
STATUTORY INSTRUMENTS

2005 No. 000

HEALTH AND SAFETY

**Management of Health and Safety at Work and Health and Safety
(Consultation with Employees) (Amendment) Regulations 2005**

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| <i>Made- - - -</i> | 2005 |
| <i>Laid before Parliament</i> | 2005 |
| <i>Coming into force</i> | 2005 |

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to employers' obligations in respect of the health and safety of workers, in exercise of the powers conferred on him by the said section 2(c) and by sections 15(1) and (2) and 47(2) of the Health and Safety at Work etc Act 1974(d) ("the 1974 Act") and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of the 1974 Act, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Management of Health and Safety at Work and Health and Safety (Consultation with Employees) (Amendment) Regulations 2005 and shall come into force on 2005.

Amendment to Management of Health and Safety at Work Regulations 1999

^(a) S.I. 1992/1711.

^(b) 1972 c.68.

^(c) As regards Scotland, see also section 57(1) of the Scotland Act 1998 (c.46), which provides that, despite the transfer to the Scottish Ministers by virtue of that Act of functions in relation to observing and implementing obligations under Community law, any function of a Minister of the Crown in relation to any matter shall continue to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972.

^(d) 1974 c.37; sections 15(1) and 50(3) were amended by the Employment Protection Act 1975 (1975 c.71) Schedule 15, paragraphs 6 and 16(3) respectively.

2. For regulation 22 of the Management of Health and Safety at Work Regulations 1999(a) there shall be substituted the following regulation –

“Restriction of civil liability for breach of statutory duty

22.-(1) Breach of a duty imposed on an employer by these Regulations shall not confer a right of action in any civil proceedings insofar as that duty applies for the protection of persons not in his employment except insofar as they are persons, employed by an employment business, to whom regulation 15(2) and (3) applies.

(2) Breach of a duty imposed on a self-employed person (not being an employer) by these Regulations shall not confer a right of action in any civil proceedings.

(3) Breach of a duty imposed on an employee by regulation 14 shall not confer a right of action in any civil proceedings insofar as that duty applies for the protection of a third party.

(4) In paragraph (3), “third party”, in relation to the undertaking, means any person who may be affected by that undertaking other than the employer whose undertaking it is and persons in his employment.”

Amendment to Health and Safety (Consultation with Employees) Regulations 1996

3. Regulation 9 of the Health and Safety (Consultation with Employees) Regulations 1996 (b) shall be amended in accordance with regulations 4 and 5 of these Regulations and any reference in those provisions to any specified provision shall, unless the context requires otherwise, be taken to be a reference to the provision so specified of the Health and Safety (Consultation with Employees) Regulations 1996.

4. For regulation 9 there shall be substituted the following regulation –

“Restriction of civil liability for breach of statutory duty

9. Breach of a duty imposed on an employer by these Regulations shall not confer a right of action in any civil proceedings insofar as that duty applies for the protection of persons not in his employment.”.

5. In regulation 10, for the words “Sections 16 to 21, 23, 24, 26, 28, 33, 36 to 39, 42(1) to (3) and 46” there shall be substituted the words “Sections 16 to 21, 23, 24, 26, 28, 33, 36 to 39, 42(1) to (3), 46 and 47(2).”

Signed by authority of the Secretary of State for Work and Pensions

Jane Kennedy

Minister of State

Department for Work and Pensions

^(a) S.I 1999/3242 as amended by S.I 2003/2457.

^(b) S.I 1996/1513, to which there are amendments not relevant to these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend provisions of the Management of Health and Safety at Work Regulations 1999 (“the 1999 Regulations”) and Health and Safety (Consultation with Employees) Regulations 1996 (“the 1996 Regulations”) which concern civil liability for breach of the duties imposed by those Regulations.
2. The Management of Health and Safety at Work and Fire Precautions (Workplace) (Amendment) Regulations 2003 (S.I 2003/2457) amended regulation 22 of the 1999 Regulations so as to activate the statutory presumption of civil liability contained in section 47(2) of the Health and Safety at Work etc. Act 1974, subject to a specific limitation. The effect was to permit civil claims to be brought against employers and employees who are in breach of duties imposed on them by those Regulations but the amendment provided that claims could not be brought against employers insofar as the duty applies for the protection of persons not in their employment, that is third parties.
3. The effect of these Regulations is to extend to employees that protection against claims by third parties, in circumstances where employees may owe a duty to third parties under regulation 14.
4. The opportunity is taken to further limit the statutory presumption of civil liability by amending regulation 22 of the 1999 Regulations so as to protect self-employed persons who are not employers against claims arising from breach of any duty imposed on them by the 1999 Regulations (regulation 2). In addition, the regulation is amended so that civil action may be brought by employees of an employment business, to whom duties are owed by host employers under regulation 15(2) and (3) of the 1999 Regulations.
6. The opportunity is also taken to amend the 1996 Regulations, regulation 9 of which contained a qualified exclusion of civil liability, to the effect that breach of a duty imposed by those Regulations may now confer a right of action in civil proceedings so far as it causes damage (regulation 5); in addition employers are also protected against claims by third parties insofar as they may owe a duty to them (regulation 4).
7. A copy of the regulatory impact assessment prepared in respect of these Regulations can be obtained from the Health and Safety Executive, Economic Adviser’s Unit, Rose Court, 2 Southwark Bridge, London SE1 9HS. A copy has been placed in the library of each House of Parliament.