

EXPLANATORY MEMORANDUM TO

THE FACTORIES ACT 1961 AND OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 (REPEALS AND MODIFICATIONS) REGULATIONS 2009

2009 No. 605

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 These Regulations remove several redundant form filling and record keeping requirements which apply to most businesses operating from a factory, office or shop in Great Britain. Employers will no longer be required to notify a health and safety enforcing authority (ie HSE or a local authority) before occupying a factory or employing a person in office, shop or railway premises. Factory employers will also no longer be required to keep a set of records called the “general register”. The Regulations introduce no new duties.

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

3.1 None.

4. Legislative Context

4.1 The Regulations remove unnecessary administrative burdens on business by repealing redundant premises notification and ‘general register’ record keeping requirements contained in the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963. The Regulations also revoke the Notification of Employment of Persons Order 1964, which prescribes the forms for notification of offices, shops and railway premises, and the Factories Act General Register Order 1973, which prescribes forms for the general register.

4.2 The above Acts regulated health and safety in most workplaces in Great Britain before the introduction of the Health and Safety at Work etc Act 1974 (HSWA). The HSWA and its subsequent regulations have repealed or replaced most of the substantive provisions of the earlier Acts – but not the form filling and record keeping requirements referred to above.

4.3 The **notification requirements** derive from 19th century factories legislation. Their purpose was to enable enforcing authorities to compile lists of premises and enable them to plan and carry out programmes of inspection of premises.

4.4 Currently, section 137 of the Factories Act 1961 and section 49 of the Offices, Shops and Railway Premises Act 1963 require employers to give notice to the relevant enforcing authority before occupying a factory (or using mechanical power in it) or employing a person in office, shop or railway premises.

4.5 The Notification of Employment of Persons Order 1964 prescribes the forms for giving notice of employment in office, shop and railway premises. No form is prescribed for giving notice under the Factories Act 1961, although HSE publishes a form for this purpose.

4.6 Section 140 of the Factories Act 1961 currently requires that a record known as the **general register** be kept in every factory. The Factories Act General Register Order 1973 prescribes

various forms for use in the register. The register's original purpose was to record information about an employer's compliance with factory legislation, to be kept available for inspection by a factory inspector.

4.7 As modern health and safety requirements replaced the old factory legislation, the general register has become obsolete. Over the years, some parts have been revoked as legislation has changed. The parts that remain today are redundant and appear to have been overlooked for removal in the past. They require factory employers to record prescribed details of:

- i) the "washing, painting, whitewashing etc" of factory walls and ceilings;
- ii) the testing of fire warning systems; and
- iii) notices sent to the local "careers office" of a person employed who is under 18 years of age.

4.8 The health and safety issues that these general register remnants formerly covered are now addressed by contemporary health and safety, or fire safety, legislation. However, an employer is still technically obliged to keep the records and failure to comply remains an offence.

4.9 The Regulations preserve requirements which still have merit, ie the requirement for gasholder inspection records to be kept available for HSE inspection and the Employment of Women, Young Persons, and Children Act 1920 requirement for a register of employed persons under 16 years of age to be kept available for inspection.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Lord McKenzie of Luton, Parliamentary Under-Secretary of State at the Department for Work and Pensions, has made the following statement regarding Human Rights:

In my view, the provisions of the Factories Act 1961 and Offices, Shops and Railway Premises Act 1963 (Repeals and Modifications) Regulations 2009 are compatible with the Convention rights.

7 Policy background

7.1 HSE considers these notification, record keeping and form filling requirements are no longer relevant to health and safety, and impose unnecessary administrative burdens on business. Based on the Government's Administrative Burdens Measurement Exercise, their removal would reduce the administrative burden on business by £21 million. This contributes to the Government's programme to reduce administrative burdens on business and charities by a net 25% by 2010.

7.2 Compliance with and awareness of the requirements is poor. The requirements are also rarely enforced. HSE and local authorities focus their resources on practical workplace health and safety issues that are of immediate concern to employers, employees and the public.

7.3 **Notification requirements** - HSE and local authorities have long used a range of alternative sources of information to identify new business premises. These include information from other government agencies, street surveys, business directories, information from reports of accidents or injuries, and complaints. Additionally, many local authorities already share information 'in-house' on the location of premises and newly established businesses - for example, using business rating and food premises data. HSE is currently developing a variety of approaches to make better use of intelligence in targeting dutyholders. These include data sharing agreements between HSE and local authorities, in line with data protection law.

7.4 In considering the notification requirements, HSE has taken into account its duty under the statutory *Regulators' Compliance Code* - to avoid or minimise duplication of data requests and to obtain data from other sources where this is practicable, beneficial and cost effective.

7.5 The **general register** record keeping requirement has been superseded by modern health and safety legislation. The health and safety issues that the general register formerly covered are now addressed by contemporary health and safety legislation (ie the HSWA and its regulations) or by fire safety law.

