

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (MISCELLANEOUS REVOCATIONS AND
AMENDMENTS) REGULATIONS 2013

2013 No. 1512

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.

2. Purpose of the instrument

2.1 This instrument amends regulation 3(2) of the Health and Safety (First-Aid) Regulations 1981 (S.I. 1981/917)¹ by removing the requirement for HSE to approve training and qualifications for the purposes of first aid at work. This instrument also revokes the Docks Regulations 1988 (S.I. 1988/1655)², which impose duties for the management of workers' health, safety and welfare in relation to specific docks-related activities, because they have been superseded by more recent legislation. Consequential amendments are made within the instrument in light of both the amendment and revocation.

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

3.1 None.

4. Legislative Context

First Aid:

4.1 This amendment to regulation 3(2) of the Health and Safety (First-Aid) Regulations 1981 is being made because the existing requirement for HSE to approve training and qualifications for the purposes of first aid at work is considered to be restrictive in terms of the choice of training provider available to employers, and to the qualifications permitted for the purposes of compliance with the Regulations.

4.2 A consequential amendment is made to revoke regulation 18 and Schedule 14 of the Health and Safety (Fees) Regulations 2012 (S.I. 2012/1652)³ in order to abolish the fees in relation to HSE training and qualification approvals.

Docks:

4.3 This instrument revokes the Docks Regulations 1988 which have been superseded by more recent legislation. It also includes consequential amendments to other regulations:

¹ <http://www.legislation.gov.uk/uksi/1981/917/made>

² <http://www.legislation.gov.uk/uksi/1988/1655/contents/made>

³ <http://www.legislation.gov.uk/uksi/2012/1652/contents/made>

- The Work at Height Regulations (S.I. 2005/735)⁴ to import provisions from regulations 7(6) of the Docks Regulations 1988 (S.I. 1988/1655) and also remove a disapplication to ensure that the same level of protection is retained;
- The Merchant Shipping (Safe Loading and Unloading of Bulk Carriers) Regulations 2003 (S.I. 2003/2002)⁵ concerning duplication of requirements in dock areas.

4.4 Minor consequential amendments will also subsequently be needed to the Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004)⁶ to transfer the definition of a “ship” from the Docks Regulations 1988, and to the Lifting Operations and Lifting Equipment Regulations (S.I. 1998.2307)⁷ (LOLER) to remove a spent provision.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.⁸

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

First Aid:

7.1 Council Directive 89/391/EEC⁹ of 12 June 1989 (Article 8) contains requirements relating to first-aid at work. In particular, these EU requirements impose a duty on employers to take necessary measures for first-aid adapted to the nature of the workplace, and approve workers required to implement these first-aid requirements. The Health and Safety (First-Aid) Regulations 1981 were deemed sufficient to implement these provisions.

7.2 The Health and Safety (First-Aid) Regulations 1981 address first-aid equipment and facilities, numbers of first aiders and training of first aiders. Regulation 3 considers the duty on employers to make provision for first-aid, and also required an employer to ensure that they provided a suitable number of first-aiders who held adequate training and qualifications approved by the HSE. Since the Regulations came into force, the HSE approval of training and qualifications has been undertaken by the direct approval of first-aid training providers themselves.

⁴ <http://www.legislation.gov.uk/uksi/2005/735/contents/made>

⁵ <http://www.legislation.gov.uk/uksi/2003/2002/regulation/12/made>

⁶ <http://www.legislation.gov.uk/uksi/1992/3004/contents/made>

⁷ <http://www.legislation.gov.uk/uksi/1998/2307/contents/made>

⁸ The WAHR apply outside Great Britain as sections 1 to 59 and 80 to 82 of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (S.I. 2001/2127) (see regulation 3 WAHR).

⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31989L0391:EN:HTML>

7.3 A government review ‘Reclaiming Health and Safety for All: An Independent Review of Health and Safety Legislation’ published in November 2011 by Professor Ragnar E Löfstedt, recommended removal of the requirement in the Health and Safety (First-Aid) Regulations 1981 for HSE to approve the training and qualifications of appointed first-aid personnel as these provisions exceeded the requirements of Council Directive 89/391/EEC and had little justification. It was considered that so long as certain standards were met, allowing businesses to choose training providers should allow them greater flexibility to choose what is right for their workplace, and possibly reduce costs.

Docks:

7.4 The Docks Regulations 1988 impose duties for the management of workers health, safety and welfare in relation to specific docks-related activities. They were conceived as a single set of Regulations which addressed port-specific activities and risks at a time when there was limited published guidance and standards for docks and the ship/shore interface, and accident rates were high.

