

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SAFETY (MISCELLANEOUS AMENDMENTS AND
REVOCATION) REGULATIONS 2017

2017 No. 304

1. Introduction

- 1.1 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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument revokes and replaces the Health and Safety (Miscellaneous Amendments) Regulations 2017. Those Regulations contained errors in the numbering of their individual regulations. This instrument makes the same amendments to legislation as those revoked Regulations were to make. The amendments are to one Act of Parliament, ([The Natural Environment and Rural Communities Act 2006](#)) and five sets of regulations relating to health and safety. The sets of regulations amended are:

- [The Offshore Installations \(Safety Zones\) Regulations 1987 \(SI 1987/1331\)](#)
- [The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 \(SI 2013/1471\)](#)
- [The Control of Major Accident Hazards Regulations 2015 \(SI 2015/483\)](#)
- [The Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations 2015 \(SI 2015/398\)](#)
- [The Dangerous Goods in Harbour Areas Regulations 2016 \(SI 2016/721\)](#)

- 2.2 All except one of the amendments are needed to make minor corrections or clarify the existing regulations. They maintain the original policy intent.
- 2.3 The amendment made by regulation 3 supports Northern Ireland's transposition of [Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC](#).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The Health and Safety (Miscellaneous Amendments) Regulations 2017 (S.I. 2017/238) contained incorrectly numbered regulations. In the light of that, it was decided to revoke and replace those Regulations with this instrument. The amendments which were to be made by the revoked Regulations are made by this instrument. The information in this Explanatory Memorandum about the amendments is the same as in the Explanatory Memorandum for the revoked Regulations, but with the references to regulation numbering updated.

- 3.2 Regulation 5(2)(c) amends the definition of “storage” in the [Control of Major Accident Hazards Regulations 2015 \(SI 2015/483\)](#) and is made to correct the drafting which was reported in the Fourth Report of Session 2015 – 2016, [dated 16 September 2015, of the Joint Committee on Statutory Instruments](#).

Other matters of interest to the House of Commons

- 3.3 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument introduces miscellaneous amendments to existing primary and secondary legislation. These amendments are for matters that have been identified over the past two years, with most making minor corrections or clarifying the legal drafting to maintain the original policy intent. The instrument also revokes and replaces the erroneous Regulations.
- 4.2 The amendment in regulation 3 (to the [Offshore Installations \(Safety Zones\) Regulations 1987 \(SI 1987/1331\)](#)) supports Northern Ireland’s transposition of [Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC](#) (OJ No L 178, 28.06.13, p 66) by implementing the requirement under Article 6(7)(g).

5. Extent and Territorial Application

- 5.1 The extent of this instrument, with the exception of regulation 3, is Great Britain. The extent of regulation 3 is Northern Ireland.
- 5.2 The territorial application of this instrument, with the exception of regulation 3, is Great Britain. The amendments to the [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 \(SI 2013/1471\)](#) and the [Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations 2015 \(SI 2015/398\)](#) are made to apply outside Great Britain in the same way that those Regulations respectively do. The territorial application of regulation 3 is Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Minister of State for Disabled People, Health and Work has made the following statement regarding Human Rights:
- “In my view the provisions of the Health and Safety (Miscellaneous Amendments and Revocation) Regulations 2017 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 This instrument introduces a set of un-related miscellaneous amendments to existing primary and secondary legislation.
- 7.2 **Regulation 2** amends the [Natural Environment and Rural Communities Act 2006](#) (“NERC”). The NERC implements the key aspects of the Government’s [Rural Strategy \(2004\)](#) and addresses a range of issues relating to the natural environment. Section 43 of the Act provides for the Secretary of State to prescribe

pesticide ingredients that could harm wildlife and provides that a person is guilty of an offence if they have such an ingredient in their possession. Subsection (3) (d) provides a defence for a person to prove that they possessed the pesticide in accordance with relevant pesticides legislation.

