

2013 No. 1667

HEALTH AND SAFETY

**The Health and Safety at Work etc. Act 1974 (Civil Liability)
(Exceptions) Regulations 2013**

<i>Made</i> - - - -	<i>4th July 2013</i>
<i>Laid before Parliament</i>	<i>10th July 2013</i>
<i>Coming into force</i> - -	<i>1st October 2013</i>

The Secretary of State makes these Regulations—

(a) in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) (“the 1972 Act”) and sections 15(1) and (2), 47(2), (2B)(b) and (7), and 50(1)(a) of the Health and Safety at Work etc. Act 1974(b) (“the 1974 Act”), and by virtue of section 72(4) of the Employment Rights Act 1996(c); and

(b) for the purpose of giving effect, without modifications, to proposals submitted by the Health and Safety Executive (“the Executive”) under section 11(3)(d) of the 1974 Act.

Before submitting proposals for these Regulations to the Secretary of State, the Executive carried out the consultations as appeared to it to be appropriate as required by section 50(3)(e) of the 1974 Act.

The Secretary of State is a Minister designated(f) for the purposes of section 2(2) of the 1972 Act in relation to measures relating to pregnant workers and/or workers who have recently given birth and/or workers who are breastfeeding.

Citation and commencement

1.—(1) These Regulations may be cited as the Health and Safety at Work etc. Act 1974 (Civil Liability) (Exceptions) Regulations 2013.

(2) These Regulations come into force on 1st October 2013.

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7).

(b) 1974 c.37. Section 15(1) was amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraph 6 and S.I. 2002/794. Section 47 was amended by section 69 of the Enterprise and Regulatory Reform Act 2013 c.24. Section 50(1)(a) was amended by S.I. 2008/960.

(c) 1996 c.18. Section 72 was substituted by the Employment Relations Act 1999 (c. 26) section 7, and Part 1 of Schedule 4.

(d) Section 11 was substituted by S.I. 2008/960.

(e) Section 50(3) was amended by the Employment Protection Act 1975, Schedule 15 paragraph 16, S.I. 2008/960 and the Health and Social Care Act 2012 (c. 7), Schedule 7 paragraph 6.

(f) S.I. 1994/1887.

Exception relating to compulsory maternity leave

2.—(1) Breach of a duty imposed by section 72(1) of the Employment Rights Act 1996 (which by virtue of section 72(4) of that Act is for these purposes treated as imposed by health and safety regulations) shall, so far as it causes damage, be actionable.

(2) Any term of an agreement which purports to exclude or restrict any liability for such a breach is void.

Exception relating to the Management of Health and Safety at Work Regulations 1999

3. In the Management of Health and Safety at Work Regulations 1999(a) for regulation 22 substitute—

“22.—(1) Breach of a duty imposed by regulation 16, 16A, 17 or 17A shall, so far as it causes damage, be actionable by the new or expectant mother.

(2) Any term of an agreement which purports to exclude or restrict any liability for such a breach is void.”

Revocations

4. The Management of Health and Safety at Work (Amendment) Regulations 2006(b) are revoked.

Review

5.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to the measures taken to implement rules on the enforcement of obligations imposed by Directive 92/85/EEC(c) in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the measures taken to implement rules on enforcement in relation to that Directive,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before 1st October 2018.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

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

4th July 2013

Mark Hoban
Minister of State
Department for Work and Pensions

(a) S.I. 1999/3242. Regulation 22 was last substituted by S.I. 2006/438.

(b) S.I. 2006/438.

(c) OJ L348, 28.11.1992, p.1.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations create some exceptions to section 47(2) of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”), as amended, which provides that a breach of a duty in certain health and safety legislation is not actionable except to the extent provided for in regulations.
2. Previously section 47 of the 1974 Act provided for a right of action in civil proceedings for breach of a duty imposed by a health and safety regulation. Section 47 was amended by section 69 of the Enterprise and Regulatory Reform Act 2013 to exclude the right to bring such a claim unless an exception had been created.
3. These Regulations create exceptions from the exclusion of civil liability for breach of statutory duty for pregnant workers and workers who have recently given birth or are breastfeeding (“new and expectant mothers”) in relation to certain rights derived from Directive 92/85/EEC (OJ L348, 28.11.1992 p.1) (“the Pregnant Workers Directive”) and Directive 2008/104/EC (OJ L327, 5.12.2008, p.9) (“the Agency Workers Directive”).
4. Section 72(1) of the Employment Rights Act 1996 (“the 1996 Act”) compels employers to prohibit a worker from working within a prescribed period known as the compulsory maternity leave period (which is 2 weeks from the date of giving birth). Section 72(4) applies the provisions of the 1974 Act to this prohibition as if it were contained in health and safety regulations made under section 15 of the 1974 Act. The effect of this, among other things, is to apply the provisions of section 47 relating to civil liability, including the power to create an exception, to a contravention of the prohibition in section 72(1) of the 1996 Act.
5. Regulation 22 of the Management of Health and Safety at Work Regulations (“the 1999 Regulations”) excluded third parties from bringing claims for breach of a duty contained in those Regulations against employers and employees. This exclusion is no longer required because section 47 of the 1974 Act now automatically excludes liability and express provision is only required for exceptions.
6. Regulation 2 of these Regulations creates a right of action in relation to a breach of the prohibition in section 72(1) of the 1996 Act, to the extent that the breach causes damage.
7. Regulation 3 substitutes regulation 22 of the 1999 Regulations to provide that new and expectant mothers (including agency workers) will continue to have a right of action in civil proceedings in relation to breaches of sections 16 – 17A of the 1999 Regulations to the extent that the breach causes damage. These provisions of the 1999 Regulations relate to requirements to carry out risk assessments and make particular arrangements for new and expectant mothers to protect their health and safety.
8. Regulation 4 revokes the Management of Health and Safety at Work (Amendment) Regulations 2006 which are now superseded.
9. Regulation 5 requires the Secretary of State to review these Regulations and publish a report setting out the conclusions of the review every 5 years starting before 1st October 2018.
10. No impact assessment has been prepared for this instrument as the provisions have no additional impact because they maintain existing rights of action for new and expectant mothers.

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