

Consultation on Proposals to remove twelve legislative measures

This consultative document is issued by the Health and Safety Executive in compliance with its duty to consult under section 16 of the Health and Safety at Work etc Act 1974.

Comments should be sent to:

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to reach there no later than **12 July 2013**.

The Executive tries to make its consultation procedure as thorough and open as possible. Responses to this consultation document will be lodged in the Health and Safety Executive's Knowledge Centre after the close of the consultation period where they can be inspected by members of the public.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)). Statutory Codes of Practice under the FOIA and EIR also deal with confidentiality obligations, among other things.

If you would like us to treat any of the information you provide, including personal information, as confidential, please explain your reasons for this in your response. If we receive a request under FOIA or EIR for the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will be disregarded for these purposes. Requests for confidentiality should be made explicit within the body of the response.

HSE will process all personal data in accordance with the DPA. This means that personal data will not normally be disclosed to third parties and any such disclosures will only be made in accordance with the Act.

Proposals to remove twelve legislative measures

Contents

Consultation by the Health and Safety Executive.....	2
How to Respond.....	2
What happens next?	2
How your responses will be handled.....	2
Queries and complaints.....	3
Summary.....	3
Background.....	4
The current position.....	4
Legislation proposed for revocation	4
The proposed changes.....	5
Impact on Business	5
Consultation Questions	6
Annex 1 - Acts of Parliament.....	7
1-1 Factories Act 1961	7
1-2 Offices, Shops & Railway Premises Act 1963	9
Annex 2 - Statutory Instruments.....	11
2-1 Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938	11
2-2 Factories Act 1937 (Extension of Section 46) Regulations 1948.....	11
2-3 Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009	11
2-4 Factories Act 1961 (Repeals) Regulations 1975	11
2-5 Factories Act 1961 etc (Metrication) Regulations 1983.....	11
2-6 Factories Act 1961 etc (Repeals and Modifications) Regulations 1974	12
2-7 Factories Act 1961 etc (Repeals) Regulations 1976	12
2-8 Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974	12
2-9 Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975	12
2-10 Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976	12

Consultation by the Health and Safety Executive

The Health and Safety Executive has a statutory duty to consult stakeholders to seek their views on its proposals. It believes that public consultation provides an open and transparent approach to decision-making. Following consultation, the Health and Safety Executive will make a recommendation to the Secretary of State on the best way forward.

How to Respond

A summary of the proposal and the questionnaire can be found at <http://www.hse.gov.uk/consult/condocs/cd260.htm>. You are requested to complete the online questionnaire.

If you are unable to complete the online questionnaire you can respond by email – you should send this to repealsandrevocations@hse.gsi.gov.uk; or by responding on paper – you can do this by printing the online questionnaire and sending your completed response to:

Robbie Cowley

Health and Safety Executive
Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

We would be grateful if you could send an email address when you provide your response, so that we can inform you of when the HSE intends to publish information concerning consultation responses on the HSE website.

Responses must be received by **12 July 2013**.

If you require a more accessible format of this document please send details to creative@hse.gsi.gov.uk and your request will be considered.

What happens next?

We will acknowledge all responses and give full consideration to the substance of arguments in the proposals; we may contact you again if, for example we have a query in respect of your response.

We will tell you when the HSE will publish information concerning the consultation responses. We will provide a summary of those who responded to this consultation and we will produce a summary of the views expressed to each question; this information will be placed on the HSE's website.

How your responses will be handled

We will acknowledge all responses and give full consideration to the substance of arguments in the development of proposals. The Health and Safety Executive will

then decide on how best to take the Regulations forward based on an interpretation and analysis of the consultation responses.

Queries and complaints

HSE follows the Government's Consultation Principles

<https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments or complaints about the way this consultation has been conducted, please contact the HSE Consultation Coordinator by writing to:

Teresa Farnan at:
Health and Safety Executive
7th Floor Caxton House
6-12 Tothill Street
London
SW1H 9NA

Or send an email to teresa.farnan@hse.gsi.go.uk

We aim to reply to all complaints within 10 working days.