- 7.3 When the Plant Protection Products Regulations were made in 2011, a consequential amendment to update the reference in section 43 so as to refer to [Regulation \(EC\) No 1107/2009](#) of the European Parliament and of the Council was missed. Regulation 2 amends section 43 of the NERC to ensure that it refers to that legislation, which is the relevant EU legislation in this area.
- 7.4 **Regulation 3** amends the [Offshore Installations \(Safety Zones\) Regulations 1987 \(SI 1987/1331\)](#) (“the 1987 Regulations”) which extends to and applies in relation to Northern Ireland only. The 1987 Regulations are made under section 23(1) of the [Petroleum Act 1987](#) and that power to make regulations is given to the Secretary of State, who makes this amendment.
- 7.5 The amendment supports Northern Ireland’s transposition of [Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC](#) (OJ No L 178, 28.06.13, p 66) by implementing the requirement under Article 6(7)(g). The 1987 Regulations specify a list of circumstances in which the prohibition in section 23 of the Petroleum Act 1987 on vessels entering or remaining in safety zones, established around installations under sections 21 and 22 of that Act, is not to apply. Article 6(7)(g) of the Directive introduced a new requirement for the consent of the duty holder to be added to the list of circumstances in which a vessel can enter or remain in a safety zone.
- 7.6 Northern Ireland implemented the majority of the Directive’s health and safety requirements in the [Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations \(Northern Ireland\) 2016 \(SR 2016/406\)](#). The Transposition Notes in respect of that implementation were published with the Explanatory Memorandum alongside those Regulations.
- 7.7 **Regulation 4** amends the [Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 \(SI 2013/1471\)](#) (“RIDDOR”). RIDDOR require employers and people in control of work premises to report certain serious workplace accidents, occupational diseases and specified dangerous occurrences. On offshore oil and gas installations, in addition to RIDDOR, operators are required to make reports under [Offshore Installations and Wells \(Design and Construction, etc.\) Regulations 1996 \(SI 1996/913\)](#) and [EU Reporting Regulation \(EU\) No 1112/2014](#). The same incident may be reportable under each of these regulations.
- 7.8 In 2015, RIDDOR was amended to allow an offshore incident reportable under more than one regulatory requirement under RIDDOR to be submitted in one report, to the same timescale of 10 working days. The amendment did not extend to a small number of incidents reportable under the EU reporting Regulation or incidents reportable under DCR, meaning that more than one report would be required in a few circumstances. Regulation 4 resolves this discrepancy and aligns reporting requirements for offshore incidents.
- 7.9 **Regulation 5** amends the [Control of Major Accident Hazards Regulations 2015 \(SI 2015/483\)](#) (“COMAH”). COMAH implements the majority of [Directive 2012/18/EU on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC](#) (O.J. L 197, 24.7.2012, p.1)

(“Seveso III”). COMAH lays down the rules for the prevention of major accidents which might result from certain industrial sites involving the production, use or storage of dangerous substances at or above certain thresholds, and the limitations of their consequences.

- 7.10 Regulation 5(2) corrects an error in the definition of “the Directive”; removes an unnecessary definition of “pipelines”; and substitutes the definition of “storage”. The latter amendment is correcting drafting which was reported by the Joint Committee on Statutory Instruments in their Fourth Report of Session 2015 – 2016, dated 16 September 2015. The amendments in regulation 5(3) implement the exceptions under Article 2(2)(c) and (d) of Seveso III. The Transposition Notes in respect of the implementation were published with the Explanatory Memorandum alongside COMAH.
- 7.11 **Regulation 6** amends the [Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations 2015 \(SI 2015/398\)](#) (“SCR 15”). SCR 15 implements the majority of the requirements of [Directive 2013/30/EU on safety of offshore oil and gas operations and amending Directive 2004/35/EC](#) and applies to oil and gas operations in the territorial sea adjacent to Great Britain and any designated area within the United Kingdom Continental Shelf. SCR 15 provides for the preparation of safety cases for offshore installations and the notification of specified activities to the competent authority.
- 7.12 Under regulation 22 of SCR 15 notifications are required for installations that are to be involved in combined operations. Regulation 6 amends the definition of combined operations to clarify that production installations that have not commenced drilling or extracting petroleum are excluded from the requirement for combined operations notifications.
- 7.13 **Regulation 7** amends the [Dangerous Goods in Harbour Areas Regulations 2016 \(2016/721\)](#) (“DGHAR”). DGHAR provide for specific measures to reduce the risk of a serious incident occurring when dangerous goods pass through harbours and harbour areas. The Regulations contain a set of safety provisions aimed at safeguarding ports against major accidents involving dangerous goods by coordinating activities between ship and shore.
- 7.14 This amendment clarifies the intention of the Regulations to apply to harbour areas within the territorial seas adjacent to Great Britain, as well as to harbour areas within Great Britain. This corrects a technical drafting error and will remove any ambiguity over the application of the Regulations.

8. Consultation outcome

- 8.1 The five technical amendments that correct or clarify existing requirements do not introduce new measures or change the policy positions that were agreed following the public consultations on the substantive pieces of legislation:
- 8.2 **Regulation 2:** The consultation on the Plant Protection Products Regulations 2011, which refers to the relevant pesticides legislation, was conducted by the Department for Environment Food and Rural Affairs. The six week consultation took place between March and April 2011 and is available on the [National Archive](#).
- 8.3 **Regulation 4:** The proposals for amending offshore reporting requirements in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 were included in the [Consultation on the implementation of the offshore safety Directive](#),

which was conducted by the Health and Safety Executive and the Department for Energy and Climate Change. The eight week consultation took place between July and September 2014 and the analysis and formal response is available with the consultation document.