8. Consultation outcome

8.1 HSE published a Consultative Document on 7 August, detailing HSE's preferred option, ie repealing the premises notification and general register requirements entirely. To allow for the summer holiday period, the consultation was open for 14 weeks, closing on 14 November. HSE invited its key stakeholders, and others identified as having a potential interest, to take part – over 700 bodies in total. This included local authorities, business and industry associations, trade unions, health and safety professionals, fire authorities, the rail industry and campaign groups. Additionally, around 45,000 subscribers to HSE's weekly update email service were alerted.

8.2 A total of 265 responses were received. No significant new issues were raised. There was strong support for the proposals:

- **94%** in favour of abolishing the **factories, offices and shops** notification requirements;
- **97%** in favour of abolishing the **railway premises** notification requirement;
- **96%** in favour of abolishing the **general register** requirement.

8.3 Of 125 responses from employers and industry associations, 97% agreed with the proposals. This included the **Confederation of British Industry** and the **EEF** (the manufacturers' association). The **Trades Union Congress** and **UNISON** were broadly content with the proposals. The **Office of Rail Regulation**, the health and safety regulator for the rail industry, supported abolition of notification of railway premises.

8.4 Earlier informal consultation had revealed that some **local authorities** would like to keep the premises notification requirement for offices and shops. All 410 local authorities in Great Britain were invited to respond. There were 24 responses, of which 15 agreed to removal of the notification requirement. The majority of the responses were from individual Environmental Health Officers. Two were submitted by regional local authority health and safety groups: one in favour of removal and one against. The Local Authorities Coordinators of Regulatory Services (LACORS)¹ also supported removal.

8.5 Local authorities that would like to retain the premises notification requirement stated that it helps them to keep an up to date list of premises. This was often linked to an apparent misperception that “data protection” prevents the sharing of data between local authority functions. However, some local authorities already exchange premises data (eg using business rating information) and gather data using a variety of other approaches. To help address the concerns of some local authorities, LACORS has agreed to promote the sharing of good practice on more effective methods of gathering information on new businesses.

9. Guidance

9.1 Supporting guidance is not necessary, as the Regulations simply remove existing requirements and do not introduce new duties. HSE is working with LACORS to ensure that local

¹ LACORS is the local government central body responsible for overseeing local authority regulatory and related services (ie services which exist to protect the public) in the UK.

authorities are fully aware of the abolition of the notification requirement and the need to remove references to it from their publications and websites. HSE will also alert business advisory services to the changes and encourage them to amend any publications which refer to the notification and general register requirements.

10. Impact

10.1 Business, charities and voluntary bodies will no longer be required to notify their premises to a health and safety enforcing authority. Additionally, factory employers will not be required to keep the general register. Based on the indicative estimates of the Government's Administrative Burdens Measurement Exercise, removal of the requirements would reduce the administrative burden by £21 million.

10.2 The impact on the public sector is minimal. HSE will incur minor implementation costs in communicating the change (externally and internally). HSE and local authorities will also need to update relevant information in guidance material (including on websites).

10.3 An Impact Assessment was prepared for the proposals reflected in this instrument and is attached to this memorandum.

11. Regulating Small Business

11.1 The legislation applies to small business. As explained above, it removes existing requirements and reduces the administrative burden on small businesses. The changes were supported by 97% of small businesses that responded to the public consultation.

12. Monitoring and Review

12.1 The success criteria for this legislative change are: a) business is aware of the change – completed premises notification forms are no longer sent to enforcing authorities; b) there is no detrimental impact on the business intelligence held by enforcing authorities. HSE will keep these matters under review.

13. Contact

Julian Cooper at the Health and Safety Executive can answer any questions regarding the instrument. Tel: 020 7717 6577 or e-mail: julian.cooper@hse.gsi.gov.uk.

Impact Assessment

Repealing notification and record

keeping requirements for factories, offices and shops

Summary: Intervention & Options

Department /Agency: Health & Safety Executive	Title: Impact Assessment of repealing notification and record keeping requirements for factories, offices and shops	
Stage: Final Proposal	Version: 3.2	Date: 25 November 2008
Related Publications: HSE Simplification Plan; Consultative Document		

Available to view or download at:

<http://www.hse.gov.uk/simplification/>; <http://www.hse.gov.uk/consult/condocs/cd219.htm>

Contact for enquiries: Julian Cooper

Telephone: 020 7717 6577

What is the problem under consideration? Why is government intervention necessary?

Legislation requires businesses employing staff in factory, shop, office and in certain railway premises, to notify the Health and Safety Executive (HSE) or their local authority before they commence operations from those premises. Factory employers must also keep a record called a "general register". The requirements have been overtaken by modern health and safety intelligence gathering arrangements and legislation. In addition, they do not apply consistently to all work premises. HSE considers they have little current relevance to maintaining health and safety at work and impose unnecessary and burdensome form filling and notification requirements on business. HSE proposes to seek the abolition of these requirements.

What are the policy objectives and the intended effects?

To repeal outdated legislation, remove unnecessary administrative burdens on business and to allow the resources of duty holders, HSE and of local authorities to be better focussed on important workplace health and safety issues. This is consistent with HSE's commitment to deliver better, smarter legislation that is easier to understand and apply.

What policy options have been considered? Please justify any preferred option.

