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## SUBSIDIARY LEGISLATION

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### OFFSHORE MINERALS HEALTH AND SAFETY AT WORK etc

#### **The Management of Health and Safety at Work Order 1998**

(S.R. & O. No. 9 of 1998)

#### ARRANGEMENT OF PROVISIONS

1. Citation and commencement
2. Interpretation
3. Application of the Management of Health and Safety at Work Regulations 1992

#### SCHEDULE

#### **The Management of Health and Safety at Work Regulations 1992 as applying under article 3 of the Order**

#### ARRANGEMENT OF REGULATIONS

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*Schedule*  
*Modification of Instrument*

**Note:** A regulation or schedule the reference to which is italicised in the above table is wholly omitted from application under the following Order

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## SUBSIDIARY LEGISLATION

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### OFFSHORE MINERALS HEALTH AND SAFETY AT WORK etc

#### The Management of Health and Safety at Work Order 1998

(S.R. & O. No 9 of 1998)

*Made:* 23 January 1998  
*Published:* 30 January 1998  
*Coming into force:* 1st February 1998

IN EXERCISE of my powers under sections 27(1), 36(2)(b) and 36(6) of the Offshore Minerals Ordinance 1994(a), and of all other powers enabling me in that behalf, and with the consent of the Secretary of State for Foreign and Commonwealth Affairs, I make the following Order—

#### **Citation and commencement**

**1.** This Order may be cited as the Management of Health and Safety at Work Order 1998 and shall come into force on 1st February 1998.

#### **Interpretation**

**2.** In this Order—

“the external application Order” means the Health and Safety at Work etc. Act 1974 (Application outside the Falkland Islands) Order 1998(b).

“the prescribed provisions of the 1974 Act” has the same meaning as it has in the external application Order.

#### **Application of the Management of Health and Safety at Work Regulations 1992**

**3.** The Management of Health and Safety at Work Regulations 1992 in the form appearing in the Schedule to this Order shall apply—

(a) in the Falkland Islands;

(b) in relation to installations and activities outside the Falkland Islands to which the prescribed provisions of the 1974 Act(c) apply by virtue of the external application Order.

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(a) No. 16 of 1994

(b) S.R. & O. No. 6 of 1998

(c) 1974 c.37

R. P. Ralph  
*Governor*

## SCHEDULE

### **The Management of Health and Safety at Work Regulations 1992 as applying under article 3 of this Order**

#### **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Management of Health and Safety at Work Regulations 1992 in their application under the law of the Falkland Islands and shall come into force on 1st February 1998.

(2) In these Regulations—

“the assessment” means, in the case of an employer or self-employed person, the assessment made or changed by him in accordance with regulation 3;

“child” means a person who has not attained the upper limit of compulsory school age, construed in accordance with the Education Ordinance 1989(a);

“employment business” means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) which supplies persons (other than seafarers) who are employed in it to work for and under the control of other persons in any capacity;

“the external application Order” means the Health and Safety at Work (Application outside the Falkland Islands) Order 1998;

“fixed-term contract of employment” means a contract of employment for a specific term which is fixed in advance or which can be ascertained in advance by reference to some relevant circumstance; and

“the prescribed provisions of the 1974 Act” has the same meaning as it has in the external application Order;

“the preventive and protective measures” means the measures which have been identified by the employer or by the self-employed person in consequence of the assessment as the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions;

“young person” means any person who has not attained the age of eighteen.

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(a) No. 9 of 1989

(3) Any reference in these Regulations to—

(a) a numbered regulation is a reference to the regulation in these Regulations so numbered; or

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation in which the reference appears.

### **Disapplication of these Regulations**

**2.—**(1) These Regulations shall not apply to or in relation to the master or crew of a sea-going ship or to the employer of such persons in respect of the normal ship-board activities of a ship's crew under the direction of the master.

(2) (omitted)

### **Risk assessment**

**3.—**(1) Every employer shall make a suitable and sufficient assessment of—

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

(2) Every self-employed person shall make a suitable and sufficient assessment of—

(a) the risks to his own health and safety to which he is exposed whilst he is at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

(3) Any assessment such as is referred to in paragraph (1) or (2) shall be reviewed by the employer or self-employed person who made it if—

(a) there is reason to suspect that it is no longer valid; or

(b) there has been a significant change in the matters to which it relates;

and where as a result of any such review changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3A) Subject to paragraph (3B), an employer shall not employ a young person unless he has, in relation to risks to the health and safety of young persons, made or reviewed an assessment in accordance with paragraphs (1) and (3C).