Summary

1. This consultative document sets out Health and Safety Executive's (HSE) rationale for the repeal or revocation of twelve legislative measures (two Acts and ten Regulations: 2 + 10). HSE believes these are either redundant, or have been overtaken by more up to date Regulations.
2. This consultation proposes the removal of the:
 - Factories Act 1961 (FA61)
 - Offices, Shops & Railway Premises Act 1963 (OSRPA)
 - Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938
 - Factories Act 1937 (Extension of Section 46) Regulations 1948
 - Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009
 - Factories Act 1961 (Repeals) Regulations 1975
 - Factories Act 1961 etc (Metrication) Regulations 1983
 - Factories Act 1961 etc (Repeals and Modifications) Regulations 1974
 - Factories Act 1961 etc (Repeals) Regulations 1976
 - Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974
 - Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975
 - Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976

Background

3. As part of HSE's research for its contribution to the Government's Red Tape Challenge (RTC), the ten sets of Regulations listed in Annex 2 were identified as suitable candidates for revocation. In addition, the Factories Act 1961 (FA61) and the Offices, Shops & Railway Premises Act 1963 (OSRPA) were identified as being largely redundant, the FA61 becoming more so if some of the Regulations included in HSE's other revocation packages were indeed revoked (eg. Regulations on docks and ship building, etc). The removal of these twelve statutes (two Acts and ten Regulations: 2 + 10) was therefore proposed as part of HSE's 'tidying up' of its legislation, subject to consideration of any legal issues, primarily the need to make any saving provisions for legislation relying on terms or conditions defined in the legislation being repealed (ie FA61 and OSRPA).
4. HSE are also planning to revoke two further sets of Regulations whose effect is wholly and exclusively concerned with the repeal and revocation of health and safety legislation which was assessed as redundant; the Health and Safety (Repeals and Revocations) Regulations 1995 (S.I. 1995/3234), and the Health and Safety (Repeals and Revocations) Regulations 1996 (S.I. 1996/3022). Revoking these two Regulations is a tidying up measure, which will have no deregulatory or other substantive effect. These two proposed revocations are not included in this Consultative Document.
5. This consultation follows on from two previously conducted in 2012, where HSE sought views on the proposed repeal and revocation of seven, and then fourteen, pieces of legislation (respectively CDs 238 <http://www.hse.gov.uk/consult/condocs/cd238.htm> and 239 <http://www.hse.gov.uk/consult/condocs/cd239.htm>).

The current position

6. This third consultation therefore proposes the repeal of two Acts and the revocation of ten Regulations. HSE considers that these are now unnecessary because they are either completely redundant or have been overtaken by more up to date Regulations. Where appropriate, guidance will be updated or further advice developed with industry, to provide details of what business needs to do to comply with the law.

Legislation proposed for revocation

7. The legislation that HSE proposes to repeal and revoke, together with the rationale for why it is no longer required and related consultation questions, are provided in the following Annexes. The legislation has been grouped into two broad sections to help you navigate through the document and identify the parts that may be of particular interest. You are, of course, welcome to respond to all the areas.

8. The contents of each Annex is as follows:

- **Annex 1- Acts of Parliament:** the Factories Act 1961 and the Offices, Shops & Railway Premises Act 1963
- **Annex 2 - Statutory Instruments:** Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938; Factories Act 1937 (Extension of Section 46) Regulations 1948; Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009, Factories Act 1961 (Repeals) Regulations 1975; Factories Act 1961 etc (Metrication) Regulations 1983; Factories Act 1961 etc (Repeals and Modifications) Regulations 1974; Factories Act 1961 etc (Repeals) Regulations 1976; Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974; Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975; Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976.

The proposed changes

9. It is proposed to repeal two Acts and revoke the ten Regulations. This document consults on these proposals.
10. If these proposals are agreed HSE will repeal and revoke these legislative measures through a new Statutory Instrument (SI). This will also provide a vehicle for any necessary amendments or saving provisions that may be required where other legislation still relies on provisions within the statutes being removed so as to ensure the continued functioning of that legislation. If these proposals are approved HSE hopes that the changes can come into force in April 2014.

