

<b>Title:</b> The Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013  <b>Lead department or agency:</b> Health and Safety Executive <b>Other departments or agencies:</b> None <b>Contact for enquiries:</b> Beverley Boyce (Tel 0203 028 4431)	<b>Post Implementation Review</b>
	<b>Source of intervention:</b> Domestic
	<b>Type of regulation:</b> Secondary Legislation
	<b>Type of review:</b> Non-statutory review
	<b>Date of implementation:</b> 06/04/2013
	<b>Date review due (if applicable):</b> April 2018

## Introduction

There is no statutory requirement to review the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013 (AOGBO). However, in the Explanatory Note there is a commitment to undertake a review: *The Health and Safety Executive plan to review the operation and effect of this Order five years after it comes into force.*

In conducting this review HSE has taken the same approach as a Post Implementation Review (PIR) in determining the scale and scope and reported the findings in the standard PIR format.

### 1. What were the policy objectives and the intended effects?

The policy objectives were:

- **Objective 1:** To consolidate the Health and Safety at Work etc. 1974 (Application outside Great Britain) Order 2001 and the Health and Safety at Work etc. 1974 (Application outside Great Britain) (Variation Order) 2011 into one instrument.
- **Objective 2:** To maintain the statutory health and safety protection for workers in emerging energy technologies that support, or could contribute to, the Government's energy security objectives:
  - by continuing to apply health and safety legislation to workers involved in offshore work activities on energy structures (e.g. wind farms) in and beyond the territorial sea; and
  - by providing legal clarity that health and safety legislation applies to offshore activities associated with combustible gas storage, carbon dioxide storage and underground coal gasification.
- **Objective 3:** To clarify definitions within the AOGBO based on lessons learned from operational experience.

## **2. Describe the rationale for the evidence sought and the level of resources used to collect it, i.e. the assessment of proportionality.**

The AOGBO applies the 'prescribed provisions' of the Health and Safety at Work etc. Act 1974 (HSWA) to specified work activities taking place in the territorial sea (which extends 12 nautical miles from the UK baseline) and in designated areas beyond the territorial sea. A designated area is an area that has been designated under the Continental Shelf Act 1964 and includes Renewable Energy Zones (REZ) and Gas Importation and Storage Zones (GISZ) made under the Energy Acts 2004 and 2008.

The AOGBO differs to all other health and safety regulations in that it does not place any specific requirements on employers, but simply extends the geographical application of HSWA beyond the mainland of Great Britain. As such, the Impact Assessment for the 2013 AOGBO reported a low impact on business, with a one-off present value cost to business estimated at £18 thousand to cover familiarisation costs only.<sup>1</sup>

Given that the 2013 AOGBO was low impact and the issues addressed were not contentious (e.g. there was broad support for the new Order during formal consultation), a light touch review was considered most appropriate. There was sufficient evidence available in-house to demonstrate whether or not the 2013 AOGBO achieved its objectives and we were able to contact the two main industry bodies to seek stakeholder's views. It was therefore possible to complete this PIR with a low level of resources.

## **3. Describe the principal data collection approaches that have been used to gather evidence for this PIR.**

We have used a mixed approach to collating the data required to provide evidence relevant to each objective:

- Objective 1: It wasn't appropriate to collect data for this objective. In 2011 a commitment was made to the Secondary Legislation Scrutiny Committee to replace the two Orders with a new Order. This was achieved when the 2013 AOGBO was implemented and consolidated the two previous Orders into one instrument.
- Objective 2: As the regulator for offshore windfarms, combustible gas storage, carbon dioxide storage and underground coal gasification, HSE collates sector intelligence and relevant data on these activities (when and if they take place). In addition, HSE works with other Government departments to share information on industry developments and be alerted to future projects. For this objective, we also sought feedback from the two industry bodies that represent the offshore windfarm sector as this is the main area of emerging energy technology offshore.
- Objective 3: When implementing regulations to transpose Directive 2013/30/EU on the safety of offshore oil and gas operations in 2015, HSE amended the definition of offshore installation and aligned it with the definition in the 2013 AOGBO. As these definitions are now the same, we were able to use the information from the public consultation on the Directive transposition to provide evidence of industry's views on the new definition of offshore installation.