After early consideration of a range of options, the following have been considered in detail:

Option 1 – Do nothing – continue with the existing legislative provisions (ie, the status-quo, with no impact on costs or benefits).

Option 2 – Repeal the premises notification and general register requirements entirely. **This is our preferred option.** We believe the requirements are redundant - good public administration and regulatory practice demand that outdated regulation or information obligations be repealed or updated. Removing these requirements would not reduce health and safety standards.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? HSE will evaluate the effect within three years after implementation.

Ministerial Sign-off For final proposal/implementation stage Impact Assessment:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jonathan ShawDate: 10 March 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Repeal the FA and OSRPA premises notification and general register requirements entirely.
-------------------------	---

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
	One-off (Transition)	Yrs	
	£ 0m		The abolition of the general register would result in an annual cost saving to business of £8.3m.
	Average Annual Cost (excluding one-off)		Removal of the current factory and other premises notification requirements would result in an annual cost saving to business of £12.7m.
£ -21m	1	Total Cost (PV)	£ -21m
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
£ 0		Total Benefit (PV)	£ 0
Other key non-monetised benefits by 'main affected groups'			

Key Assumptions/Sensitivities/Risks

This impact assessment uses figures from the Administrative Burdens Measurement Exercise (ABME), which are **indicative only** as they derive from small samples that are not statistically valid. In addition, the ABME **assumed full compliance** with each regulatory requirement.

Price Base Year 2005	Time Period Years 1	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-------------------------	------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?		Great Britain			
On what date will the policy be implemented?		06 April 2009			
Which organisation(s) will enforce the policy?		N/A			
What is the total annual cost of enforcement for these organisations?		£ N/A			
Does enforcement comply with Hampton principles?		N/A			
Will implementation go beyond minimum EU requirements?		N/A			
What is the value of the proposed offsetting measure per year?		£ N/A			
What is the value of changes in greenhouse gas emissions?		£ N/A			
Will the proposal have a significant impact on competition?		No			
Annual cost (£-£) per organisation (excluding one-off)		Micro 0	Small 0	Medium 0	Large 0
Are any of these organisations exempt?		N/A	N/A	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0	Decrease of	£ 21m
		Net Impact	£ -21m

Key: Annual costs and benefits: (Net) Present

Introduction

1. This impact assessment considers proposals to remove the form filling and record keeping requirements of the Factories Act 1961 (the FA) and the Offices, Shops and Railway Premises Act 1963 (OSRPA).
2. **Consultation update:** *HSE invited comments on its proposals and the ‘consultation stage’ impact assessment through a formal consultation conducted between 7 August and 14 November 2008. A total of 265 responses were received, although few commented on the impact assessment. Following consultation, HSE believes the **cost and benefit estimates remain valid**. Specific comments and conclusions are covered below under the relevant headings.*

Background

3. The FA and OSRPA impose certain notification and record keeping requirements on most businesses in Great Britain that employ people.
4. The FA requires the occupier, usually an employer, of factory premises to give not less than one month’s notice to HSE before occupying or using the premises as a factory - HSE publishes the F9 form for this purpose. If already using the premises, the employer must give one month’s notice before using any “mechanical power” in the premises.
5. A factory business can apply to HSE for permission to shorten the one-month notice period.
6. A factory must also keep a record of certain information called the “general register” - a set of forms is prescribed for the purpose. A factory employer must send an HSE inspector extracts from the register if requested.
7. Most of the legislation linked to the general register requirement has been replaced making the register obsolete in practice.
8. The OSRPA requires most businesses intending to employ staff in office or shop premises to notify the authority responsible for enforcing health and safety legislation in those premises (usually the local authority) before they employ staff in the premises. The notification must be given on a form prescribed under OSRPA known as the OSR1.
9. HSE and local authorities generally include the information from the F9 and OSR1 forms on their databases of premises for which they have health and safety enforcement responsibilities.
10. The OSRPA also requires railway operators employing staff in premises (other than offices and shops), such as signal boxes or other buildings close to the railway line, to notify those premises using form OSR7. This requirement has fallen entirely into disuse and the form is no longer published.
11. **Annex A** of this impact assessment contains more detailed background on the current legal framework and a summary of the proposed changes.

Rationale for Government Intervention

Rationale for the legislation

12. The key purpose of the factory, office and shop premises notification requirements is to provide authorities responsible for enforcing health and safety in those premises with information about the location and the number of premises. Authorities can then plan and prioritise their enforcement activities.
13. The general register requirements derived from 19th century factories legislation that required factory employers to record details of their compliance with factory health and safety legislation on forms kept in a register, and for the register to be available for

inspection by a factory inspector. The general register has now effectively been superseded by modern legislation including the Health and Safety at Work etc Act 1974 (HSWA) and its regulations.

