

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (MISCELLANEOUS REPEALS AND
REVOCATIONS) REGULATIONS 2014

2014 No. 486

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

These Regulations repeal certain provisions of the Office, Shops and Railway Premises Act 1963 (c. 41) (<http://www.legislation.gov.uk/ukpga/1963/41/contents>) and the Factories Act 1961 (c. 34) ([Http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/contents](http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/contents)). The Regulations also revoke 7 Statutory Instruments (SIs). They all concern health and safety provisions that have been overtaken by more up-to-date Regulations, are redundant or no longer deliver the intended benefit.

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

None.

4. Legislative Context

4.1 In May 2013 the Board agreed that HSE should undertake a four week statutory consultation, under the Fast Track recommendations, on the proposal to repeal the remaining Sections of the Factories Act 1961 and the Office, Shops and Railway Premises Act 1963, subject to any saving provisions, and also to revoke ten amending and modifying SIs. This work forms part of HSE's programme of reform to remove redundant legislation and help employers understand quickly and easily what they need to do to manage workplace risks. The recommendations flowing from the consultation and subsequent legal advice reduced the repeals and revocations being sought because parts of both Acts and a number of SIs are still required.

This instrument repeals the following Sections of the Acts:

- Office, Shops and Railway Premises Act 1963 - Sections 42 to 44, 46, 59, 59A, 63, 67, 69, 72, 73, 78, 80, 82, 83, 84, 86 and 88,
- Factories Act 1961 - Sections 39, 56, 117, 119, 121, 122, 153, 154, 154A, 163, 169, 170 and 181.

alongside revoking the following seven instruments (listed in chronological order):

- Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938
- Factories Act 1937 (Extension of Section 46) Regulations 1948
- Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications)

Regulations 1974

- Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975
- Factories Act 1961 (Repeals) Regulations 1975
- Factories Act 1961 etc. (Repeals) Regulations 1976
- Offices, Shops and Railway Premises Act 1963 etc. (Repeals) Regulations 1976

4.2 This work is one element of a wider programme to make the legislative framework simpler and easier to understand in order to improve compliance, while maintaining the same standards of protection for those in the workplace or affected by work activities. An outline of the sections of the Acts and each set of Regulations is provided below together with an explanation of why they are no longer required.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Disabled People, Mike Penning MP, has made the following statement regarding Human Rights:

“In my view the provision of the Health and Safety (Miscellaneous Repeals and Revocations) Regulations 2014 are compatible with the Convention rights”.

7. Policy background

- *What is being done and why*

7.1 Professor Löfstedt’s independent review of health and safety legislation

‘Reclaiming health and safety for all’

(<http://www.official-documents.gov.uk/document/cm82/8219/8219.pdf>) was published in November 2011. HSE is working to deliver the recommendations in this review. In this report Professor Löfstedt recommended that unnecessary or redundant regulations should be revoked to produce a simpler regulatory framework.

7.2 In response to Government better regulation initiatives such as the Red Tape Challenge, (<https://www.redtapechallenge.cabinetoffice.gov.uk/home/index>) HSE officials have looked closely at health and safety legislation and identified further measures that they believe are no longer required.

7.3 The purpose of these Regulations is to repeal certain provisions of the following two Acts and revoke all seven of the following Regulations:

- Factories Act 1961
- Office, Shops and Railway Premises Act 1963
- Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938
- Factories Act 1937 (Extension of Section 46) Regulations 1948
- Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974

- Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975
- Factories Act 1961 (Repeals) Regulations 1975
- Factories Act 1961 etc. (Repeals) Regulations 1976
- Offices, Shops and Railway Premises Act 1963 etc. (Repeals) Regulations 1976

7.4 Without any intervention these provisions and instruments would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.

7.5 The public were given the opportunity to comment on Regulations under the Government's Red Tape Challenge initiative. This exercise was launched on 7 April 2011 with a new theme in the spotlight on the website every three weeks. Workplace health and safety is a cross cutting theme and was open to challenge throughout the initiative. It was also in the spotlight from 30 June 2011 for three weeks. Some 197 Regulations were in scope for the Workplace Health and Safety theme. All Red Tape Challenge comments are collated to provide a clearer picture for Government of which Regulations should stay, which should go and which should change. All the Health and Safety Theme comments received so far have been considered by HSE.

7.6 The following paragraphs provide an outline of each legislative measure and explain why they are no longer required. Related legislative measures have been grouped together and ordered chronologically. A link to the legislation website has been included for each where it is applicable.

Factories Act 1961 (c.34)

<http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/contents>

The Factories Act 1961 (FA61), originally an Act to consolidate the Factories Acts 1937 to 1959 and certain other enactments relating to the safety, health and welfare of employed persons has been superseded by more recent legislation. Furthermore, some provisions of the FA61 which had to be retained to enable enforcement of other legacy legislation, have themselves become redundant with the repeal of that legislation by the Health and Safety (Miscellaneous, Revocations & Amendment) Regulations 2013 (<http://www.legislation.gov.uk/uksi/2013/1512/contents/made>) . The Act will remain in force with the following sections still active: 10A (power to require medical supervision), 123 (application of Act to electrical stations), 124 (institutions), 125 and 126 (docks and ships), 127 (building operations and works of engineering construction), 141 (preservation of registers), 155, 158, 162, 166, 167 & 171 (offences, penalties and legal proceedings), 172 to 174 (application of the Act), 175 to 176, 178, 180, 182, 183, 184 & 185 (interpretation and general provisions).