Impact on Business

11. It is Government policy to use an Impact Assessment (IA) to assess and understand the impact, both costs and benefits, of all new Regulations. An important part of the IA is the cost-benefit analysis which identifies the costs and benefits of a proposal and quantifies, in monetary terms, as many of them as is feasible.
12. The policy objective of this work is to streamline the legislative framework by removing redundant or out-of-date legislation that is no longer needed to control health and safety risks in the workplace.
13. It is anticipated that these changes will have no impact in the operation of business. Furthermore, HSE expects that due to the nature of the changes there will not be any familiarisation costs associated with them. The process is, however, expected to contribute to a wider programme of work to make the legislative framework simpler and easier to understand, while maintaining the same standards of protection for those in the workplace or affected by work activities
14. A proportionate Impact Assessment is available on request.

Consultation Questions

15. Questions on each specific set of legislative measures are set out below.

Q1.1 Do you agree with the proposal, as outlined in Annex 1-1, to repeal the remaining Sections of the Factories Act 1961?

If you have answered 'No' to the above question, what are your objections?

Q1.2 In particular, do you agree with the argument given in Annex 1-1, that the change in regulatory regime from Section 39 of the Factories Act 1961 to PUWER etc will not impose any additional burdens on businesses?

If you have answered 'No' to the above question, can you quantify how great this burden would be, and over what timescale it would have an impact?

Q1.3 Do you also agree that using PUWER etc instead of Section 39 of the Factories Act 1961 will offer the same level of protection as under the historical legislative regime?

If you have answered 'No' to the above question, what are your objections?

Q1.4 Do you agree with the proposal, as outlined in Annex 1-2, to repeal the remaining Sections of the Offices, Shops & Railway Premises Act 1963?

If you have answered 'No' to the question above, what are your objections?

Q2.1 Do you agree with the proposal, as outlined in Annex 2, to revoke the ten Statutory Instruments?

If you answered 'No', what are your objections?

If you complete the questionnaire you will also be invited to answer two further questions. These are:

Q3 Are there any further comments you would like to make on the issues raised in this Consultative Document?

Q4 Is there anything you particularly liked or disliked about this consultation?

Annex 1 - Acts of Parliament

1-1 Factories Act 1961

- 1.1 An Act to consolidate the Factories Acts 1937 to 1959 and certain other enactments relating to the safety, health and welfare of employed persons. Historically, the Factories Act and Regulations made under it would have applied to virtually all industrial premises and processes throughout Great Britain.
- 1.2 Currently, the remaining substantive duties within the Act are believed to be adequately covered by more modern legislation. In particular, one remaining Section still applies to water sealed gas holders, and other Sections remained in place to support enforcement of that Section and Regulations made under various Factories Acts (eg the Ship Building and Ship-Repairing Regulations 1960, though these have been revoked by the Health and Safety (Miscellaneous Repeals, Revocations & Amendment) Regulations 2013). There may also be residual links with other legacy legislation that relies on terms or conditions defined in the Act that may require some saving provisions to be made.
- 1.3 It is believed that Section 39 FA61, the Section that imposes duties in relation to water sealed gas holders, can be safely repealed without lowering health and safety protection, as more modern legislation can provide an equivalent level of protection to those at work and affected by work. Specifically, HSE believes that the safe operation and maintenance of such gas holders can be achieved using the duties set out in the Provision and Use of Work Equipment Regulations 1998, the Health & Safety at Work etc. Act 1974 (HSWA), the Management of Health & Safety at Work Regulations 1999, associated Approved Codes of Practice (ACoP) and, in the case of larger gas holders, COMAH. Section 39(2) FA61, which dealt with the thorough examination of such water sealed gas holders, has also been revoked by the Health and Safety (Miscellaneous Repeals, Revocations & Amendment) Regulations 2013.
- 1.4 For those (water-sealed) gas holder with a capacity above the COMAH thresholds (50 tonnes for LT and 200 tonnes for TT) COMAH provides an adequate framework for regulation.
- 1.5 For all (water-sealed and other types) gas holders PUWER Regs 4, 5, 6 and 7 provide an adequate regulatory framework to a similar standard to FA61 Section 39. Specifically:

Factories Act 1961 Section 39 Precautions as respects water-sealed gasholders.

S39(1) Every gasholder shall be of sound construction and shall be properly maintained.

- 1.6 Regulations 4 and 5 of PUWER deal with the suitability of work equipment, and its subsequent maintenance. These Regulations effectively mirror the provisions of Section 39(1).