Rationale for reviewing the legislation

14. The Health and Safety Executive has committed to work towards a 25% target reduction in administrative burdens by May 2010 and has published a Simplification Plan² to help it meet this goal and report on progress. The plan includes reviewing some requirements on employers to provide information or keep records - looking at how we might reduce them without loss of health and safety protection.
15. The removal of forms which are outdated, unnecessary or which duplicate other requirements was also a recommendation of the Hampton review³.
16. The Regulators' Compliance Code⁴ is also relevant. It incorporates principles drawn from the Hampton review. HSE and other regulators must have regard to the Code provisions, which include standards to be taken into account when placing information requirements on business.
17. The Code also includes strategies to reduce form filling and record keeping obligations by using better regulatory practices. If, for example, a regulator keeps the same information on businesses on several independent databases (ie each linked to a separate function of the regulator), they should consider sharing that data so that a business only need provide it once. Regulators should also only collect data when justified by impact assessment. These strategies can help regulators reduce the overall administrative burden on business.
18. HSE also has a responsibility to make sure its legislation is as clear, coherent and comprehensible as possible. If we can identify and remove laws that have become redundant or superseded, the law becomes less complex and it takes less time and money to understand it. Businesses should not have to wade through legislation which may no longer be relevant to find out what their obligations are.
19. We envisage the main benefits of reviewing the FA and OSRPA requirements to be:
 - a. Simplification of health and safety legislation by removing outdated and unnecessary paperwork requirements, without loss of health and safety protection.
 - b. Reduction of the frequency of requests for similar data from the same businesses by government authorities.
 - c. Elimination of requirements that could stop or delay new businesses from starting up and employing staff without prior notice to a government authority.
 - d. Enabling business and enforcing authorities to better focus health and safety resources on reducing risks at workplaces.
 - e. Stimulating discussion on how health and safety enforcing authorities can maintain effective databases of premises using technology and practical strategies so they can target enforcement resources most efficiently.
20. Any reduction of administrative burdens will particularly benefit small businesses, a high proportion of which are subject to the existing premises notification requirements.

Options

21. In addition to Options 1 and 2, set out later in this impact assessment, we initially considered and **rejected** two further options: (A) abolishing the general register but updating the OSR1

² <http://www.hse.gov.uk/simplification/>

³ *Reducing administrative burdens: effective inspection and enforcement* HM Treasury, 2005

⁴ *Regulators' Compliance Code*, Department for Business, Enterprise & Regulatory Reform, 2007.

and F9 forms to make them easier to complete; and (B) abolishing the general register but extending the premises notification requirements to all businesses.

22. Although option (A) would have made it less time consuming for businesses to complete the forms, resulting in some cost savings for business, it would of course have preserved the administrative burden for redundant requirements that serve no practical health and safety purpose.
23. Option (B) was based on the views of a small number of local authorities, obtained in our initial consultations. While conceding the problems of the current notification regime, they felt that a blanket obligation on all businesses would increase the accuracy and currency of premises databases.
24. They also argued that this would better align the notification requirements with the premises coverage of the more modern HSWA - while the HSWA applies to all employers, the FA and OSRPA notification requirements do not. The OSRPA excludes office or shop premises in which the proprietor employs close family members or where the total hours worked by all employees is normally not more than 21 hours per week. Self-employed people who operate from their own premises are also not covered by the FA and OSRPA requirements.
25. As mentioned earlier, HSE and local authorities must have regard to the Regulators' Compliance Code when placing information requirements on business; HSE is also committed to removing unnecessary administrative burdens. Option (B) would increase the existing administrative burden on business, with little or no justification - HSE and many local authorities already obtain premises data in other ways. For these reasons, HSE concluded that it would be inappropriate to develop this option further.
26. The two options that we considered in this Impact Assessment are outlined below.

Option 1 – Do nothing – continue with the existing legislative provisions

27. Doing nothing would leave the notification, forms and record keeping requirements in place. We do not see this as a feasible option, but it serves as a base case against which the other option is compared.
28. Good public administration and regulatory practice demand that outdated regulation or information requirements be repealed or updated. Both the F9 and OSR1 forms do not appear to have been reviewed or substantially altered for many years. The OSR1 form dates from 1964 and includes references to superseded legislation.

Option 2 – Repeal the FA and OSRPA premises notification and general register requirements entirely.

29. Under this option, the requirements to complete forms to notify new office, shop or factory premises would be removed. The requirement to keep the general register would be abolished. This would remove outdated legislation and unnecessary administrative burdens on business. It would also allow the resources of duty holders, HSE and of local authorities to be better focussed on important workplace health and safety issues. **This is our preferred option.**

Gasholders

30. In option 2 we would have to make alternative provision for the keeping of records of inspection of gasholders, which currently have to be attached to the general register. We propose to simply provide for the records to be kept for the same period as currently required (ie 2 years) and to be available for inspection. This change would be achieved by amending the FA. It would not alter the administrative burden for gasholders and is therefore not discussed under the cost and benefit headings.