(3B) Where an employer is employing a young person when this paragraph comes into force he shall, in relation to risks to the health and safety of young persons, review the assessment forthwith.

(3C) In making or reviewing the assessment, an employer who employs or is to employ a young person shall take particular account of—

- (a) the inexperience, lack of awareness of risks and immaturity of young persons;
- (b) the fitting out and layout of the workplace and the workstation;
- (c) the nature, degree and duration of exposure to physical, biological and chemical agents;
- (d) the form, range and use of work equipment and the way it is installed;
- (e) the organisation of processes and activities;
- (f) the extent of health and safety training provided or to be provided to young persons; and
- (g) risks from agents, processes and work listed in the Annex to Council Directive 94/33/EC on the protection of young people at work<sup>(b)</sup>;

(4) Where the employer employs five or more employees, he shall record—

- (a) the significant findings of the assessment; and
- (b) any group of his employees identified by it as being especially at risk.

#### **Health and safety arrangements**

4.—(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) Where the employer employs five or more employees, he shall record the arrangements referred to in paragraph (1).

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<sup>(b)</sup> OJ No. L216, 20.8.94., p.12

#### **Health surveillance**

5. Every employer shall ensure that his employees are provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment.

#### **Health and safety assistance**

6.—(1) Every employer shall, subject to paragraphs (6) and (7), appoint one or more competent persons to assist him in undertaking the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions.

(2) Where an employer appoints persons in accordance with paragraph (1), he shall make arrangements for ensuring adequate co-operation between them.

(3) The employer shall ensure that the number of persons appointed under paragraph (1), the time available for them to fulfil their functions and the means at their disposal are adequate having regard to the size of his undertaking, the risks to which his employees are exposed and the distribution of those risks throughout the undertaking.

(4) The employer shall ensure that—

(a) any person appointed by him in accordance with paragraph (1) who is not in his employment—

(i) is informed of the factors known by him to affect, or suspected by him of affecting, the health and safety of any other person who may be affected by the conduct of his undertaking, and

(ii) has access to the information referred to in regulation 8; and

(b) any person appointed by him in accordance with paragraph (1) is given such information about any person working in his undertaking who is—

(i) employed by him under a fixed-term contract of employment, or

(ii) employed in an employment business,

as is necessary to enable that person properly to carry out the function specified in that paragraph.

(5) A person shall be regarded as competent for the purposes of paragraph (1) where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in that paragraph.

(6) Paragraph (1) shall not apply to a self-employed employer who is not in partnership with any other person where he has sufficient training and experience or knowledge and other qualities properly to undertake the measures referred to in that paragraph himself.

(7) Paragraph (1) shall not apply to individuals who are employers and who are together carrying on business in partnership where at least one of the individuals concerned has sufficient training and experience or knowledge and other qualities—

(a) properly to undertake the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions; and

(b) properly to assist his fellow partners in undertaking the measures they need to take to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions.

### **Procedures for serious and imminent danger and for danger areas**

7.—(1) Every employer shall—

(a) establish and where necessary give effect to appropriate procedures to be followed in the event of serious and imminent danger to persons at work in his undertaking;

(b) nominate a sufficient number of competent persons to implement those procedures insofar as they relate to the evacuation from premises of persons at work in his undertaking; and

(c) ensure that none of his employees has access to any area occupied by him to which it is necessary to restrict access on grounds of health and safety unless the employee concerned has received adequate health and safety instruction.

(2) Without prejudice to the generality of paragraph (1)(a), the procedures referred to in that sub-paragraph shall—

(a) so far as is practicable, require any persons at work who are exposed to serious and imminent danger to be informed of the nature of the hazard and of the steps taken or to be taken to protect them from it;

(b) enable the persons concerned (if necessary by taking appropriate steps in the absence of guidance or instruction and in the light of their knowledge and the technical means at their disposal) to stop work and immediately proceed to a place of safety in the event of their being exposed to serious, imminent and unavoidable danger; and

(c) save in exceptional cases for reasons duly substantiated (which cases and reasons shall be specified in those procedures), require the persons concerned to be prevented from resuming work in any situation where there is still a serious and imminent danger.