7.5 The Regulations are being revoked because parts have already been revoked by the Work at Height Regulations 2005; the Lifting Operations and Lifting Equipment Regulations 1998; and the Confined Spaces Regulations 1997 (S.I. 1997/1713)¹⁰. The remainder has been superseded by more general requirements of recent legislation such as the Management of Health & Safety at Work Regulations 1999 (S.I. 1999/3242)¹¹, the Workplace (Health, Safety and Welfare) Regulations 1992 and the Manual Handling Operations Regulations 1992 (S.I. 1992/2793)¹² along with the more specific requirements of the Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306)¹³. Revocation of these Regulations will not introduce new duties on employers, nor will it reduce protection for workers or those affected by work activities.

7.6 The Docks Regulations 1988 also deal with some activities and work practices which are no longer commonplace. The recent development of health and safety guidance by the industry confirmed that the Regulations are outdated. Health and safety standards in ports can now be dealt with more effectively through other existing legislation.

7.7 Revocation of these Regulations is one element of a wider programme to make the legislative framework simpler and easier to understand and to improve compliance, while maintaining the same standards of protection for those in the workplace or affected by work activities.

Consolidation

¹⁰ <http://www.legislation.gov.uk/uksi/1997/1713/contents/made>

¹¹ <http://www.legislation.gov.uk/uksi/1999/3242/contents/made>

¹² <http://www.legislation.gov.uk/uksi/1992/2793/contents/made>

¹³ <http://www.legislation.gov.uk/uksi/1998/2306/contents/made>

7.8 There are no plans to consolidate the relevant legislation.

First Aid:

7.9 Informal consolidation of the amendment will be included in the Department's revised guidance document to the 1981 Regulations, which is available to download at no cost to the public.¹⁴

Docks:

7.10 Revocation of the Docks Regulations is part of Government initiatives such as the Red Tape Challenge and HSE's wider programme and to make the legislative framework simpler and easier to understand and to improve compliance, while maintaining the same standards of protection for those in the workplace or affected by work activities.

8. Consultation outcome

First Aid:

8.1 A public consultation took place from 22 October 2012 to 03 December 2012 ("the Formal Consultation"). HSE took a proportionate approach to fulfilling its statutory duty under the Health and Safety at Work etc Act 1974 by conducting a shortened consultation exercise. This was considered to be justified because it built on views sought by HSE about the proposed amendment to regulation 3(2) of the 1981 Regulations in informal stakeholder consultation conducted earlier in 2012 ("the Informal Consultation").

8.2 HSE has also undertaken informal consultation with the Voluntary Aid Societies, including St John Ambulance, British Red Cross, St. John Ambulance Wales and St Andrew's First Aid (Scotland), and consulted with the Scottish Qualification Authority (SQA) and the Department for Education and Skills Wales (DFES Wales) alongside the Office of Qualifications and Examinations Regulation (Ofqual), to discuss the continued development of nationally accredited and recognised qualifications for first-aid ('regulated qualifications'). This has led to working with SQA accredited Awarding Organisations (AOs) alongside those accredited by Ofqual in stakeholder groups and workshops to develop these regulated qualifications for first-aid. These stakeholder groups and workshops also included representatives from business organisations (e.g. CBI, FSB etc), trades unions and first-aid related industry bodies. (There were no DfES Wales accredited AOs at the time of the groups and workshops.)

8.3 HSE conducted and produced a full analysis of the Formal Consultation responses.¹⁵

¹⁴ <http://www.hse.gov.uk/pubns/priced/174draft.pdf>

¹⁵ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2013/270213/annex-1-consultation-on-changes.pdf>

8.4 HSE received 408 responses to the Formal Consultation. Although a majority of respondents (63%) disagreed with the proposed legislative change to remove HSE approval of training and qualifications from regulation 3(2) of the 1981 Regulations, an analysis of the consultation responses indicated that many of these respondents were first-aid training providers who have an interest in maintaining HSE's formal approval support for their commercial interests.

8.5 Further analysis indicated that, although against the removal of HSE approvals in principle, respondents were mostly concerned about reducing the standards of workplace first-aid training and provision. HSE's revised guidance seeks to address these concerns by identifying how existing first-aid standards will be maintained.

8.6 Those respondents in agreement with the recommendation for removal of HSE approvals generally represented large employers and, in particular, the public sector. HSE estimates that support from such employers would account for approximately 60% of employees.

8.7 Following consideration of the results of the Formal Consultation, the HSE Board recommended that the proposal set out in the Consultative Document to remove the requirement for HSE to approve first aid training and qualifications should be implemented in full.

8.8 In order to clarify further issues (for example, the withdrawal of the approval of the associated Approved Code of Practice (ACoP)), and to allow all stakeholders with an interest to properly consider and comment on the proposed draft guidance, the HSE Board made a decision to undertake a further period of formal consultation. Subsequent to this consultation the Board recommended the withdrawal of the ACoP.