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<sup>1</sup> <http://www.legislation.gov.uk/ukxi/2013/240/impacts/2013/1104>

#### **4. To what extent has the regulation achieved its policy objectives? Have there been any unintended effects?**

Government and stakeholder feedback confirms that all objectives have been delivered and there are no unintended consequences. Due to the unique status of the AOGBO these policy objectives could not be delivered by non-regulatory means.

**Objective 1:** By consolidating two instruments into one, and securing Collective Agreement to this process at write round, the streamlining of legislation was achieved.

**Objective 2:** Maintaining statutory health and safety protection for workers involved in work activities associated with energy structures (e.g. wind farms), combustible gas storage, carbon dioxide storage and underground coal gasification has been achieved by keeping these activities within scope of the AOGBO.

The wind industry has continued to grow since the 2013 AOGBO was introduced. In 2012, the generating capacity for the wind industry was 2.1 GW. At April 2017, there were 28 operational offshore wind farms around the UK coastline, with 1,450 turbines and a generating capacity of 5.5GW. Industry is confident that a total of around 10GW will be installed by 2020, with an additional 10GW by 2025. A significant amount of this expansion will be a result of newly constructed windfarms in the renewable energy zones (outside the territorial sea). Employment growth in the sector has been substantial and now stands at 13,000 direct and non-direct full time jobs with further growth anticipated. The construction of the East Anglia wind farm commenced in 2017 and will require 3,000 skilled workers over the 2 to 3 year build period.

During construction of an offshore wind farm workers with a range of skills and expertise are required. At one development over 4,000 workers were registered for offshore working and at peak time approximately 1,000 people were at work offshore. When the Construction (Design and Management) Regulations were amended in 2015, they were applied to the territorial sea and designated areas beyond it by the AOGBO. This resulted in a single regulatory framework for all design and construction activities related to offshore wind farms, making sure that the health and safety of all workers engaged in such activities is appropriately protected.

In addition to construction work, there is significant activity during the operational phase of a development. On the current largest wind farm, up to 70 technicians will be working offshore on each available day performing routine maintenance.

HSE has issued a number of enforcement notices that have resulted in safer equipment, improved safe guards and management systems to protect workers involved in all offshore working:

- Following an accident on a turbine within territorial waters, which resulted in a prosecution, it was noted that the same organisation was following this unsafe system of work on other turbines and HSE took appropriate action to rectify this.
- HSE have also taken some enforcement action on windfarms in renewable energy zones, outside territorial waters. This includes: an improvement notice that led to improved safeguards and maintenance systems on service lifts; a prohibition that led to improved control systems and stability of service lifts; and two inspections that identified unsafe systems of work.

There have been no developments in carbon dioxide storage or underground coal gasification since the 2013 AOGBO came into force but such projects cannot be ruled out in the longer term. Keeping these activities within scope of the AOGBO provides reassurance that appropriate regulations are in place for any future projects.

We contacted the two main industry bodies: Renewable UK.com and G+ Offshore Wind and sought feedback from their members. We asked if they thought HSE should continue to regulate energy structures such as windfarms, within and beyond the territorial sea, and if HSE should be able to regulate activities associated with new technologies as and when they are developed. We didn't receive any specific comments or objections. However, members of G+ Offshore Wind discussed our questions at a focal group meeting and provided the following summary statement: *'In general, G+ members were supportive of the existing structure and didn't feel that changes were required. The thinking was that everyone had worked together to make it work and it was felt that this was now being achieved'.*

**Objective 3:** The 2013 AOGBO updated the definition of offshore installation. In 2015 (when implementing new regulations to transpose requirements of Directive 2013/30/EU on safety of oil and gas operations) we aligned the definition of offshore installation (Offshore Installations and Pipeline Works (Management and Administration) Regulations 1995) with that in the 2013 AOGBO.