(3) A person shall be regarded as competent for the purposes of paragraph (1)(b) where he has sufficient training and experience or knowledge and other qualities to enable him properly to implement the evacuation procedures referred to in that sub-

paragraph.

### **Information for employees**

**8.—(1)** Every employer shall provide his employees with comprehensible and relevant information on—

- (a) the risks to their health and safety identified by the assessment;
- (b) the preventive and protective measures;
- (c) the procedures referred to in regulation 7(1)(a);
- (d) the identity of those persons nominated by him in accordance with regulation 7(1)(b); and
- (e) the risks notified to him in accordance with regulation 9(1)(c).

(2) Every employer shall, before employing a child, provide a parent of the child with comprehensible and relevant information on—

- (a) the risks to his health and safety identified by the assessment;
- (b) the preventive and protective measures; and
- (c) the risks notified to him in accordance with regulation 9(1)(c).

(3) The reference in paragraph (2) to a parent of a child includes a reference to a person who has parental responsibility within the meaning of section 4 of the Children Ordinance 1994<sup>(c)</sup>.

### **Co-operation and co-ordination**

**9.—(1)** Where two or more employers share a workplace (whether on a temporary or a permanent basis) each such employer shall—

- (a) co-operate with the other employers concerned so far as is necessary to enable them to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions;
- (b) (taking into account the nature of his activities) take all reasonable steps to co-ordinate the measures he takes to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions with the measures

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(c) No. 28 of 1994

the other employers concerned are taking to comply with the requirements and prohibitions imposed upon them by or under the relevant statutory provisions; and

(c) take all reasonable steps to inform the other employers concerned of the risks to their employees' health and safety arising out of or in connection with the conduct by him of his undertaking.

(2) Paragraph (1) shall apply to employers sharing a workplace with self-employed persons and to self-employed persons sharing a workplace with other self-employed persons as it applies to employers sharing a workplace with other employers; and the references in that paragraph to employers and the reference in the said paragraph to their employees shall be construed accordingly.

**Persons working in host employers' or self-employed persons' undertakings**

**10.—**(1) Every employer and every self-employed person shall ensure that the employer of any employees from an outside undertaking who are working in his undertaking is provided with comprehensible information on—

(a) the risks to those employees' health and safety arising out of or in connection with the conduct by that first-mentioned employer or by that self-employed person of his undertaking; and

(b) the measures taken by that first-mentioned employer or by that self-employed person in compliance with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions insofar as the said requirements and prohibitions relate to those employees.

(2) Paragraph (1) shall apply to a self-employed person who is working in the undertaking of an employer or a self-employed person as it applies to employees from an outside undertaking who are working therein; and the reference in that paragraph to the employer of any employees from an outside undertaking who are working in the undertaking of an employer or a self-employed person and the references in the said paragraph to employees from an outside undertaking who are working in the undertaking of an employer or a self-employed person shall be construed accordingly.

(3) Every employer shall ensure that any person working in his undertaking who is not his employee and every self-employed person (not being an employer) shall ensure that any person working in his undertaking is provided with appropriate instructions and comprehensible information regarding any risks to that person's health and safety which arise out of the conduct by that employer or self-employed person of his undertaking.

(4) Every employer shall—

(a) ensure that the employer of any employees from an outside undertaking who are working in his undertaking is provided with sufficient information to enable that second-mentioned employer to identify any person nominated by that first-mentioned employer in accordance with regulation 7(1)(b) to implement evacuation procedures as far as those employees are concerned; and

(b) take all reasonable steps to ensure that any employees from an outside undertaking who are working in his undertaking receive sufficient information to enable them to identify any person nominated by him in accordance with regulation 7(1)(b) to implement evacuation procedures as far as they are concerned.

(5) Paragraph (4) shall apply to a self-employed person who is working in an employer's undertaking as it applies to employees from an outside undertaking who are working therein; and the reference in that paragraph to the employer of any employees from an outside undertaking who are working in an employer's undertaking and the references in the said paragraph to employees from an outside undertaking who are working in an employer's undertaking shall be construed accordingly.

