

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (MISCELLANEOUS REVOCATIONS)
REGULATIONS 2012

2012 No. 1537

1. This explanatory memorandum has been prepared by the Health and Safety Executive 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 revoke seven Statutory Instruments, listed below, relating to health and safety provisions. There are being revoked because they are either redundant or have been overtaken by more up to date Regulations.

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

None.

4. Legislative Context

4.1 This instrument revokes the following seven instruments:

- a. Regulations, dated August 24th, 1906, made by the Secretary of State for Use of Locomotives and Waggon on Lines and Sidings in or used in connection with Premises under the Factory and Workshop Act, 1901 (S.R.&O.1906/679)
- b. the Pottery (Health and Welfare) Special Regulations 1950 (S.I. 1950/65) the Non-ferrous Metals (Melting and Founding) Regulations 1962 (S.I. 1962/1667);
- c. the Employment Medical Advisory Service (Factories Act Orders etc. Amendment) Order 1973 (S.I.1973/36);
- d. the Health and Safety (Foundries etc.) (Metrication) Regulations 1981 (S.I.1981/1332);
- e. the Pottery (Health etc.) (Metrication) Regulations 1982 (S.I. 1982/877); and
- f. the Anthrax Prevention Order 1971 etc. (Revocation) Regulations 2005 (S.I.2005/228)

4.2 This work is one element of a wider programme 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. An outline of each set of Regulations and the Order is provided in paragraph 7.3 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

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 Professor Löfstedt's independent review of health and safety legislation 'Reclaiming health and safety for all' (<http://www.dwp.gov.uk/docs/lofstedt-report.pdf>) was published in November 2011. In response to this, and the Red Tape Challenge, HSE has identified a number of health and safety regulations that are either redundant or that have been overtaken by more modern legislation. The purpose of these Regulations is to revoke seven such SIs (six Regulations and one Order). Without any intervention these would remain in force and contribute to the impression that health and safety law is extensive, complex and out of date.

7.2 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 open to challenge throughout the initiative. It was also in the spotlight from 30 June 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.

7.3 The following paragraphs provide an outline of each set of Regulations and the Order and explain why they are no longer required.

REGULATIONS FOR USE OF LOCOMOTIVES AND WAGGONS ON LINES AND SIDINGS IN OR USED IN CONNECTION WITH PREMISES UNDER THE FACTORY AND WORKSHOP ACT 1901 (1906) (S.R. & O. 1906 No.679) <http://www.legislation.gov.uk/ukstro/1906/679/contents/made>

These Regulations impose duties on the occupiers of factories or workshops, where locomotives, waggons or other rolling stock are used. Occupiers must maintain capstans, lines of rails and points and properly construct and maintain every gantry. Much of the substantive contents of these Regulations have been revoked by the Railway Safety (Miscellaneous Provisions) Regulations 1997 (S.I. 1997/553 (<http://www.legislation.gov.uk/uksi/1997/553/contents/made>)). Once these revocations had taken place, very little was left. The remaining provisions (regulations 4, 8 and 20) are covered by more recent legislation (e.g. the Provision and Use of Work Equipment Regulations 1998 (S.I. 1998/2306) (<http://www.legislation.gov.uk/uksi/1998/2306/contents/made>)), the Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004) (<http://www.legislation.gov.uk/uksi/1992/3004/contents/made>)), the Health & Safety (Safety Signs and Signals) Regulations 1996 (S.I. 1996/341) (<http://www.legislation.gov.uk/uksi/1996/341/contents/made>) and Work at Height

Regulations 2005 (S.I. 2005/735)
(<http://www.legislation.gov.uk/uksi/2005/735/contents/made>).

**POTTERY (HEALTH AND WELFARE) SPECIAL REGULATIONS 1950
(S.I. 1950/65)**

<http://www.legislation.gov.uk/uksi/1950/65/contents/made>

The Regulations apply to the manufacture of pottery articles which includes china, earthenware and any article made from clay or from a mixture of clay and other materials (but not to factories making unglazed/salt-glazed ware from natural clay in the plastic state to which no flint/quartz has been added, to bricks, architectural terra-cotta made from plastic clay and is either unglazed or glazed with a leadless glaze).