Costs and Benefits

Data Sources and Assumptions

31. There are some uncertainties in our assessment of the costs and benefits.
32. This impact assessment uses figures from the Administrative Burdens Measurement Exercise (ABME)⁵ for estimates of the number of businesses and other regulated entities subject to the information obligations and record keeping requirements. The ABME is also the source of the managerial time and the overall administrative burden which each requirement imposes.
33. The ABME estimates were obtained using the Standard Cost Model⁶ (SCM), which provides a simplified, systematic, methodology for estimating the administrative costs⁷ imposed by regulation.
34. The costs estimated by the ABME were **indicative only** as they derived from small samples that were not statistically valid.
35. It is important to note that the ABME **assumed full compliance** with each of the regulatory requirements it analysed.
36. Some of the FA information requirements are closely related. For example, steps in a particular statutory process to enable a factory business to start. Rather than “double count” the number of businesses affected in what is essentially a one-off process, the ABME appears to give a single estimate for the number or “population” of businesses affected. Where no number of businesses is stated by the ABME for a specific information requirement, such as the F9 form, we have used the ABME population figure for the closest related information requirement, where we consider it reasonable to do so.
37. The ABME estimated the total of the various FA administrative burdens at £8.6m.
38. The FA figure includes an amount for three requirements related to gasholder safety totalling about £0.1m. No change to these administrative burdens is proposed.
39. The ABME estimated the administrative burden of the OSRPA notification requirement at £12.5m. This figure represents the annual costs to affected businesses of purchasing “goods and services” to comply with the obligation to notify office or shop premises. The ABME assumed that, rather than use internal resources to meet this requirement, business would buy-in services (eg a consultant) instead. Therefore the ABME included no specific assessment of the internal costs (time) or overheads for a business completing the OSR1 form.
40. The ABME did not provide a separate breakdown for the cost of the railway premises notification requirement, ie using form OSR7. The requirement has fallen entirely into disuse and the form is no longer published. The proposed removal of the OSR1 provides the opportunity to eliminate this form also. For the purpose of the options discussed in this impact assessment, we have treated the OSR7 as included in the proposals for the OSR1 form.

⁵ The ABME was a government-wide exercise, carried out to provide an indication of the administrative burden on business created by regulations. It estimated the cost associated with complying with administrative tasks (form filling, record keeping etc, including requirements under health and safety legislation) and the total annual administrative cost contained in all legislation in force as at May 2005.

⁶ The Standard Cost Model is a pragmatic methodology invented by the Dutch to provide systematic measurement of administrative costs of regulation. More information on the SCM and the methodology can be found on the website of the Department for Business, Enterprise & Regulatory Reform at:
<http://www.berr.gov.uk/bre/policy/simplifying-existing-regulation/administrative-burdens/page44061.html>

⁷ Administrative costs are defined as “the recurring costs of administrative activities that businesses are required to conduct in order to comply with the information obligations that are imposed through central government regulation”.

41. The total ABME estimate for the FA and OSRPA administrative burdens is approximately £21.1m. The total under consideration in our proposals is £21m (ie not including the gasholder requirements, as explained above).
42. ***Consultation update:*** *While most respondents to the consultation agreed with the impact assessment or made no comment on its assumptions, some respondents challenged claims that the proposals would save business £21m - particularly when, as the consultative document acknowledged, few businesses comply with the requirements and they are rarely enforced.*
43. *In response to this, it may be useful to restate that the ABME cost estimates are indicative only, drawn from small samples and should not be seen as statistically representative. The ABME also assumed full compliance by those subject to a particular information obligation. Estimates of savings to the private sector were therefore based on this assumption.*
44. *The ABME exercise delivered a reasonably consistent estimate of the administrative costs on the private sector, providing regulators with a baseline from which to measure the effect of initiatives to reduce unnecessary burdens.*

Sectors and Groups Affected

45. Most employers of staff in offices and shops in Great Britain are subject to the OSRPA OSR1 requirements and all factories to the FA F9 requirement. Every factory must keep the general register.
46. The term “factory” covers a wide range of premises - from the largest manufacturing enterprises to any workplace where goods are manufactured or persons are employed in “manual labour”, including packaging plants and printing works. The FA requirements also apply to places which are not generally regarded as a factory, such as places where gas is stored in gasholders.
47. The ABME noted that the requirement to notify an office or shop was particularly relevant for those in the micro (0 – 9 employees) business category. The ABME identified 91% of office and shop businesses in this category.

Annual Benefits for Business

Option 1 – Do nothing – continue with the existing legislative provisions

48. There are no benefits from this option.

Option 2 – Repeal the general register and the FA and OSRPA premises notification requirements entirely

49. According to the ABME estimates, removing these requirements would reduce the administrative burden on business by **£21m** per annum.
50. This option also contributes to the overall simplification of health and safety legislation to which business is subject. It removes, for most businesses, any remaining administrative burden the FA or OSRPA would otherwise have on their operations and helps them to better focus their time and resources on important workplace health and safety issues.