S39(2) Every gasholder shall be thoroughly examined externally by a competent person at least once in every period of two years, and a record containing the prescribed particulars of every such examination shall be entered in or attached to the general register.

- 1.7 An equivalent level of protection is afforded by compliance with Regulation 6 of PUWER, which deals with the initial and periodic inspection of work equipment, and by following industry guidance (see paragraph on IGEM below).

S39(3) In the case of a gasholder of which any lift has been in use for more than twenty years, the internal state of the sheeting shall at least once in every period of ten years, be examined by a competent person by cutting samples from the crown and sides of the holder or by other sufficient means and all samples so cut and a report on every such examination signed by the person making it shall be kept available for inspection.

- 1.8 Again, compliance with PUWER Regulation 6 and following industry guidance will produce an equivalent level of protection.

S39(4) A record signed by the occupier of the factory or by a responsible official authorised in that behalf showing the date of the construction, as nearly as it can be ascertained, of the oldest lift of every gasholder in the factory shall be kept available for inspection.

- 1.9 Compliance with Regulations 5 and 6 of PUWER would render such a specific requirement unnecessary.

S39(5) Where there is more than one gasholder in the factory, every gasholder shall be marked in a conspicuous position with a distinguishing number or letter.

- 1.10 It is not considered that such a specific requirement is necessary, if a business is complying with relevant health and safety legislation and industry guidance.

S39(6) No gasholder shall be repaired or demolished except under the direct supervision of a person who, by his training and experience and his knowledge of the necessary precautions against risks of explosion and of persons being overcome by gas, is competent to supervise such work.

- 1.11 Regulation 7 of PUWER deals with specific risks arising from the use of work equipment and, specifically, with the designation of staff to carry out certain tasks and requirements for their training.

S39(7) In this section "gas holder" means a water-sealed gasholder which has a storage capacity of not less than 140 cubic metres.

- 1.12 The reference to "140 cubic metres" was included by virtue of the Factories Act 1961 etc (Metrication) Regulations 1983, see Annex 2-5.
- 1.13 The Institution of Gas Engineers and Managers (IGEM) have published technical standards since the 1960s. These are established as trusted gas industry standards and are used to assist in compliance with legislation and official approved codes of practice and guidance. These include the IGEM/SR/4 Edition 3 publication titled "Variable Volume Gasholders Storing Lighter Than Air Gases".
- 1.14 If the repeal of this legislation is taken forward HSE will work in partnership with IGEM and industry to make any changes to the SR/4 standard that might be required. This will focus on a goal setting approach to ensure the standards in place are both adequate and appropriate.
- 1.15 Section 39 of the FA61 has been cited in one Improvement Notice (in relation to a non-network gasholder) issued in the previous 13-year period. Section 39 of the FA61 does not appear to have been cited in approved prosecution activity during the same period.
- 1.16 The removal of some of the legacy statutes referred to above has already been subject to earlier consultation in HSE's CD 239, and have been revoked by the recent Health and Safety (Miscellaneous Repeals, Revocations & Amendment) Regulations 2013. This reduces the need for any saving provisions, making it easier, and indeed more appropriate, to repeal the remaining parts of the FA61.
- 1.17 On the basis of the above, HSE believes that the remaining provisions of the FA61 can safely be repealed, with no extra burden on business, and no loss of protection (subject to any saving necessary provisions). If the Act is repealed, then repealing/amending SIs that have themselves modified it can also be revoked without risk. This would include a number of the SIs referred to in Annex 2, some of which would automatically fall if the FA61 were repealed.

1-2 Offices, Shops & Railway Premises Act 1963

- 1.18 An Act to make fresh provision for securing the health, safety and welfare of persons employed to work in office or shop premises and provision for securing the health, safety and welfare of persons employed to work in certain railway premises; to amend certain provisions of the Factories Act 1961; and for purposes connected with the matters aforesaid. The Act originally applied to virtually all office premises, across all industries in innumerable workplaces throughout GB. It is likely that the bulk of these premises would have been allocated to local authorities for enforcement, other than their own offices, those associated with the Crown, or offices within other premises allocated to HSE.
- 1.19 The substantive parts of the OSRPA have gradually been repealed as more modern legislation was introduced. In particular, in the 1990s, with the coming into force of the '6 Pack' of Regulations derived from the Framework

and daughter Directives and later EU-led legislation. There are some apparent interdependencies with the FA61, but these would become redundant if that Act was itself repealed.