The definition of offshore installation was updated to give legal clarity that vessels whose primary purpose is accommodation or undertaking activities mechanically entering the pressure containment boundary of a well are classed as offshore installations. The definition was also amended to clarify that if offshore installations ceased to be used for oil and gas activities, but were used for another purpose (eg accommodation for wind farms) they would cease to be classed as offshore installations. During this time, work activities would be covered by the general provisions of the Health and Safety at Work etc. Act 1974 (HSWA) by virtue of the 2013 AOGBO. When such installations came to the end of their life however, it was clarified that they would once again be classed as offshore installation so that the major hazard safety regime would be in place for high risk decommissioning and demolition activities.

HSE included the updated definition of offshore installation in the public consultation (on the Directive transposition) and asked if consultees agreed with the principle of these changes. Almost all respondents agreed that the high risk decommissioning activities should be covered by the major hazard regime. HSE also checked whether it was a real possibility that offshore installations could be used for activities that were not related to oil and gas operations. Respondents offered suggestions on how these installations might be used (mainly in relation to wind farms) and confirmed that when the installation was being used for another purpose, the lower risk work activities should be covered by the general provisions of HSWA by virtue of the AOGBO.

**5a. Please provide a brief recap of the original assumptions about the costs and benefits of the regulation and its effects on business (e.g. as set out in the IA).**

The IA estimated that there would be a one-off cost to industry, to familiarise themselves with the new AOGBO, of £18 thousand in ten-year present-value terms. The total

equivalent annual net cost to business was £2.1 thousand. HSE verified these assumptions at consultation and they were validated by RPC.<sup>2</sup>

The IA concluded that there would be no additional compliance costs for industry. This was based on the assumption that companies would continue to undertake the requirements of HSWA as part of their business as usual. The previous Orders already covered energy structures (e.g. wind farms), combustible gas storage, carbon dioxide storage and underground coal gasification so operators would already be complying with health and safety requirements under HSWA. Consolidating these previous Orders into one instrument and providing legal clarification on the areas and activities that were within scope did not place any further requirements on industry.

The IA identified that there would be non-monetised health and safety benefits: The new Order would provide legal clarity on activities and areas within scope of the AOGBO and the companies operating in these sectors would learn from incidents that occurred and take steps to drive risk as low as is reasonably practicable.

## **5b. What have been the actual costs and benefits of the regulation and its effects on business?**

As the actual costs to business were minimal and HSE hasn't received information on any additional costs that were not considered in the original IA, it would not be proportionate to estimate the actual costs to business due to the burdens that such an evaluation would place on the regulator and industry.

## **6. Assessment of risks or uncertainties in evidence base / Other issues to note**

The main uncertainty was whether or not the emerging energy technology work activities that we aimed to keep within scope of the AOGBO would actually take place offshore. As offshore windfarm projects have taken place, or are under development, keeping these areas in scope has been justified. Offshore carbon dioxide storage and underground coal gasification cannot be completely ruled out longer-term, so it is appropriate to keep such activities in scope to future proof the AOGBO.

## **7. Lessons for future Impact Assessments**

The IA for the AOGBO is unique in that the AOGBO is different to all other health and safety legislation and as such there are no lessons learned that are relevant to other IAs. This is because the AOGBO does not itself place any specific requirements on employers, but extends the geographical application of HSWA beyond the mainland of Great Britain. The assessment of costs for complying with the specific provisions of HSWA, or regulations made under HSWA, are included in the IAs for the specified regulations.

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<sup>2</sup> <https://www.gov.uk/government/publications/impact-assessment-opinions-all-published-opinions-from-2012>. See page 504.

**8. What next steps are proposed for the regulation (e.g. remain/renewal, amendment, removal or replacement)?**

This was not a formal statutory review and the 2013 AOGBO will remain in place. As the impact on business is minimal, and the work required by government and industry to facilitate the development of emerging energy technologies takes place over many years, it is appropriate to review the AOGBO again by April 2023.