Annual Costs for Business

Option 1 – Do nothing – continue with the existing legislative provisions

51. There are **no changes to administrative burdens or costs** with this option, but without change the current premises notification and record keeping requirements face **several**

risks. They include:

- a. Continued inconsistency between the employers and premises subject to the OSR1 and F9 notification requirements and those subject to the Health and Safety at Work etc Act 1974 (HSWA). For example, not all shop employers have to notify premises but all shop employers are responsible for protecting the health and safety of their staff and other people, such as customers and members of the public, who may be affected by their work.
- b. Unfairness and financial disadvantage for businesses that do comply with the law and incur compliance costs - those who fail to comply gain a financial and commercial advantage over their competitors.
- c. Resources diverted to interpreting and communicating complex or outdated legislation. Whereas modern health and safety legislation, such as the HSWA, focuses on specified duties owed by employers and those “at work”, the FA and OSRPA only apply to employers if they employ staff in premises with particular characteristics defined in legislation. Doubt and uncertainty may arise about whether particular premises are caught by the legislation, thereby necessitating legal advice at extra cost to the enforcing authority or business.
- d. Failure to remove the notification and record keeping requirements would give a further lease of life to legislation for which there is general consensus to repeal. Although total repeal of the remaining FA and OSRPA provisions is not currently proposed, it is important to continue to advance towards this aim and to further simplify the health and safety legislative regime of Great Britain. This was envisaged by the HSWA.
- e. Deterrence of, or impediments to, local small business start-ups, employment growth and difficulties for new migrants or businesses from EU member states in understanding or meeting requirements. Arcane legislation and associated form-filling requirements may inhibit or deter a small business from establishing itself or temporarily entering a market to provide goods or services. For example, the FA requirement to give one month’s notice before occupying or using factory premises or the OSRPA requirement to give advance notice before employing staff in a shop or office may delay or frustrate the capacity of a business to take advantage of quickly emerging market opportunities. These barriers to entry may be particularly challenging to businesses run by newcomers to Great Britain for whom their own small business is a means to economic advancement and financial independence. The growth of the increasingly important services sector of the economy within Great Britain and the European Union generally may be constrained by unnecessary or disproportionate regulations on the provision of services.
- f. Duplication of paperwork. Many businesses are subject to multiple notification requirements in respect of their premises. Multiple information requirements raise business costs and create confusion and uncertainty for smaller businesses already coping with other government notification or record keeping requirements. The Regulators’ Compliance Code requires regulators to explicitly consider how they can reduce costs to business by avoiding duplication of data requests and by sharing data.
- g. Inconsistent notice periods. Different legislation regulating the use of premises requires different notice periods. The FA requires one month and food standards legislation 28 days. The OSRPA does not stipulate a period but still requires prior notification of employment. Businesses must take into account these different periods before starting up in new premises.

Option 2 – Repeal the FA and OSRPA premises notification and the general register requirements entirely

52. There would be some **minimal familiarisation costs** for businesses to take account of the abolition of these requirements.

Implementation (start-up) costs for national regulators and local authorities

Option 1 – Do nothing – continue with the existing legislative provisions

53. There would be no implementation or start up costs for regulators under this option as it assumes no change to the current regulatory regime.

Option 2 – Repeal the FA and OSRPA premises notification and the general register requirements entirely

54. Both HSE and local authorities would incur some minor costs in revising procedures and removing information from websites or other information services.

55. There would also be some additional costs in informing business of the abolition of the requirements. As information on the requirements is generally provided through regulators' websites, this cost would be relatively minor.

56. Some local authorities have indicated the requirement to notify office and shops remains an important source of information for their premises register. Abolition of the requirement may result in additional costs for them if they have to develop or refine other sources of information to maintain their premises registers.

Annual Benefits for national regulators and local authorities

Option 1 – Do nothing – continue with the existing legislative provisions

57. There are no additional benefits for HSE or local authorities in maintaining the forms and general register requirements.

Option 2 – Repeal the FA and OSRPA premises notification and the general register requirements entirely

58. Information received from initial consultations suggested that enforcing authorities devote few, if any, resources to enforcing the premises notification requirement. Consequently, any savings from abolition are unlikely to be significant.

Annual Costs for national regulators and local authorities

Option 1 – Do nothing – continue with the existing legislative provisions

59. There are no additional costs from maintaining the current legislative regime. However, absence of practical enforcement can lead to a loss of awareness and knowledge of a law and skills in its administration – information and advisory materials on the law may become out of date or irrelevant with consequent uncertainty thereby increasing the likelihood of non-enforcement and non-compliance.

60. Some enforcing authorities may become reliant on information gained through compulsory paper based notification requirements at the expense of more comprehensive, flexible, and efficient data sources. While the challenge of keeping an accurate and current premises database is substantial, dependence on traditional notification processes may deflect authorities from considering approaches more consistent with the principles of better regulation, including those in the Regulators' Compliance Code, such as data sharing within their authority and focussing on higher risk premises.

61. Non-enforcement, inconsistent enforcement and non-compliance can contribute to general disrespect and disregard for the law, making it more difficult for authorities to gain compliance with other legislation and creating loss of trust in authorities' enforcement regimes and policies.

Option 2 – Repeal the FA and OSRPA premises notification and the general register requirements entirely

62. There are unlikely to be any annual costs from abolition of these requirements.

Specific Impact Tests

63. Below is a list of the specific impact tests we have considered.

Consultation update: *No comments or information was received which would suggest our initial assessment of the specific impacts should be revised.*

Competition Assessment

64. We do not believe the proposal to remove the FA and OSRPA information requirements will have a significant impact on competition. The current requirements require factory employers to give one month's notice before using premises as a factory, and office and shop employers to give an unspecified period of prior notification of employment. There may be some slight positive impact on competition through removal of the prior notification requirement (ie one month's notice), which is a potential barrier to entry to the market.