Docks:

8.9 The Docks Regulations 1988 were amongst a number of legislative measures that were subject to a public consultation that took place between 3 April and 4 July 2012. In engaging stakeholders HSE ensured that the relevant industry groups and trade unions were alerted to the consultation. 33 responses were received in relation to the Regulations. A summary of the consultation is contained in the relevant HSE Board paper.¹⁶

8.10 Responses, where stated, were received from a wide range of groups including: industry, trade unions; trade associations; academics; charities; local Government and non-departmental public bodies. The consultation allowed people to respond to some or all of proposals according to their interests. HSE therefore analysed the results and considered all the responses received. No evidence was received that undermined the rationale for removal.

8.11 85% (28 out of 33) of those who answered the question supported revocation of the Regulations. Of the rest, the main objections were that prescriptive sector based legislation would be replaced with existing risk based, goal-setting legislation (though this already applies in the vast majority of other industry sectors) and that there was a need for specific regulations because of the hazardous nature of the industry.

¹⁶ <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/220812/paugb1257.pdf>

8.12 As a result of the consultation responses and further representations from both industry and worker representatives, the HSE Board decided to develop a shortened, simplified Approved Code of Practice (ACoP). This would contain the relevant material from the original ACoP further guidance and signposting, thereby replacing both the current ACoP as well as other HSE docks guidance. The replacement ACoP sets out the preferred way of complying, in ports-specific situations, with the Health and Safety etc Act 1974 that will continue to apply when the Docks Regulations 1998 are revoked. There are no new duties or requirements stemming from these revisions.

8.13 The HSE Board, having taken account of the responses to a second consultation (from 9 April 2013 to 22 May 2013) on the content of the proposed Approved Code of Practice agreed that the Docks Regulations 1988 should be revoked October 2013 but that the revocation would not come into force until April 2014 to allow time for detailed development and approval of the new Approved Code of Practice.

9. Guidance

First Aid:

9.1 The Health and Safety (First-Aid) Regulations 1981 Approved Code of Practice and guidance (L74) was amended following public consultation, and this draft guidance was published on HSE's first aid web pages on 21 February 2013 to provide employers with helpful information on how to comply with the amended regulation 3(2) duty in these Regulations.

9.2 The revised guidance covers, amongst other things, information on how an employer can arrive at an informed decision on what first aid provision is 'appropriate in the circumstances of the case', in terms of the required training, equipment and other issues; and how an employer can make an appropriate choice of training provider and the due diligence that they should undertake.

9.3 Targeted stakeholder engagement activity, and proactive media relations with trade and regional media were employed to help ensure that those affected by the proposed legislative changes to the 1981 Regulations understood what was happening, the rationale for it, and the benefits of the change.

Docks:

9.4 HSE has been working with industry stakeholders for some years to produce a suite of freely available industry led Safety in Ports (SiP) guidance documents that provide signposts to relevant legislation and up-to-date guidance on good practice and current health and safety standards. These documents can be freely downloaded from: - <http://www.portskillsandsafety.co.uk/publications> . This approach would allow other HSE docks guidance publications to be withdrawn in line with HSE's wider policy of rationalising guidance.

9.5 Specific guidance on this element of the Statutory Instrument is unnecessary because it is revoking legislation that is either redundant or has been overtaken by

more up to date Regulations. HSE will however work with stakeholders to ensure they are aware of the proposed changes.

9.6 The Docks Regulations 1988 were supported by an Approved Code of Practice “Safety in Dock Work” [COP25]¹⁷ that provided practical guidance on compliance the Regulations and the Health and Safety at Work etc Act 1974 c.37¹⁸. This ACoP will be replaced with a simplified ACoP by April 2014.

10. Impact

First Aid:

10.1 The impact on business is an estimated annual cost saving of approximately £0.43 million. This is largely realised from producing revised guidance that will ensure that employers establish a level of first aid provision that is adequate and appropriate for their business needs and is not disproportionate.

10.2 The impact on the public sector, such as the emergency services, is a potential saving of between £55 million and £119 million, with a best estimate of £87 million over a 10-year period. This significant saving is amassed from both time and cost savings, which have arisen from the avoidance of duplication of syllabus content between first-aid at work and frontline advanced life support and emergency trauma training.

10.3 An Impact Assessment is attached to this memorandum (Annex 2) and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

Docks:

10.4 Changes to the Docks Regulations (1988) are expected to have a zero net cost to business. HSE do not expect that there will be costs from familiarisation as the ACoP will not be removed in its entirety and there will be no new duties or requirements stemming from these revisions. Cost associated with updating industry guidance and training materials are expected to be negligible.