- 1.20 The OSRPA was generally considered to be redundant and appears to have primarily been retained to deal with the employment status of police officers, and such officers seconded to the Serious Organised Crime Agency, when working in office premises. This matter was resolved by the application of HSWA and Relevant Statutory Provisions to police officers in the 1990s by the Police (Health & Safety) Act 1997 and Police (Health & Safety) Regulations 1999. The limited application of the OSRPA to other classes of workers (ie persons appointed under the Registration Service Act 1953) is also now redundant due to more modern legislation affecting this sector, and those classes of workers being included within the scope of the definition of employees under HSWA.
- 1.21 HSE therefore believes that the OSRPA can be repealed without risk. Again, if this Act is repealed, then repealing/amending SIs that have themselves modified it can also be revoked without risk. This would include a number of the SIs referred to in Annex 2.

Annex 2 - Statutory Instruments

2-1 Factories Act (Docks, Building and Engineering Construction, etc) Modification Regulations 1938

- 2.1 This SI originally amended the Factories Act 1937, but is regarded as if made under the corresponding provision of FA61. Only one part remains extant, Regulation 1, which applied the requirement to keep a General Register under Section 116 FA61 to premises such as docks, wharves, quays, warehouses, works of engineering construction, etc. However, Section 116 FA61 was itself repealed by the Employment Act 1989, and the requirement for a General Register was repealed by the SI at 2-3 below. This SI is therefore spent and, as it was made under powers in the Factories Act, will fall automatically if the FA61 is repealed.

2-2 Factories Act 1937 (Extension of Section 46) Regulations 1948

- 2.2 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 superceded by similar powers in HSWA. Current legislation on welfare, the Workplace (Health, Safety & Welfare) Regulations 1992, will in any case apply to canteens in workplaces. The SI is therefore redundant and, as it was made under powers in the Factories Act, will fall automatically if the FA61 is repealed.

2-3 Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009

- 2.3 These Regulations amend the two Acts referred to in their title, principally to remove the requirement for notification of occupation of a factory and employment of persons in offices, shops and railway premises. It also removes the requirement to keep a General Register under the FA61. If the FA61 and OSRPA are repealed then these Regulations would appear to have no substantive effect and can be revoked.

2-4 Factories Act 1961 (Repeals) Regulations 1975

- 2.4 These Regulations removed duties under the FA61 that were superceded 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.

2-5 Factories Act 1961 etc (Metrication) Regulations 1983

- 2.5 These Regulations updated imperial measurements in the FA61 to metric measurements. However, the bulk of the provisions so updated have now themselves either been repealed, or are superceded by more modern legislation rendering this SI largely redundant. Two of the updates related to water sealed gas holders with a volume of not less than 140 cubic meters and are relevant to Section 39 FA61. They would need to be retained whilst this

Section is extant, but would become redundant if that Section were itself repealed as is proposed in Annex 1-1.

2-6 Factories Act 1961 etc (Repeals and Modifications) Regulations 1974

2.6 These Regulations repealed and updated parts of the FA61 and transferred functions of inspectors appointed under the FA61 to those appointed under the HSWA. Currently, such inspectors are all now appointed under HSWA, and discharge the functions set out in that Act. However, the Regulations also contained some saving provisions from the 1948 Regulations at 2-2, and from legislation relating to the Medical Inspectors and mines & quarries. So if revoked there may need to be some consequential saving provisions.

2-7 Factories Act 1961 etc (Repeals) Regulations 1976

2.7 These Regulations repealed redundant parts of the FA61 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.

2-8 Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 1974

2.8 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 HSWA, and discharge the functions set out in that Act. They are therefore redundant and can be revoked.

2-9 Offices, Shops and Railway Premises Act 1963 (Repeals) Regulations 1975

2.9 These Regulations removed duties under the OSRPA that were superceded 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.

2-10 Offices, Shops and Railway Premises Act 1963 etc (Repeals) Regulations 1976

2.10 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.

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The full text of this and other Consultative Documents can be viewed and downloaded from the Health and Safety Executive web site on the internet: www.hse.gov.uk/consult/index.htm

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