

EXPLANATORY MEMORANDUM TO
THE DEREGULATION ACT 2015 (HEALTH AND SAFETY AT WORK)
(GENERAL DUTIES OF SELF-EMPLOYED PERSONS) (CONSEQUENTIAL
AMENDMENTS) ORDER 2015

2015 No. 1637

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

The Deregulation Act 2015 (Health and Safety at Work) (General Duties of Self-Employed Persons) (Consequential Amendments) Order 2015 (“the Consequential Order”) amends various Regulations made under section 15 of the Health and Safety at Work etc. Act 1974 (“HSWA”). The amendments are in consequence of amendments to section 3 of HSWA made by section 1 of the Deregulation Act 2015 (“the 2015 Act”).

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

3.1 None.

4. Legislative Context

4.1 Currently, section 3(2) of HSWA, imposes a general duty on all self-employed persons to protect themselves and others from risks to their health and safety, regardless of the type of activity they are undertaking and the risks that they are creating.

4.2 Section 1 of the Deregulation Act 2015, which comes into force in full on 1 October 2015, amends section 3(2) HSWA. Only those self-employed persons who conduct undertakings of a description prescribed in regulations will have an obligation to conduct their undertaking in such a way as to ensure that, so far as is reasonably practicable, they themselves and other persons who may be affected are not exposed to risks to their health and safety. The Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015 (S.I. 2015/1583) were made on 3rd August 2015. These Regulations set out the prescribed undertakings. The Regulations prescribe undertakings by reference to:

- (a) a short list of high risk activities where there should clearly be no exemption from section 3(2) HSWA; and
- (b) a “catch-all” provision to ensure that those self-employed who may pose a risk to others are not exempt from section 3(2) HSWA.

4.3 The Consequential Order amends subordinate health and safety legislation that places duties on self-employed persons so that those duties only apply to those

self-employed persons who conduct prescribed undertakings.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

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

- **What is being done and why**

7.1 One of the key recommendations made by Professor Ragnar Löfstedt in his report “Reclaiming health and safety for all: An independent review of health and safety regulation,”¹ was to exempt from health and safety law those self-employed people whose work activities pose no potential risk of harm to others. In response to Professor Löfstedt’s recommendations the Government asked HSE to draw up proposals for changing the law “to remove health and safety burdens from the self-employed in low risk occupations, whose activities represent no risk to other people. This will bring Britain into line with other European countries, who have taken a more proportionate approach when applying health and safety law to the self-employed and will free around one million people from red tape without impacting on health and safety outcomes.”²

7.2 Section 1 of the Deregulation Act 2015 amends section 3 of HSWA which currently places a duty on all self-employed persons to protect themselves and others from risks to their health and safety. The amended section 3(2) and the new sub-section (2A) of HSWA provide that only those self-employed persons who conduct certain undertakings (that are prescribed in regulations) are under that duty. This follows from Professor Löfstedt’s recommendations and the response received from the public consultation requiring that those self-employed persons undertaking high risk activities should not be exempt from duties under section 3(2) of HSWA.

7.3 The Consequential Order makes amendments to subordinate legislation so that existing duties on self-employed persons in that legislation are limited to those who conduct prescribed undertakings.

8. Consultation outcome

8.1 HSE undertook a 12 - week public consultation on options to implement Professor Löfstedt’s recommendation in August 2012. After considering the responses to the public consultation, HSE made recommendations to the Secretary of State (“the

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66790/lofstedt-report.pdf

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66794/lofstedt-report-response.pdf

SoS”) for Work and Pensions on a preferred option.

- 8.2 The proposed change to section 3(2) of HSWA was included in the draft Deregulation Bill at clause 1. Evidence was presented to the Pre-Legislative Scrutiny Committee that there was potential for self-employed persons to incorrectly assess whether the exemption applied to them because of the way the clause was drafted. Although no recommendation was made, the Government took note of these concerns and the clause was amended to limit the scope of the general duty under section 3(2) so that all self-employed persons would be exempt unless they conducted an “undertaking of a prescribed description.”
- 8.3 The clarity of the definitions in the list of prescribed undertakings in the draft regulations, to which the self-employed would still have duties under section 3(2) HSWA was the subject of an 8- week public consultation in July 2014. Respondents to the consultation highlighted gaps, anomalies and confusion in the way the prescribed undertakings had been drafted and stated that the proposals went further than Professor Löfstedt’s recommendation.
- 8.4 The Government gave careful consideration to the consultation responses and subsequently tabled amendments to clause 1 of the Deregulation Bill to amend the vires of the clause to allow for a “catch-all” provision to be prescribed in the Regulations i.e. to ensure those self-employed persons who may pose a risk to others are not exempt from health and safety law. A shorter and simpler list of activities where there would be no exemption from section 3(2) was also prepared.
- 8.5 An analysis of both consultations is available on the HSE website, under consultative documents CD242 and CD273.
<http://www.hse.gov.uk/consult/2014.htm>
<http://www.hse.gov.uk/consult/2012.htm>

9. Guidance

- 9.1 HSE’s website will be updated to reflect the changes to the law, which will include a new self-employed section on the website, sign-posted from the home page. The guidance will provide the self-employed with information on factors to take into account when making the judgement about whether or not the law applies. The guidance will be available 12 weeks prior to the changes coming into effect.

10. Impact

- 10.1 An Impact Assessment was prepared for the overarching policy and clause 1 of the Deregulation Bill and accompanied the Explanatory Memorandum to the Health and Safety at Work etc Act 1974 (General Duties of Self-Employed Persons) (Prescribed Undertakings) Regulations 2015. The Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to self-employed persons and small businesses.

- 11.2 To minimise the impact of the requirements on small business, HSE will produce clear guidance for the self-employed to explain the change.
- 11.3 As a “fast track” measure, a Small and Medium Business Assessment has not been undertaken, as per Section 1.6.4 of the Better Regulation Framework Manual (March 2015).
- 11.4 The change to Section 3(2) has been subject to public consultation and SBTAF and other trade associations representing small businesses have been consulted.

12. Monitoring & review

- 12.1 Article 3 requires the Secretary of State to review the operation and effect of this Order and publish a report within 5 years after it comes into force and within every 5 years after that. Following a review, it will fall to the Secretary of State to consider whether the Order should remain as it is, or be revoked or amended.

13. Contact

Sarah Wadham at the Health and Safety Executive (Tel: 0151 951 3005 or email: sarah.wadham@hse.gsi.gov.uk) can answer any queries regarding the instrument.