

**EXPLANATORY MEMORANDUM TO
THE MANAGEMENT OF HEALTH AND SAFETY AT WORK (AMENDMENT)
REGULATIONS 2006**

2006 No. 438

1. This explanatory memorandum has been prepared by Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

The Regulations repeal and replace section 22 of the Management of Health and Safety at Work Regulations 1999.

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

- 3.1 These Regulations (“the 2006 Regulations”) make a small but significant change to the Management of Health and Safety at Work Regulations 1999 (“the 1999 Regulations”). The paragraphs below on the legislative and policy background give more information on this.
- 3.2 The civil liability provisions of the 1999 Regulations were amended in 2003, in response to concerns raised by the EC Commission, to enable employees to claim damages from their employer in a civil action where they suffer injury or illness as a result of the employer being in breach of those Regulations. They were also intended to enable civil claims to be brought against employees for a breach of their duties under those Regulations that resulted in injury or illness. Employees have duties under those Regulations to use any equipment, dangerous substance etc. in accordance with any training and instruction provided by the employer. Employees are also required to alert their employer of serious and imminent danger in the workplace or any shortcomings in the health and safety arrangements.
- 3.3 The wording of the 2003 amendment produced the unintended consequence of allowing claims to be brought against employees by third parties who were affected by their work activity, e.g. members of the public. This had not been the policy intention.
- 3.4 This unintended consequence of the 2003 amendment was raised by one concerned group. HSE sought independent advice which also concluded that there was potential for third parties to make claims against employees.

- 3.5 HSE found no evidence that the 2003 amendment has led to any claims against employees, but the potential for such claims was there.
- 3.6 Regulation 22 of the 1999 Regulations contains the civil liability provisions.
- 3.7 The amendments made by the 2006 Regulations exclude the right of third parties to bring civil actions against employees, extending to them the same rights as exist for employers.

4. **Legislative Background**

- 4.1 The 1999 Regulations implemented aspects of the EC Framework Directive on health and safety (89/391/EEC) (“the EC Framework Directive”).
- 4.2 The 2003 amendments to the 1999 Regulations and to the Fire Precautions (Workplace) Regulations 1997 were offered by the UK to the European Commission in 2001 to address their concerns over the implementation of the EC Framework Directive. Failure to make the necessary amendments could have led to infraction proceedings.
- 4.3 The 2003 amendments enabled employees to claim damages from their employer in a civil action, where they suffered injury or illness as a result of the employer being in breach of MHSWR. Similar provisions were made as regards duties owed by employees.
- 4.4 In 2004 concerns were raised about the 2003 amendments to the 1999 Regulations insofar as they related to employees. The main focus was that the amended 1999 Regulations as constructed would permit claims against employees by third parties who are affected by their work activity, e.g. members of the public. This had not been the policy intention when the 2003 amendments were made.

5. **Extent**

- 5.1 This instrument applies to Great Britain.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy background**

- 7.1 It was noted that while the civil liability placed on employers (by the 2003 amendments) was restricted to actions for damages brought by their employees, the liability on employees was drawn more widely with the opening up of actions by third parties.

- 7.2 HSE received its own Counsel's Opinion on issues concerning employee liability in October 2004 which confirmed that third parties would have the right to bring civil claims against employees for personal injury caused by a breach of duty under the 1999 Regulations. No evidence was found to indicate that such action was being taken, but future such action could not be ruled out.
- 7.3 HSC/E's underlying policy intention in placing a civil liability on employees for a breach of their duties under the 1999 Regulations (the amendment in 2003) was to promote employee responsibility and to ensure that liability was placed on the person who caused the breach. The intention was that the breach by the employee would be actionable by a fellow employee or their employer; it was not intended to give rise to actionable claims against employees by third parties.
- 7.4 These amendments are proposed to remedy the unintended consequences of the 2003 amendments.

8. **Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 The impact on the public sector is none.

9. **Contact**

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