- 8.4 **Regulation 5:** The consultation on the [Control of Major Accident Hazard Regulations 2015 \(COMAH\)](#) was conducted by the Health and Safety Executive. The nine week consultation took place between May and June 2014 and the [analysis and formal response](#) are available on the Health and Safety Executive website.
- 8.5 **Regulation 6:** The [Consultation on the implementation of the offshore safety Directive](#), which includes the regulatory proposals for the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 was conducted by the Health and Safety Executive and the Department for Energy and Climate Change. The eight week consultation took place between July and September 2014 and the analysis and formal response is available with the consultation document.
- 8.6 **Regulation 7:** The consultation on the [Proposals on the review of the Dangerous Substances in Harbour Areas Regulations 1987](#) was conducted by the Health and Safety Executive. The eight week consultation took place between October and December 2015 and the analysis and formal response are available with the consultation document.
- 8.7 **Regulation 3** forms part of Northern Ireland's transposition of [Directive 2013/30/EU on the safety of offshore oil and gas operations and amending Directive 2004/35/EC](#). The [Consultation on the Offshore Safety Directive](#) was conducted by the Health and Safety Executive Northern Ireland. The seven week consultation took place between December 2014 and February 2015 and the analysis and formal response are available with the consultation document.

9. Guidance

- 9.1 No specific guidance or publicity is required for this statutory instrument. Where necessary, the individual amendments to existing sets of Regulations will be signposted on the respective sector pages on the Health and Safety Executive website.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.
- 10.4 In respect of the technical amendments in this instrument, Impact Assessments were produced for the substantive regulations at their time of making and are available as follows:
- 10.5 **Regulation 2:** [Impact Assessment](#) on Plant Protection Products: Enforcement Regulations and Fees Regulations.
- 10.6 **Regulation 4:** [Implementation of Directive 2013/30/EU on the safety of oil and gas operations and on updating UK oil and gas legislation \(IA No:0088\)](#)
- 10.7 **Regulation 5:** [Impact assessment for the transposition of the Seveso III Directive into UK Law through the COMAH Regulations \(IA No:HSE0082\)](#)

- 10.8 **Regulation 6:** [Implementation of Directive 2013/30/EU on the safety of oil and gas operations and on updating UK oil and gas legislation \(IA No:0088\)](#)
- 10.9 **Regulation 7:** [Review of Dangerous Substances in Harbour Areas Regulations 1987 \(IA No: HSE0096\)](#)
- 10.10 **Regulation 3:** In respect of this provision, which applies in Northern Ireland only, an Impact Assessment has not been prepared. There are no oil and gas operations in Northern Ireland's territorial waters and there are no impacts from this regulation. [A Note on the Costs and Benefits](#) was signed off by the Northern Ireland Department for the Economy in November 2016.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 There is no impact on small businesses from the amendments made by this statutory instrument.
- 11.3 The Impact Assessments for the substantive legislation (details provided in section 10 of this Memorandum) document the impact and approach taken to the regulation of small businesses.

12. Monitoring & review

- 12.1 Under the requirements of the [Small Business Enterprise and Employment Act 2015](#), this instrument includes a statutory review clause in respect of the amendment in regulation 3 to [The Offshore Installations \(Safety Zones\) Regulations 1987 \(SI 1987/1331\)](#). As these provisions apply in Northern Ireland only, and there are currently no oil and gas operations in Northern Ireland's territorial waters, these regulations will be monitored in line with any industry developments and in conjunction with the review of the equivalent legislation in Great Britain, which is included in [The Offshore Installations \(Offshore Safety Directive\) \(Safety Case etc.\) Regulations 2015](#).
- 12.2 A review provision is not provided for the amendment in regulation 2 to [Natural Environment and Rural Communities Act 2006](#). This is an amendment to primary legislation and is therefore outside the scope of the statutory review clause policy.
- 12.3 Regulations 4, 5, 6 and 7 of this instrument amend substantive regulations which already include review provisions for those regulatory regimes. Section 28(3)(e) provides for a general exemption for secondary legislation that amends other legislation already containing a review provision and such cases are outside the scope of the statutory duty.

13. Contact

- 13.1 Rachel McCann at the Health and Safety Executive. Telephone 0203 028 3179 or email: Rachel.McCann@hse.gov.uk or
Beverley Boyce at the Health and Safety Executive. Telephone 0203 029 4431 or email Beverley.Boyce@hse.gov.uk
can answer any queries regarding the instrument.