65. We have considered the four key questions, namely, whether in any affected market the proposals would:

- a. Directly limit the number or range of suppliers – removal of the requirements will have no effect on the range of suppliers in any market.
- b. Indirectly limit the number or range of suppliers – there is no evidence the proposals will have this effect.
- c. Limit the ability of suppliers to compete – the proposal places no restrictions or limits on suppliers ability to compete.
- d. Reduce suppliers' incentives to compete vigorously – there will be no disincentive to, or other inhibition on, vigorous competition.

Small Firms Impact Test

66. Our preferred option will have a beneficial impact on small business by reducing administrative burdens. As previously noted, the FA and OSRPA requirements cover a wide range of employers and businesses across all industry groups. The ABME noted the requirements particularly affected small businesses, which are represented in the growing services, food and hospitality sectors.

67. We are also aware some small businesses have expressed concern at the number of times they are asked to provide the same information to government for various regulatory purposes. Our preferred option will remove at least one form filling obligation for most businesses.

Legal Aid

68. There will be no impact on legal aid.

Sustainable Development/Carbon Assessment/Other Environment

69. We see no impact on these matters.

Health Impact Assessment

70. We have considered the guidance and the screening questions published by the Department of Health on whether the proposals will have an impact on health or health inequalities. We believe the proposals will have no impact on health.

Impact on Equality and Human Rights

71. The proposals will have no adverse impact on race equality, disability equality, gender equality or human rights.

Rural Proofing

72. We do not believe our proposals will have a different impact in rural areas from non-rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Current legal framework and how it would change

Notice of employment of persons in an office or shop – Offices, Shops and Railway Premises Act 1963 - section 49

1. The Offices, Shops and Railway Premises Act 1963 (OSRPA) comprehensively regulated health and safety in offices and shops in Great Britain. The Health and Safety at Work etc Act 1974 (HSWA) and its regulations have now almost entirely superseded it.
2. The OSRPA also applies to certain railway premises, but in practice modern railway legislation has also superseded it. This is discussed below.
3. Section 49(1) is one of the few remaining substantive provisions of the OSRPA. It requires anyone intending to employ people in office or shop premises to send a notice to the authority responsible for enforcing health and safety in those premises. Failure to comply with this requirement is an offence.
4. The original purpose of premises notification was to ensure health and safety enforcement authorities had an accurate and current list of premises for which they were responsible. Armed with this information, they could plan and prioritise their inspection and enforcement activities.
5. However, from the legislation's inception, annual reports to Parliament noted that non-compliance with the premises notification requirements "was a widespread problem". Reports also found premises notification "was seldom effected on an occupier's own initiative but only after a visit by an inspector⁸". After eight years operation of the Act's notification provisions, the report continued to record "widespread failure of employers to register". The report for 1972⁹ suggested this failure had been "largely counteracted by the local knowledge of inspectors and liaison with the rating and planning departments of local authorities". Local knowledge and, what we would now describe as, "data sharing" appear to have been just as significant in establishing an accurate premises register in the 1960s and 70s as they do today.
6. The form of the notice which the employer must use is set out in Schedule 2 of the Notification of Employment of Persons Order 1964 (SI 1964/533).
7. The form has not been revised to take account of legislative changes since it was first published. Many of the questions in Part III of the form are redundant as they relate to fire safety legislation no longer in force.
8. An employer has to complete two copies of the form and send them to their enforcing authority. Generally, local authorities are responsible for enforcing health and safety in offices and shops. However, HSE covers offices occupied by government departments (including the offices of local authorities).
9. The second copy of the form was forwarded by the enforcing authority to the fire authority to enable it to determine if the premises required a fire certificate. This was a requirement of former fire safety legislation.
10. The OSRPA (and therefore the requirement to register an office or shop) does not apply to certain premises – these main exceptions are:
 - a. Premises where only self-employed persons work – there must be at least one person employed in the premises to trigger the notification requirement.
 - b. Businesses where the only people employed are close family members of the employer – the OSRPA specifies the categories of relatives. If however, the family shop adopted

⁸ The Offices, Shops and Railway Premises Act 1963, Report by the Secretary of State for Employment and Productivity, 31 December 1967, Chapter II, paragraph 1

⁹ 31 December 1972, Chapter 1, paragraph 11

a corporate structure and family members were employed by a family company, the premises would be covered by the OSRPA.

- c. Premises where the total hours worked by all employees is normally not more than 21 hours each week.
 - d. Premises used for transitory purposes in certain circumstances.
11. These exceptions reflect the original scope of the OSRPA - it was not intended to impose the detailed employee health, safety and welfare provisions on family or very small businesses. Consequently, as provided for above, those employers do not need to register their office or shop.
 12. The Workplace (Health, Safety and Welfare) Regulations 1992 replaced many of the general provisions of the OSRPA. In contrast to the OSRPA, the regulations make no exceptions for businesses employing family members or for those employing for limited hours.