10.5 Furthermore, the removal of these sets of regulation will contribute towards streamlining the Health and Safety legislative framework. There will also be ongoing annual benefits to industry from the reduction in materials they need to be familiar with due to the sign-posting format of the ACoP.

11. Regulating small business

First Aid:

11.1 The legislation applies to small businesses.

¹⁷ <http://www.hse.gov.uk/pubns/books/cop25.htm>

¹⁸ <http://www.legislation.gov.uk/ukpga/1974/37>

11.2 Clearance from the Economic Affairs Committee (EAC) for a waiver from the micro-business and start-up regulatory moratorium was sought and subsequently granted for this proposal as it is a deregulatory measure where the amendments and resulting regulation need to be applied fully and equitably across all sectors and sizes of business;

11.2 The requirement to make provision for first aid on small firms (employing up to 20 people) is the same as for all other businesses of varying sizes. This should be based on a duty holders risk assessment and needs to be proportionate and adequate to the needs of the particular workplace, including number of workers, work activity and other factors. Provision for first aid therefore needs to be uniformly regulated for micro and all other size businesses. (Potentially it is possible that a very small business in terms of numbers of employees could have significant first aid requirements.)

11.3 In order to reach these micro businesses HSE consulted with organisations who would be able to contact directly with this group or its representatives (often as members). Many of these groups were members of, or represented on, HSE's key stakeholder group and HSE was therefore able to directly gauge the responses of micro businesses through these representative bodies. These included the Federation of Small Businesses (FSB), the Small Business Trade Association Forum (SBTAF), the British Chambers of Commerce, the Confederation of British Industry (CBI), the Institute of Directors (IOD), the Engineering Employers' Federation (EEF), the British Retail Consortium (BRC) and the Association of Convenience Stores.

11.4 Furthermore HSE worked with other stakeholders (e.g. St John Ambulance, British Red Cross, and the British Healthcare Trade Association) to ensure the information reached as large an audience as possible (particularly micro businesses) by utilising their communication channels –employing messaging that these changes 'were important as they affected every employer across every business sector'.

Docks:

11.5 The legislation is deregulatory and therefore applies to small business to allow them to benefit from a simplified legislative framework.

12. Monitoring and review

First Aid:

12.1 The success criteria for this instrument are duty-holders will benefit from a greater flexibility in selecting first-aid training providers and selecting training that is at an appropriate level for their workplace.

12.2 As the cycle of requalification for first aid at work training will be completed in three years, it will not be possible to undertake any review until all affected businesses have experienced any changes made. It is the experiences, views (in terms of benefits and issues) and performance (compliance) of these end user businesses that are key to HSE's assessment of successful implementation. A separate sunset and review clause has not been included within the Health and Safety (Miscellaneous

Revocations and Amendments) Regulations 2013 because this is a de-regulatory measure which does not give rise to a new net regulatory burden or cost on business or civil society. Accordingly it falls outside of the scope of the mandatory sunseting policy.

12.3 There are a number of aspects to how HSE will monitor the affects of any changes from the point of implementation. Feedback from key stakeholders will continue to be welcomed and considered with respect to any changes (this includes feedback from end users and those with an interest in first aid). HSE will also monitor and consider any duty holder (end-user) feedback that may be received directly from time to time. HSE also intends to constitute and oversee a ‘first aid forum’, which will consider within its scope the affects of any changes, the issues of maintaining and improving quality of training standards, and the quality of first aid at work provision.

12.4 HSE will continue to consider all feedback received and that allows for qualitative assessment of the first aid training industry. HSE realises that the shape of the first aid training industry is likely to change over time due to the interactions between duty holders and their selected training provider. HSE will therefore continue to consider any information available from its field force in relation to businesses who may choose to run in-house training, and their implementation of such training in future.

12.5 In support of its monitoring and review, HSE will be able to undertake a limited quantitative analysis based on the data submitted (in relation to Ofqual etc regulated qualifications, and also data received on a voluntary basis from larger organisations). This will allow for comparison and assessment of the continued uptake of (commercial) first aid at work training and the emerging shape of the training industry. HSE will also be able to undertake qualitative analysis of enforcement activity and wider ‘fee for intervention’ cases relating to first aid to inform the state of quality standards going forwards.

Docks:

12.6 This instrument repeals the whole of the Docks Regulations 1988 so no monitoring or review is necessary.

13. Contact

Any questions may be respectively answered by:

First Aid:

Andy McGrory at the Health and Safety Executive (tel: 0151 951 4048, or email: Andy.McGrory@hse.gsi.gov.uk) can answer any questions.

Docks:

Vincent Joyce at the Health and Safety Executive (tel: 0151 951 4927, or email: vincent.joyce@hse.gsi.gov.uk)