the SIs referred to in the CD.

### **Offices, Shops & Railway Premises Act 1963**

6. The substantive parts of the OSRPA have gradually been repealed as more modern legislation was introduced, and any extant Sections are no longer considered necessary. Detailed arguments in support of this position are set out in the CD

7. HSE therefore believes that the few remaining Sections of the OSRPA can also be repealed without risk, subject to any saving provisions. Again, if this Act is repealed, then repealing/amending SIs that have themselves modified it can also be revoked. This would include a number of the SIs referred to in the CD.

### **Statutory Instruments**

8. The Regulations listed in Annex 2 of the CD are primarily modifying or repealing in nature and do not place duties on persons. Additionally, in the case of those SIs modifying the FA61 and OSPRA, the legislation they modified has itself become redundant or has been repealed. The RTC fiche recommendations for all these SIs was *removal*. Further, if the FA61 and OSRPA are repealed, then those of the ten SIs that were made under those Acts will automatically 'fall', though it is proposed to still include them in any amending SI. HSE therefore believes that these ten SIs can also be revoked without risk.

9. The CD does not include an option to do nothing. This is because HSE's recommended policy option is the removal of this redundant legislation.

### **Other implications**

#### **Legal**

10. In considering the legal implications of this proposed program of work, Treasury Solicitors (TSol) identified a number of other statutes that appeared to rely on terms defined in the FA61 and OSRPA. These are, typically, where the legislation makes use of terms such as 'factory' (which is defined in Section 175 of FA61), 'office' or 'shop' (which are defined in Section 90 of the OSRPA), etc. To allow the proper operation of this legislation if the FA61 and OSRPA were to be repealed, the amending SI would need to contain appropriate saving provisions, ensuring that the necessary terms were still available to the relevant legislation. This is a predictable result of repealing such legacy legislation, and is not contentious.

## **Impact Assessment**

11. It is anticipated that these changes will have no impact on the operation of businesses. The process is, however, expected to contribute to a wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities.
12. A proportionate Impact Assessment will be made available upon request, but has not been included in the CD itself.

## **Consultation**

13. The main sector that would potentially be impacted by the changes to the FA61, are the power generators that still use the larger water sealed gas holders. HID have been working with the relevant industry association, IGEM (the Institution of Gas Engineers and Managers), as part of RTC, and in relation to changes to FA61 that were made in the Health and Safety (Miscellaneous Repeals, Revocations & Amendment) Regulations 2013. HID have therefore been fully engaged in developing the policy lines set out in this CD and supported the proposed repeal of the remaining parts of FA61 that are relevant to this sector. IGEM would also be formally contacted as part of the consultation.
14. HSE also consulted ORR in relation to rail-related terms that were defined in FA61 and OSRPA. ORR had no objection to the proposed repeals and, if needed, such terms would in any case be kept by virtue of saving provisions in the amending SI.
15. HSE's Local Authority Unit were made aware of this work, primarily in relation to the OSRPA, as this was, historically, the main statute enforced by local authority health & safety regulators. The English & Welsh Local Government Associations, and COSLA in Scotland, would also be contacted formally as part of the actual consultation.
16. The devolved administrations have already all been made aware of this work, and would be contacted again as part of the consultation. Within GB, health & safety law is not a devolved matter and so the Welsh and Scottish Governments have no direct control over this area of law. However, in considering what saving provisions might be necessary if the FA61 and OSRPA were to be repealed, TSol identified a number of statutes that relied on terms defined in those two Acts which were 'owned' by the devolved administrations. Saving provisions in any amending SI would ensure that these terms were retained, so as to ensure the ongoing operation of those statutes. Northern Ireland has its own health & safety legislation.

17. The Chief Economist signed off the Impact Assessment for this work, and it was also endorsed by HSE's Regulation Committee (RC).

18. As outlined above, TSol have been actively involved in this work from an early stage, and their advice informed HSE's consideration of the route used to seek these repeals and revocations.

### **Equality Impact Assessment**

19. In line with current Government policy, no formal Equality Impact Assessment (EIA) was carried out for this work.

### **Timing**

20. Subject to clearance by the Board and the Minister, it is proposed to consult in June & July 2013, so that any amending SI can be included in the Government's 7<sup>th</sup> Statement of New Regulation in October 2013. This would allow the amending SI to come into force in April 2014.

### **Action**

21. The Board is asked to agree to the publication of the attached Consultative Document (Annex 1) to begin the formal consultation process to repeal and revoke these twelve statutes.

### **Paper clearance**

22. The paper was cleared by SMT on 1st May 2013.