Offices, Shops, and Railway Premises Act 1963 (c.41)

<http://www.legislation.gov.uk/ukpga/1963/41/contents>

The Offices, Shops and Railway Premises Act 1963 (OSRPA), originally an Act to make provision for securing the health, safety and welfare of persons employed to work in office, shop premises and in certain railway premises and to amend certain provisions of the FA61 has largely been superseded by more recent legislation in particular the Health and Safety at Work etc Act 1974 (HSWA) (<http://www.legislation.gov.uk/ukpga/1974/37/contents>) . The Act will remain in force with the following sections still active: 1-3 (containing relevant definitions), 74

and 75 (which amend the FA61), 85 (application of the Act) and 90 (required to interpret the other sections).

Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938

<http://www.legislation.gov.uk/uksro/1938/610/contents/made>

This SI was made under the Factories Act 1937, but is treated as if made under the corresponding provision of the FA61. Only one provision remains extant, Regulation 1, which modified section 116 of the Factories Act 1937 (which required the keeping of a general register) in its application to premises such as docks, wharves, quays, warehouses, or works of engineering construction. However, Section 116 of the Factories Act 1938 was itself repealed by the Employment Act 1989

(<http://www.legislation.gov.uk/ukpge/1989/contents>), and the requirement for a General Register was repealed by the Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009

(<http://www.legislation.gov.uk/uksi/2009/605/contents/made>). This SI is therefore spent.

Factories Act 1937 (Extension of Section 46) Regulations 1948

(<http://www.legislation.gov.uk/uksi/1948/707/contents/made>)

This SI was again made under the Factories Act 1937, and amended that Act to extend the power to make welfare regulations to canteens. This power is now superseded by similar powers in the HSWA. Current legislation on welfare, the Workplace (Health, Safety & Welfare) Regulations 1992

(<http://www.legislation.gov.uk/uksi/1992/3004/contents/made>), will in any case apply to canteens in workplaces. The SI is therefore redundant.

Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974

(<http://www.legislation.gov.uk/uksi/1974/1943/contents/made>)

These Regulations repealed redundant parts of the OSRPA that were covered by the HSWA, amended Regulations made under the OSRPA (which have themselves been revoked or become redundant) and transferred functions of inspectors appointed under the OSRPA to those appointed under the HSWA. Currently, such inspectors are all now appointed under the HSWA, and discharge the functions set out in that Act. The Regulations are therefore redundant and can be revoked.

Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975

(<http://www.legislation.gov.uk/uksi/1975/1011/contents/made>)

These Regulations removed duties under the OSRPA that were superseded by duties under the HSWA. As these Regulations provide only for repeals, they are spent and revoking them serves to tidy up the canon of health & safety legislation, making it clearer and more concise for the user.

Factories Act 1961 (Repeals) Regulations 1975

(<http://www.legislation.gov.uk/uksi/1975/1012/contents/made>)

These Regulations removed duties under the FA61 that were superseded by duties under the HSWA. As these Regulations provide only for repeals, they are spent and revoking them serves to tidy up the canon of health & safety legislation.

Factories Act 1961 etc (Repeals) Regulations 1976

<http://www.legislation.gov.uk/ukxi/1976/2004/contents/made>)

These Regulations repealed redundant parts of the FA61 and two statutory instruments following the introduction of new fire safety legislation (and that fire legislation has itself since been updated). They are therefore redundant and can be revoked.

Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976

<http://www.legislation.gov.uk/ukxi/1976/2005/contents/made>)

These Regulations repealed redundant parts of the OSRPA following the introduction of new fire safety legislation (and that fire legislation has itself since been updated). They are therefore redundant and can be revoked.

- *Consolidation*

7.7 There are no plans to consolidate the relevant legislation.

8. Consultation outcome

8.1 A public consultation took place from 17th of June 2013 for a period of four weeks. HSE took a proportionate approach to fulfilling its statutory duty to consult by conducting a shortened exercise. This was because HSE believed the regulations were either totally redundant or had been overtaken by more modern regulatory requirements and were not currently being used. This was subsequently confirmed by the responses to the consultation.

8.2 In engaging stakeholders HSE ensured that the relevant industry groups, organisations, trade associations and interested parties were alerted to the consultation. In total sixty nine responses were received, answering the questions set out in the Consultative Document. Of those responses, 93% agreed with the proposal to repeal parts of the Factories Act 1961 and 97% agreed with the repealing of parts of the Office, Shops, and Railway Premises Act 1963. The outcome of the consultation is summarised in an HSE Board paper and can be viewed at <http://www.hse.gov.uk/consult/condocs/cd260-responses.pdf>

8.3 Responses, where stated, were received from groups including: industry consultants; trade unions; trade associations; academics; charities and national government; non-governmental organisations and non-departmental public bodies; members of the public and pressure groups. The consultation allowed people to respond to some or all of the proposals according to their interests. HSE therefore analysed the results for each set of proposals separately and considered all the responses received. No evidence was received that undermined the rationale for removal.

8.4 As a result of the public consultation, and legal clarification on several matters raised sought following it, changes were made to the proposals resulting in only the partial repealing of both Acts and the revocation of only seven of the ten regulations originally suggested. This was deemed necessary because parts of both Acts are still required as they apply to legislation that is not being repealed, is not obsolete or spent.

9. Guidance

Specific guidance on the Statutory Instrument is unnecessary because it is revoking and repealing legislation that is removing measures that are either redundant, have been overtaken by more up-to-date Regulations or do not deliver the intended benefits. HSE will however work with stakeholders to ensure they are aware of the proposed changes where necessary as outlined in paragraph 8 above.

10. Impact

10.1 This instrument has no direct impact on the operation of business, the private sector or civil society.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

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

12. Monitoring and Review

This instrument repeals certain sections of OSRPA and the FA61 and revokes seven Regulations and so no monitoring or review is necessary.

13. Contact

Victoria Francis at Health and Safety Executive (tel. 0151 951 4243 or email: victoria.francis@hse.gsi.gov.uk) can answer any queries regarding the instrument.