Only one operative provision remains in force (the remainder have been revoked). This is regulation 16 which imposes an additional requirement above that of compliance with the Workplace (Health, Safety & Welfare) Regulations 1992 (S.I. 1992/3004) (<http://www.legislation.gov.uk/uksi/1992/3004/contents/made>) for meeting specific temperatures in the workplace generally and in ovens specifically. The Regulations provide very specific maximum and minimum temperatures (i.e. 24/13°C in the workroom or 6°C higher than the outdoor temperature when it exceeds 18°C degrees, 46°C at head height within an oven).

The intention is to revoke these regulations thus removing prescribed temperature limits with respect to workroom temperatures in a move to a more flexible approach based on what is deemed a reasonable temperature in accordance with the Workplace (Health, Safety & Welfare) Regulations 1992 (S.I. 1992/3004).

Assessment of other industries to which specific temperature requirements do not apply, but where high temperature plant is in use, e.g. glass, suggests adverse health effects from high temperature can be controlled via other legislation such as the Workplace (Health, Safety & Welfare) Regulations 1992 (S.I. 1992/3004), Management of Health and Safety at Work Regulations 1999 (S.I. 1999/2051) (<http://www.legislation.gov.uk/uksi/1992/2051/contents/made>) and section 2 of the Health and Safety at Work Act 1974 (c. 37) (<http://www.legislation.gov.uk/ukpga/1974/37/contents>). Although these do not specify specific temperatures, they could deal with workroom temperature requirements.

Employers are required to undertake a risk assessment for their workplace and this should include risks of working in heat and thermal comfort. In deciding the appropriate measures to put in place, employers should take into account a range of factors, including humidity, air movement, air temperature, radiant temperature, solar gain and the nature of the work being undertaken. Thermal comfort cannot be determined on air temperature alone.

**NON-FERROUS METALS (MELTING AND FOUNDING)
REGULATIONS 1962 (S.I. 1962/1667)**

<http://www.legislation.gov.uk/uksi/1962/1667/contents/made>

These Regulations, made under Factories Act 1961 (c. 34) (<http://www.legislation.gov.uk/ukpga/Eliz2/9-10/34/contents>), impose health, safety

and welfare requirements for dressing operations¹ to be carried on inside buildings and apply to about 220 foundries. The requirements are effectively covered by more recent legislation. All the other Regulations have already been revoked.

Only one substantive regulation still applies (regulation 18) and that provides that “all dressing operations shall be carried out inside a weather-proof building”. The worker protection requirements can be removed because worker protection is effectively dealt with by more modern health and safety legislation. Control of worker exposure to dust, fume and noise arising from the processes concerned is now secured through the Control of Substance Hazardous to Health Regulations 2002 (S.I. 2002/2677) (<http://www.legislation.gov.uk/uksi/2002/2677/contents/made>) and Control of Noise at Work Regulations 2005 (S.I. 2005/1643) (<http://www.legislation.gov.uk/uksi/2005/1643/contents/made>). Protection from adverse weather/low temperatures is now achieved through the Personal Protective Equipment at Work Regulations 1992 (S.I. 1992/2966) (<http://www.legislation.gov.uk/uksi/1992/2966/contents/made>) and the Workplace (Health, Safety and Welfare) Regulations 1992 (S.I. 1992/3004) (<http://www.legislation.gov.uk/uksi/1992/3004/contents/made>).

EMPLOYMENT MEDICAL ADVISORY SERVICE (FACTORIES ACT ORDERS ETC AMENDMENT) ORDER 1973 (S.I. 1973/36)

<http://www.legislation.gov.uk/uksi/1973/36/contents/made>

This Order amends various Regulations and Orders so that medical examinations of persons and related functions under those legislative instruments are performed by fully registered medical practitioners appointed in accordance with the provisions of the Employment Medical Advisory Service Act 1972 (c. 28) (<http://www.legislation.gov.uk/ukpga/1972/28/contents>). The whole of this Order is redundant. All the Statutory Instruments amended by it have subsequently been revoked.