### **Capabilities and training**

**11.—**(1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

(2) Every employer shall ensure that his employees are provided with adequate health and safety training—

(a) on their being recruited into the employer's undertaking; and

(b) on their being exposed to new or increased risks because of—

(i) their being transferred or given a change of responsibilities within the employer's undertaking,

(ii) the introduction of new work equipment into or a change respecting work equipment already in use within the employer's undertaking,

(iii) the introduction of new technology into the employer's undertaking, or

(iv) the introduction of a new system of work into or a change respecting a system of work already in use within the employer's undertaking.

(3) The training referred to in paragraph (2) shall—

(a) be repeated periodically where appropriate;

(b) be adapted to take account of any new or changed risks to the health and safety of the employees concerned; and

(c) take place during working hours.

### **Employees' duties**

**12.—**(1) Every employee shall use any machinery, equipment, dangerous substance,

transport equipment, means of production or safety device provided to him by his employer in accordance both with any training in the use of the equipment concerned which has been received by him and the instructions respecting that use which have been provided to him by the said employer in compliance with the requirements and prohibitions imposed upon that employer by or under the relevant statutory provisions.

(2) Every employee shall inform his employer or any other employee of that employer with specific responsibility for the health and safety of his fellow employees—

(a) of any work situation which a person with the first-mentioned employee's training and instruction would reasonably consider represented a serious and immediate danger to health and safety; and

(b) of any matter which a person with the first-mentioned employee's training and instruction would reasonably consider represented a shortcoming in the employer's protection arrangements for health and safety,

in so far as that situation or matter either affects the health and safety of that first-mentioned employee or arises out of or in connection with his own activities at work, and has not previously been reported to his employer or to any other employee of that employer in accordance with this paragraph.

### **Temporary workers**

**13.—**(1) Every employer shall provide any person whom he has employed under a fixed-term contract of employment with comprehensible information on—

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee by or under any of the relevant statutory provisions,

and shall provide the said information before the employee concerned commences his duties.

(2) Every employer and every self-employed person shall provide any person employed in an employment business who is to carry out work in his undertaking with comprehensible information on—

(a) any special occupational qualifications or skills required to be held by that employee if he is to carry out his work safely; and

(b) any health surveillance required to be provided to that employee by or under any of the relevant statutory provisions.

(3) Every employer and every self-employed person shall ensure that every person carrying on an employment business whose employees are to carry out work in his undertaking is provided with comprehensible information on—

(a) any special occupational qualifications or skills required to be held by those employees if they are to carry out their work safely; and

(b) the specific features of the jobs to be filled by those employees (in so far as those features are likely to affect their health and safety);

and the person carrying on the employment business concerned shall ensure that the information so provided is given to the said employees.

### **Provisions as to protection of women**

**13A to 13C** (omitted)

### **Protection of young persons**

**13D.**—(1) Every employer shall ensure that young persons employed by him are protected at work from any risks to their health or safety which are a consequence of their lack of experience, of absence of awareness of existing or potential risks or the fact that young persons have not yet fully matured.

(2) Subject to paragraph (3), no employer shall employ a young person for work—

(a) which is beyond his physical or psychological capacity;

(b) involving harmful exposure to agents which are toxic or carcinogenic, cause heritable genetic damage or harm to the unborn child or which in any other way chronically affect human health;

(c) involving harmful exposure to radiation;

(d) involving the risk of accidents which it may reasonably be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or

(e) in which there is a risk to health from—

(i) extreme cold or heat;

(ii) noise; or

(iii) vibration,

and in determining whether work will involve harm or risk for the purposes of this paragraph, regard shall be had to the results of the assessment.

(3) Nothing in paragraph (2) shall prevent the employment of a young person who is no longer a child for work—

(a) where it is necessary for his training;

(b) where the young person will be supervised by a competent person; and

(c) where any risk will be reduced to the lowest level that is reasonably practicable.

(4) The provisions contained in this regulation are without prejudice to—

(a) the provisions contained elsewhere in these Regulations; and

(b) any prohibition or restriction, arising otherwise than by this regulation, on the employment of any person.

#### **Exemption certificates**

14. (omitted)

#### **Exclusion of civil liability**

15. Breach of a duty imposed by these Regulations shall not confer a right of action in any civil proceedings.

#### **Extension outside the Falkland Islands**

16.—(1) These Regulations shall, subject to regulation 2, apply to and in relation to the premises and activities outside the Falkland Islands to which the prescribed provisions of the 1974 Act apply by virtue of the Health and Safety at Work etc. Act 1974 (Application Outside the Falkland Islands) Order 1998.

