

Health and Safety Commission Paper		HSC/02/118	
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Exemptions:	None		

HEALTH AND SAFETY COMMISSION

Results of consultation on proposals to amend the Management of Health and Safety at Work Regulations 1999 and the Fire Precautions (Workplace) Regulations 1997

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Issue

1. To agree the submission of draft Regulations to Ministers that amend the Management of Health and Safety at Work Regulations 1999 (MHSWR) and the Fire Precautions (Workplace) Regulations 1997 (FPR) to allow employees to claim damages from their employer, in a civil action, where they suffer injury or illness as a result of the employer breaching MHSWR or FPR. These draft Regulations will also allow civil claims against employees for a breach of the employees duties under reg. 14 of MHSWR which results in injury or illness. These amendments have been offered by the UK to the European Commission to address their concerns over the implementation of the EC Framework Directive on health and safety (89/391/EEC). Given this commitment to the EC the consultation exercise essentially concerned 'how' rather than 'whether'. In addition amendments are proposed to FPR to clarify enforcement responsibilities.

Timing

2. Urgent. The UK needs to fulfil its commitment to the European Commission to amend MHSWR and FPR or else risk infraction proceedings.

Recommendation

3. That the HSC :
 - Notes the substance and content of the comments made by consultees in response to the consultative document, "*Consultative proposals to amend the Management of Health and Safety at Work Regulations 1999 and the Fire Precautions (Workplace) Regulations 1997*" – see Annex A attached;
 - Agrees to the HSE recommendations concerning the regulatory proposals – see paras. 6 - 10 below;
 - Agrees the submission of the draft Regulations and Regulatory Impact Assessment to Ministers for approval – see Annexes B and C attached.

Background

4. The matter has already been the subject of the following HSC papers : HSC/00/284 (7 November 2000); HSC/00/293 (21 November 2000); HSC/00/294 (5 December 2000), and; HSC/01/150 (25 September 2001). Following earlier HSC discussions the Chair wrote to DETR Ministers on 12 December 2000 recommending that the UK address the EC's concerns over MHSWR by undertaking to remove the civil liability exclusion for breach of statutory duty towards employees (thus enabling an employee to bring a claim for damages against their employer for injury or illness caused by their

employer's failure to comply with MHSWR). Ministers agreed and in January 2001 the EC was notified that MHSWR would be amended and, on the recommendation of Home Office Ministers, corresponding amendments would be made to the civil liability exclusion provisions in FPR.

5. HSC agreed at its meeting on 25 September 2001 to consult on the proposals to amend MHSWR and FPR. The resulting consultative document (CD177) was published in December 2001 – the consultation ran for 15 weeks. 128 responses were received : 76 respondents offered little or no comment on CD177. The remaining 52 responses were split two-thirds actively supporting the removal of the civil liability exclusion and one-third expressing varying degrees of concern about the proposed change. A full list of the respondents is set out at Annex D.

Argument

6. Annex A, attached, contains a summary of issues raised by organisations and individuals responding to CD177 – for most part expanding on issues which had been addressed by HSC in its consideration of the draft consultative document on 25 September 2001 (see HSC/01/150). A number of those respondents supporting the removal of the civil liability exclusion contended that the change was logical and would align MHSWR and FPR with the vast majority of health and safety regulations under which no such exclusion was provided for. There was also support for HSC's view that the proposed civil liability change would help underpin efforts to improve health and safety performance and raise the profile of health and safety.

7. There were concerns expressed over particular aspects of the proposals including :
 - that the retrospective application of the civil liability change (see paras. 8&9 of Annex A);
 - the potential increase in the number of compensation claims (see paras. 10-15 of Annex A);
 - the potential for employees to face compensation claims (see paras. 20-23 of Annex A);
 - the extension of proposals to non-employees (see paras. 24-26).
8. For the reasons set out in the supporting commentary in Annex A HSE recommends that the proposals as set out in the HSC recommendations should stand and that :
 - there should be a 3-year limit on bringing claims in line with existing rules governing claims for damages;
 - claims should be monitored by employers' organisations, trade unions and HSE, as proposed, to ascertain full extent of any increase in claims and identify signs of a growth in unmeritorious claims;
 - employees should be open to certain claims including where there have been breaches of duties imposed upon them under reg. 14 of MHSWR and injury or illness has resulted;
 - retain the civil liability exclusion for non-employees.
9. The draft Regulations also contain a minor amendment to define "ship" in similar terms to those used in the Merchant Shipping Act. The effect is to amend MHSWR so that they do not apply to *the master and crew of any type of merchant ship (including river steamers) in respect of the normal ship-board activities, but* that they would apply when shore-based workers worked alongside the crew, e.g. during dock operations. The

amendment corrects an anomaly commented on by LJ Clarke in his report on river safety, that MHSWR rather than merchant shipping legislation applied to merchant ships operating on inland waters. A CD detailing the proposed amendment was issued by the Maritime and Coastguard Agency on HSE's behalf in 1999 and there have been no objections.

10. There were no objections to the miscellaneous proposals set out in CD177 including proposals to clarify HSE's responsibility for enforcing FPR for ships under construction and repair.

Consultation

11. 3,000 copies of CD177 were issued directly by HSE and 4,100 enquirers accessed the document via the HSE web site. The Fire Policy Unit, ODPM, which has the policy lead on fire safety, has been consulted throughout.

Presentation

12. A submission will need to go to Ministers in the Office of the Deputy Prime Minister and at the Department of Work and Pensions seeking their approval to lay the amending Regulations before Parliament. The submission will need to reflect recent machinery of government changes and new responsibilities for Ministers at DWP and the ODPM on health and safety and fire safety.

13. In taking forward the recommendation to amend MHSWR and FPR the HSC agreed earlier to work with the Lord Chancellors Department, employers' organisations and the TUC to develop and promote systems that ensure that the civil liability changes are not undermined by unjustified or unmeritorious claims. HSE undertakes to report back to HSC on the outcome of this work by late 2003.

Costs and Benefits

14. The Regulatory Impact Assessment (attached at Annex C) concludes that the number of additional civil liability claims likely to be generated by this regulatory change is likely to be very small. The "compliance costs" incurred are likely to vary considerably from business to business. There are very little resource costs and benefits associated with these changes. This regulatory change will remove the threat of infraction proceedings over the civil liability issue and the associated costs of such proceedings as well as removing the unquantifiable contingent liability that could stem from Francovich liability.

Financial/Resource Implications for HSE

15. Minimal – there will be costs associated with the production of revised guidance to support amended MHSWR but these will be met from within existing resources.

Environmental Implications

16. None.

Other Implications

17. None.

Action

18. As recommended in para. 3 above.