HEALTH AND SAFETY (FOUNDRIES ETC) (METRICATION) REGULATIONS 1981 (S.I. 1981/1332)

<http://www.legislation.gov.uk/uksi/1981/1332/contents/made>

These Regulations substitute amounts/quantities expressed in metric units for amounts not so expressed. However, they now have no application or value as two of the three sets of Regulations to which they apply have been revoked in total and the third revoked to the extent that they do not contain any units of measurement, so these metrication regulations have no effect.

POTTERY (HEALTH ETC) (METRICATION) REGULATIONS 1982 (S.I. 1982/877)

<http://www.legislation.gov.uk/uksi/1982/877/contents/made>

These Regulations amend the Pottery (Health) Special Regulations 1947 (S.I. 1947/2161) (which have been revoked by the Potteries etc. (Modifications) Regulations 1990 (SI 1990/305) (<http://www.legislation.gov.uk/uksi/1990/305/contents/made>) and Pottery (Health and Welfare) Special Regulations 1950 (SI 1950/65),

¹ The removal of excess material and surface irregularities from castings by grinding.

(<http://www.legislation.gov.uk/uksi/1950/65/contents/made>) by substituting amounts expressed in metric units for amounts not so expressed, specifically degrees Celsius for degrees Fahrenheit.

If the Pottery (Health and Welfare) Special Regulations 1950 (above) are revoked then these metrication Regulations can be revoked.

ANTHRAX PREVENTION ORDER 1971 ETC (REVOCATION) REGULATIONS 2005 (S.I. 2005/228)

<http://www.legislation.gov.uk/uksi/2005/228/contents/made>

These regulations do not impose any duty on employers. They revoke prescriptive, hazard-specific legislation which predated the Health and Safety at Work etc Act 1974 (c. 37) (<http://www.legislation.gov.uk/ukpga/1974/37/contents>). The requirements under the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677) (<http://www.legislation.gov.uk/uksi/2002/2677/contents/made>) now provide the regulatory framework for controlling risks to employees and others who might be affected by work activities involving potential exposure to bacillus anthracis bacterium (which causes the anthrax disease).

• Consolidation

No consolidation is necessary because this instrument is revoking existing legislation.

8. Consultation outcome

8.1 A public consultation took place between 23 January and 12 March 2012. 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 HSE ensured that the relevant Industry groups and Trade Unions were alerted to the consultation. Thirty three responses were received. Twenty seven of these answered the questions set out in the consultative document, with a further three offering text comments. There were three nil responses. All 27 respondents who answered the question “Do you agree with the proposal to revoke the seven statutory instruments?” were in favour; and all 27 who answered the question “Are any of these Regulations used in practice in the relevant sector/industry?” said No. Of the three further respondents who offered text comments only, one supported the removal of the two sets of potteries Regulations and another supported the approach.

8.3 Respondents who stated their type of organisation included; consultants (7, 21%), Local Government (4, 12%), Industry and Trade Associations (3, 9% each). Nine respondents (27%) did not state their type of organisation.

8.4 There were no answers submitted for questions relating to costs and only two general comments on benefits.

8.5 A summary of the outcome of the consultation can be viewed at <http://www.hse.gov.uk/aboutus/meetings/hseboard/2012/>

9. Guidance

Guidance is unnecessary because this instrument is revoking legislation that is redundant or has been overtaken by more up to date Regulations.

10. Impact

10.1 A full impact assessment is attached to this memorandum and will be published alongside it on www.legislation.gov.uk.

10.2 The impact assessment confirms that there are no costs or benefits associated with the removal of these legislative measures.

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 & review

This instrument revokes six Regulations and one Order so no monitoring or review is necessary.

13. Contact

Helen Smith at the Health and Safety Executive (tel 0207 227 3829 or email: helen.smith@hse.gsi.gov.uk) can answer any queries regarding the instrument.