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STATUTORY INSTRUMENTS

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**1994 No. 2865**

**HEALTH AND SAFETY**

**The Management of Health and Safety  
at Work (Amendment) Regulations 1994**

<i>Made</i>	- - - -	<i>7th November 1994</i>
<i>Laid before Parliament</i>		<i>10th November 1994</i>
<i>Coming into force</i>	- -	<i>1st December 1994</i>

The Secretary of State, in exercise of the powers conferred on him by sections 15(1) and 47(2) of, and paragraphs 7 and 8(1) of Schedule 3 to, the Health and Safety at Work etc. Act 1974(1) and of all other powers enabling him in that behalf, and for the purpose of giving effect without modifications to the proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the said Act of 1974 after the carrying out by the Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Management of Health and Safety at Work (Amendment) Regulations 1994 and shall come into force on 1st December 1994.

**Amendment of the Management of Health and Safety at Work Regulations 1992**

2.—(1) The Management of Health and Safety at Work Regulations 1992(1) (in these Regulations referred to as “the 1992 Regulations”) shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 1(2) of the 1992 Regulations there shall be added the following definitions—

(a) before the definition of “the assessment”:

““the 1978 Act” means the Employment Protection (Consolidation) Act 1978;” and

(b) after the definition of “fixed-term contract of employment”:

““given birth” means “delivered a living child or, after twenty-four weeks of pregnancy, a stillborn child”;

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

“maternity leave period” in relation to an employee is the period referred to in section 33(1) of the 1978 Act<sup>(2)</sup>;

“new or expectant mother” means an employee who is pregnant; who has given birth within the previous six months; or who is breastfeeding;”

(3) After regulation 13 of the 1992 Regulations the following provisions shall be added:—

“**13A.**—(1) Where—

- (a) the persons working in an undertaking include women of child-bearing age; and
- (b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any processes or working conditions, or physical, biological or chemical agents, including those specified in Annexes I and II of Council Directive 92/85/EEC<sup>(3)</sup> on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding,

the assessment required by regulation 3(1) shall also include an assessment of such risk.

(2) Where, in the case of an individual employee, the taking of any other action the employer is required to take under the relevant statutory provisions would not avoid the risk referred to in paragraph (1) the employer shall, if it is reasonable to do so, and would avoid such risks, alter her working conditions or hours of work.

(3) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer shall, subject to section 46 of the 1978 Act, suspend the employee from work for so long as is necessary to avoid such risk.

(4) In paragraphs (1) to (3) references to risk, in relation to risk from any infectious or contagious disease, are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.

**13B.** