

Application of health and safety law offshore

Guidance on the legislative changes introduced by the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2013

Offshore Information Sheet No 1/2013

Introduction

The Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2013 (the 'Order') is expected to come into effect on 6 April 2013.

The Order will revoke both the Health and Safety at Work etc Act 1974 (Application outside Great Britain) Order 2001 and the Health and Safety at Work etc Act 1974 (Application outside Great Britain) (Variation) Order 2011. It re-enacts their provisions with modifications and introduces new articles associated with emerging energy technologies (EETs).

This guidance note provides further information on the changes associated with the new Order, but in summary the new Order will:

- (a) ensure the statutory protection provided by the 2001 Order and the 2011 Variation Order is maintained;
- (b) provide legal clarity for dutyholders that HSE has the power to regulate activities associated with new EETs (eg combustible gas storage and underground coal gasification) and climate change technologies (eg carbon dioxide storage) offshore;
- (c) update the definitions relating to certain activities, based on the lessons HSE has learned from operational experience and taking on board feedback from the public consultation (eg clarifying which structures HSE regulates as an offshore installation).

Background

The purpose of the Order is to apply sections 1 to 59 and 80 to 82 (the 'prescribed provisions') of the Health and Safety at Work etc Act 1974 (HSWA) beyond the mainland of Great Britain to specified offshore areas and work activities. These offshore areas include the 'territorial sea'¹ and 'designated areas'.²

The 2013 Order will consolidate the 2001 Order and the 2011 Variation Order, to maintain HSE's ability to regulate work activities and ensure statutory protection is extended to workers and work activities associated with 'energy structures' (wind farms), which are being built beyond the territorial sea within the Renewable Energy Zone.

In addition, the new Order provides legal clarity to dutyholders that HSE has the power to regulate work activities with new EETs (eg combustible gas storage and underground coal gasification and climate change technologies (eg carbon dioxide storage) within the territorial sea or in a 'Gas Importation and Storage Zone' (GISZ) (any area designated by section 1(5) of the Energy Act 2008).

¹ A belt of sea over which the UK exercises sovereign jurisdiction. It is adjacent to, and measured from, the UK coastline to a maximum width of 12 nautical miles

² Any area designated by order under section 1(7) of the Continental Shelf Act 1964

Application

The 2013 Order applies sections 1 to 59 and 80 to 82 (the 'prescribed provisions') of the HSWA outside Great Britain within territorial sea and UK designated areas to:

- (a) offshore installations and most activities on or in connection with them; (including certain diving projects) (Article 4);
- (b) wells and activities in connection with wells (Article 5);
- (c) pipelines, pipeline works and activities in connection with pipeline works (Article 6);
- (d) mines and activities in connection with them (Article 7);
- (e) activities connected to gas unloading, storage and recovery, the conversion of any natural feature for the permanent or temporary storage of gas and related exploration activities (Article 8);
- (f) production of energy from water or wind and activities in connection with their exploration and exploitation (Article 9);
- (g) underground coal gasification and any activities in connection with it (Article 10);
- (h) various other activities within the territorial sea (Article 11).

Regulations made under the HSWA apply offshore only if they contain a clause which says so explicitly. Each set of regulations details the extent of their application offshore by reference to the relevant articles of the Order.

They are not bound to follow the Order's divisions between categories (eg regulations may deem parts of pipelines and wells to be parts of offshore installations), but cannot exceed the overall scope of the Order. Existing regulations which refer to the 2001 (or previous) Orders will be construed as referring to appropriate parts of the new Order.

In the guidance which follows, a reference to the 2001 Order is a reference to that order as amended by the 2009 and 2011 Variation Orders.

Explanation of the changes and introduction to the new Articles

Article 2 – Interpretation

- (a) To update the definition of 'activity' so that it includes 'standing a vessel by'.
- (b) The definition of an 'energy structure' found in article 2 of the 2001 Order has been 'moved' to Article 9(2), as this is now the only article in the Order that makes reference to an 'energy structure'. The definition has also been updated to ensure that the 'energy structure' can be regulated during its life cycle by including the wording 'which is, or is to be, or has been' used for producing energy etc.
- (c) To include a definition of a 'gas importation and storage zone' (GISZ) to clarify the term used in article 4(1) and article 8(1).
- (d) The definition of a 'stand-by vessel' in the 2001 Order has been removed and a 'new' Article 4(4) has been introduced. This provides clarification and addresses comments arising from the public consultation. It removes any previous ambiguity

over the application of the regulation to a 'stand-by vessel' that performed a dual role, giving assistance in the event of an emergency etc and, for example, performing a lifting operation. (Also see the comments associated with article 4(4)(b) below.)

(e) The definition of 'vessel' which is capable of being 'staffed', has been changed to read which is capable of being 'navigated' to ensure consistency with that used by other regulators, eg the Maritime and Coastguard Agency (MCA).

Article 4 – Offshore Installation

(a) Article 4(1) includes the wording 'a gas importation and storage zone'. This has been added to ensure that when gas storage activities are undertaken via an offshore installation within such a specified area they are covered by this article.

(b) Article 4(1)(b)(i) and (ii) appearing in the 2001 Order have been 'moved' and appear essentially in a 'new' Article 4(4). The removal of the definition of 'stand-by vessel' and additional wording in Article 4(4)(b) are in recognition that 'stand-by vessels' are often used for other activities as well as emergency assistance and these other activities, eg a lifting operation should still be regulated. Article 4(4) clarifies the activities a 'vessel' undertakes that are excluded from the Order provided it is not undertaking other activities.

(c) Article 4(2)(b) in the 2001 Order now appears essentially as article 4(2).

(d) Article 4(2)(b)(i) in the 2001 Order is now 'renumbered' as article 4(2)(a).

(e) Article 4(2)(b)(ii) in the 2001 Order has been 'removed' and replaced by article 4(2)(b) to confirm that activities falling within Article 8(2) (in relation to gas importation and storage) are covered by Article 4 and the definition of an 'offshore installation'.

(f) Article 4(2)(b)(iii) in the 2001 Order is renumbered as article 4(2)(c).

(g) Article 4(2)(b)(iv) in the 2001 Order is renumbered as article 4(2)(e). The word 'primarily' has replaced 'mainly' to clarify that it is only vessels whose primary purpose is accommodation that fall under the definition of an offshore installation and are subsequently covered by the Order.

(h) The addition of article 4(2)(d). HSE has included this to cover the undertaking of activities, including those from a vessel, which involve mechanically entering the pressure containment boundary of a well.

(i) The 'removal' of article 4(3)(c) from the 2001 Order. HSE has removed this to ensure that all activities in relation to a (non-mobile) structure which was formerly an offshore installation fall within the Order. The 'has been' declaration within Article 4(2) would then ensure the prescribed provisions applied to installations whose purpose had changed.

(j) Article 4(3)(d) in the 2001 Order has been 'renumbered' as Article 4(3)(c).

(k) Article 4(3)(e) in the 2001 Order has been 'renumbered' as Article 4(3)(d).

(l) The addition of Article 4(3)(e) to exclude structures specified in article 10(c).

(m) Article 4(4) is a 'new' provision to state the activities (which otherwise would be regarded as ones 'in connection with an offshore installation') to which the prescribed provisions of the HSWA do not apply. Some of these activities carried on in, or from,

a vessel excluded by article 4(4)(b) were excluded in the 2001 Order in relation to 'stand-by vessels'. The range of these excluded activities has been expanded. For example, training in relation to giving emergency assistance is now not regarded as an activity in connection with an offshore installation.

(n) Article 4(5) is a new paragraph to ensure that a vessel used for excluded activities is not excluded if there are other activities carried on from it in connection with an offshore installation.

Article 6 – Pipelines

(a) Article 6(1)(c)(ii) in the 2001 Order has been amended to say 'on a vessel' not 'in a vessel' (this was mistyped in the original Order).

(b) A new Article 6(1)(c)(iii) to ensure 'anchor handling' in connection with pipeline works is covered by the Order.

Article 8 – Gas Importation and Storage

(a) This is a new article to clarify HSE's jurisdiction when regulating work activities associated with the importation, storage and or recovery of combustible gas and carbon dioxide.

(b) The 2011 Variation Order introduced an Article 8A into the 2001 Order, this is no longer required due to the 'removal' of Article 4(3)(c).

(c) Article 8(2)(a) refers widely to an 'installation' rather than an offshore installation covered by Article 4 (Article 8(4) provides a definition of an 'installation'). This is to ensure that installations of all types are covered by this article.

(d) Article 8(3) is to confirm that it will be Article 4(1) that covers an offshore installation that undertakes activities associated with the importation and storage of gas.

(e) Article 8(5) – this provision is included to ensure references to 'gas' in Article 8(2) and 8(4) include any substance which consists wholly or mainly of gas.

Article 9 – Production of Energy from Water or Wind

(a) This 'new' article replaces Article 8B in the 2001 Order (inserted by the 2011 Variation Order), to apply the prescribed provisions of the HSWA to energy structures, and maintain and consolidate HSE's jurisdiction to regulate them.

(b) The definition of an energy structure has been updated to clarify that this includes a structure 'or machine'. This will bring the definition in line with European Union terminology (eg under the Machinery Directive).

Article 10 – Underground Coal Gasification

(a) This is a new article that will apply the prescribed provisions of the HSWA to any work activities associated with Underground Coal Gasification and give HSE the jurisdiction to regulate them. Article 10(c) – the inclusion of the wording 'which is, or is to be, or has been' is to capture any fixed or floating structure used in connection with underground coal gasification activities to ensure they can be regulated throughout their life cycle.

Article 11 – Other Activities Within the Territorial Sea

(a) This article has been updated to provide clarity on the activities that are not covered within Articles 4, 5, 6, 7, 8, 9 and 10, but are covered by the prescribed provisions of the 1974 Act.