(2) For the purposes of Part I of the 1974 Act, the meaning of “at work” shall be extended so that an employee or a self-employed person shall be treated as being at work throughout the time that he is present at the premises to and in relation to which these Regulations apply by virtue of paragraph (1); and, in that connection, these Regulations shall have effect subject to the extension effected by this paragraph.

#### **Modification of instrument**

17. (omitted)

#### THE SCHEDULE

*(omitted)*

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EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations, because of the provisions of the Order under which they are applied, apply only in respect of offshore minerals exploration and exploitation operations.
2. Regulation 3 requires employers and self-employed persons to make assessments of the health and safety risks to which their respective undertakings give rise, for the purpose of ascertaining what they have to do to comply with their obligations under health and safety legislation. Regulation 3 also makes provision for the review and recording of risk assessments.
3. Regulation 4 requires employers to make, give effect to and in certain cases record appropriate health and safety arrangements.
4. Regulation 5 requires employers to ensure that their employees are provided with appropriate health surveillance.
5. Regulation 6 requires employers to appoint an adequate number of competent persons to assist them to comply with their obligations under health and safety legislation unless (in the case of a sole trader or a partnership) the employer concerned already has sufficient competence to comply with the relevant obligations without assistance. Regulation 6, as well as defining "competent person " in this context, also requires employers—
  - (a) to make arrangements for ensuring adequate co-operation between the competent persons they appoint; and
  - (b) to provide the competent persons they appoint with—
    - (i) the facilities necessary to enable them to carry out their functions, and
    - (ii) specified health and safety information.
6. Regulation 7 requires employers—
  - (a) to establish and give effect to procedures to be followed in the event of serious and imminent danger to persons working in their respective undertakings;
  - (b) to nominate competent persons to implement those procedures in so far as they relate to the evacuation from premises of persons at work in their respective undertakings ; and

(c) restrict access to any danger areas occupied by them. Regulation 7 also specifies in detail what the procedures referred to above must achieve and defines what is meant by "competent person " in this context.

7. Regulation 8 requires employers to provide their employees with specified health and safety information.

8. Regulation 9 requires every employer and self-employed person who shares a workplace with any other employer or self-employed person to—

(a) co-operate with that other person so far as is necessary to enable him to comply with his statutory health and safety obligations;

(b) co-ordinate the measures he takes in compliance with his statutory health and safety obligations with the measures being taken in that regard by that other person; and

(c) take steps to provide that other person with specified health and safety information.

9. Regulation 10 requires employers and self-employed persons to ensure that—

(a) the employers of any employees from outside undertakings who are working in their respective undertakings are provided with specified health and safety information;

(b) self-employed persons who are working in their respective undertakings are provided with specified health and safety instructions and information; and

(c) any employees from outside undertakings who are working in their respective undertakings are provided with specified health and safety instructions and information.

10. Regulation 11 requires employers—

(a) to consider their employees' capabilities as regards health and safety when entrusting tasks to them; and

(b) to ensure that in specified circumstances their employees are provided with adequate health and safety training. Regulation 11 also specifies when the training referred to above is to be provided and the circumstances in which it is to be repeated or adapted.

11. Regulation 12 requires employees—

(a) to use machinery, equipment, dangerous substances, transport equipment, means of production and safety devices in accordance with any relevant training and instructions; and

(b) to inform their respective employers or any specified fellow employees of dangerous work situations and shortcomings in those employers' health and safety arrangements.

12. Regulation 13—

(a) requires employers and self-employed persons to provide temporary workers in their respective undertakings with health and safety information before they commence their duties;

(b) requires employers and self-employed persons to provide any employment business whose employees are to carry out work in their respective undertakings with specified health and safety information about the work to be done by those employees; and

(c) requires any employment business provided with information by an employer or self-employed person in pursuance thereof to pass that information on to the employees to whom it relates.

13. Regulation 13D contains provisions in relation to the employment of young persons.

14. Regulation 15 provides that breach of a duty imposed by the Regulations does not confer a right of action in civil proceedings.

15. Regulation 16—

(a) extends the application of the Regulations to and in relation to certain offshore matters; and

(b) extends the meaning of “at work” so that for the purposes of the Regulations an employee or a self-employed person is treated as being at work at all times when he is present at the premises to and in relation to which the Regulations apply by virtue of that regulation.