

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 (APPLICATION OUTSIDE
GREAT BRITAIN) ORDER 2013

2013 No. 240

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The proposed instrument consolidates the current Health and Safety at Work etc. 1974 (Application outside Great Britain) Order 2001 (HSWA)¹ and the Health and Safety at Work etc. 1974 (Application outside Great Britain) (Variation Order) 2011².
 - 2.2 The new Order will ensure:
 - That health and safety legislation continues to apply to workers involved in offshore work activities on energy structures (e.g. wind farms) beyond the territorial sea;
 - Provide legal clarity for duty holders that health and safety legislation applies to offshore activities associated with emerging energy and climate change technologies (e.g. combustible gas storage, carbon dioxide storage and underground coal gasification); and
 - Clarify various definitions within the Order based on operational experience.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative Context**
 - 4.1 The Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2001 (the 2001 Order) applies the prescribed provisions of the Health and Safety at Work etc. Act 1974 (HSWA) to specified work activities outside of Great Britain within the territorial sea (which extends to 12 nautical miles from the UK baseline) and designated areas.
 - 4.2 When this Order was introduced in 2001 it was not envisaged that wind farms would be built beyond 12 miles from the UK coastline or that other offshore energy work activities would be undertaken. As new industries exploiting the offshore environment do not fall within scope of the HSWA unless specified in the 2001 Order, an amending Variation Order was introduced in 2009 to cover such work activities in a Renewable Energy Zone³ (REZ).

¹ Link: <http://www.legislation.gov.uk/ukxi/2001/2127/contents/made>

² Link: <http://www.legislation.gov.uk/ukxi/2011/745/contents/made>

³ “renewable energy zone” means an area designated by order under section 84(4) of the Energy Act 2004(b).

4.3 The 2009 Variation order was time-limited on the basis that Government would introduce a new Order by 2011. As this was not possible due to HSE still assessing what new work activities were planned offshore, a second Variation Order was introduced in 2011. This was also time-limited and expires in April 2012. In 2011, a commitment was made to the Secondary Legislation Scrutiny Committee to replace the two Orders with a new Order by the time the second Variation Order expired.

5. Territorial Extent and Application

This instrument applies to a renewable energy zone or a designated area beyond the territorial seas adjacent to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

- *What is being done and why*

7.1 The 2013 Order will consolidate the current 2001 Order and the 2011 Variation Order with some modification, to maintain legislative continuity. The provisions of the current 2001 Order as amended, which allow health and safety legislation to apply to energy structures within the territorial sea, are subject to a sun-setting provision and will expire on the 6th April 2013. The 2013 order is required at this time to enable those provisions to continue.

7.2 The Crown Estate held two competitive rounds in 2001 and 2003 for lease options for offshore wind farms, with 14 allocated in Round 1 and 15 allocated in Round 2. Of the 15 allocated in Round 2, four will be much larger projects and will potentially be situated beyond the territorial sea in a Renewable Energy Zone (REZ).

7.3 The Coalition Government in its “*Our programme for Government*”⁴ on Energy and Climate Change, has committed to increasing the target for energy from renewable sources, introduce measures to encourage marine energy and deliver an offshore electricity grid in order to support the development of the new generation of offshore wind power. The introduction of the 2013 Order will contribute to maintaining a safe working environment within the renewable energy sector and enable Health and Safety Executive (HSE) to have the power to regulate these work activities.

- *Consolidation*

7.4 The 2013 Order will consolidate the current 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.

⁴ Link:

http://www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_187876.pdf

8. Consultation outcome

8.1 The public consultation on the proposals to replace the 2001 Order and the 2011 Variation Order with a new 2013 Order started on 11th April 2012 and ran for 12 weeks ending on the 4th July 2012⁵. Of the 22 consultation responses received all but one were entirely in favour of or unopposed to the proposals and none of the comments received raised any areas of contention. The one respondent, who did not agree, did not give any reasons to support their answer. Key comments from respondents included:

- Support for the consolidation of the 2001 Order and 2011 Variation Order to reduce administrative burdens on industry;
- Maintenance of worker safety offshore; and
- Recognition that micro businesses undertaking offshore oil and gas activities which have major hazard potential should fall within scope of the Order

8.2 Analysis of the responses assisted HSE in finalising this offshore policy to ensure it reflected stakeholder's views and to provide any legislative change that was required. HSE are planning to publish an analysis of the responses to the consultation on its website in October 2012. This analysis can be accessed via the following link: <http://www.hse.gov.uk/consult/condocs/cd232-responses.pdf>

9. Guidance

To support the introduction of the 2013 Order HSE will ensure that all key stakeholders and the public are informed, by e-mail alert. HSE has placed a summary of stakeholders' consultation responses on its website. HSE has also produced guidance on the main amendments introduced by the Health and Safety at Work etc. Act 1974 (Application outside Great Britain) Order 2013, which is also available on its website.

<http://www.hse.gov.uk/offshore/legislative-changes.pdf>

10. Impact

10.1 The 2013 Order will consolidate and maintain the provisions in the 2001 Order and the 2011 Variation Order. An impact Assessment (IA) for the 2013 Order has been prepared because it is domestic legislation that imposes costs on business. For this instrument the Equivalent Annual Net Cost to Business is very small, £2.1 thousand. However the amendments are essentially administrative and simplification changes to ensure that the Health and Safety at Work etc. Act 1974 and certain other regulations are extended outside of the UK to specific areas and activities.

10.2 The Regulatory Policy Committee (RPC) have now reviewed the final stage Impact Assessment (IA) and given an overall assessment of green, confirming the IA is fit for purpose and the costs and benefits have been adequately assessed. This work was initiated prior to the Government changes to impact assessments and RPC scrutiny published in August 2012. As such an impact assessment had already been developed and submitted for consideration by the RPC at both the pre-consultation stage and final stage. However, for future amendments to the Order, HSE would ask the RPC to consider that these changes were "*a trivial and mechanical change in nature which will not affect a department's One-in One-out balance*" and would ask the RPC to agree that an impact assessment was not required to be submitted at all.

⁵ Link: <http://www.hse.gov.uk/consult/condocs/cd232.htm>

- 10.3 There is no impact on the public sector.
- 10.4 An impact assessment is attached to this memorandum and will be published alongside it on the legislation website at <http://www.legislation.gov.uk/>.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach adopted is to produce guidance on the new 2013 Order that is suitable for small businesses to understand. The Health and Safety Executive (HSE) will also work with large organisations to ensure they both inform and support the small businesses that form part of their supply chain.
- 11.3 The basis for the final decision on what action to take to assist small business is from HSE's understanding that these amendments will mainly impact on the large organisations involved in leading the work in the specialised areas of activity to which it relates.

12. Monitoring & review

- 12.1 The Order is a unique piece of domestic legislation and there are currently no powers under the Health and Safety at Work etc. Act 1974 or European legislation that enables HSE to require it to be reviewed in line with the Government's objectives to regularly review new regulation. However, HSE will undertake a review of the new Order in 2018 and this commitment has been included in the Explanatory Notes of the statutory instrument.

13. Contact

Karen McDonough at the Health and Safety Executive Tel: 0151 951 3308 or email: karen.mcdonough@hse.gsi.gov.uk can answer any queries regarding the instrument.