Railway premises

13. Section 49(1) of the OSRPA also requires those who plan to employ staff in railway premises (for example, signal boxes) to notify the appropriate authority by completing a separate form known as an OSR7. Like the OSR1, this form is also set out in the Notification of Employment of Persons Order 1964.
14. This provision has fallen entirely into disuse and the form is no longer published.
15. The Office of Rail Regulation (ORR) has responsibility for health and safety in relation to the operation of railways, tramways and certain other systems of guided transport. ORR is the enforcing authority for stations including railway offices and ticket offices.
16. Local authorities have responsibility for those parts of stations occupied by separate businesses including offices and shops – these premises are subject to the OSR1 notification requirement.

Proposed change to the legislation:

17. HSE proposes to remove these requirements by repealing section 49 of the OSRPA entirely and revoking the Notification of Employment of Persons Order 1964.

Notice of occupation of a factory – Factories Act 1961 - section 137

18. Not less than one month before any premises are used as a factory a notice must be sent to HSE. The notice must state the name of the occupier or the title of the firm, the postal address, the nature of the work to be carried on and the nature of any mechanical power to be used. Employers can request for HSE to shorten the one month period.
19. Not less than one month before the date on which mechanical power is first used in a factory, notice must be sent to HSE stating the nature of the mechanical power.
20. If the premises were already being used as a factory when the occupier took them over, and if the new occupier proposes to use them for the same purpose without interruption and without changing the nature of the work, the occupier need not give notice of one month in advance of taking over. But they must provide it as soon as possible and in any event not later than one month after taking over.
21. Failure to comply with this requirement is an offence.
22. The requirement to give notice of occupation of a factory dates from at least 1878. It originally ensured factory inspectors, responsible for monitoring the employment of women and children and basic machinery safety, received notice of new factories or the use of “mechanical power” in factories.

Proposed change to the legislation:

23. HSE proposes to remove these requirements by repealing section 137 of the FA entirely.

General register – Factories Act 1961 - section 140

24. Every factory must keep a register known as the general register. The Factories Act (General Register) Order 1973 (SI 1973/8) sets out the detailed contents of the general register and the form on which the required information has to be recorded (ie form F31). There are different forms for building operations and works of engineering construction (ie form F36) and for docks, wharves and quays (ie form F35).
25. The general register must record:
- a. name of occupier, address of factory, registered office address and nature of work;
 - b. details of persons employed under the age of 18 (HSE published this part of the register as form F32);
 - c. details of the periodical whitewashing, painting etc of the factory (HSE published this part of the register as form F34);
 - d. details of fire certificates; and
 - e. details of tests and examinations of fire alarms.
26. The general register must be kept in the factory or at a place approved by an HSE inspector. The factory occupier must send HSE details from the register if requested and keep the register for two years after the date of the last entry.
27. Failure to comply with this requirement is an offence.
28. The general register has ceased to be of relevance to health and safety in factories or other premises. For example, any requirement to wash and paint factory walls and surfaces was removed from the Act in 1992 but the reference in the general register remains. The general register also still reflects requirements of earlier fire safety legislation – now replaced by the Fire Safety (Scotland) Regulations 2006 and the Regulatory Reform (Fire Safety) Order 2005 (for England and Wales).

Proposed change to the legislation:

29. HSE proposes to remove the general register requirements by repealing sections 140 and 122(7) of the FA and revoking the Factories Act (General Register) Order 1973. They would also repeal the interpretation at section 176(1) and references to “general register” in certain other sections of the FA.

Gasholders and the general register – section 39

30. Places where gasholders are located are treated as factories for the purposes of the FA. Section 39 of the FA requires those who operate or occupy gasholder premises to properly maintain any gasholder and arrange for a competent person to thoroughly examine it once in two years.
31. The Gasholders (Record of Examinations) Order 1938 (SI 1938/598) sets out the details and other information which must be included in each record of examination.
32. The FA requires the record of each examination be entered in or attached to the general register.
33. The proposed abolition of the general register will require some other provision for the retention of these records, which are still relevant for health and safety purposes.
34. In practice this will simply require the gasholder owner or occupier to keep the same record and make it available for inspection.

Proposed change to the legislation:

35. We would modify section 39(2), requiring the record of examination to simply be “kept available for inspection”.

References to any other registers

36. The Employment of Women, Young Persons and Children Act 1920 (EWYPCA) also contains a reference to the general register and requires an employer to keep a register of the name and age of any person under 16 employed in industrial premises. In practice this is likely to be a person who has passed school leaving age and is therefore no longer a “child”¹⁰ but who has not yet turned 16. The EWYPCA applies the FA’s provisions on keeping registers to the register of persons under 16.
37. Although we propose to remove references to the general register in the FA, our amendments will ensure the continuation of the existing obligation on employers under the EWYPCA, to keep and maintain the register of persons under 16 in the way the FA specifies.

¹⁰ The EWYPC Act provides that no child can be employed in any industrial undertaking (section 1(1)).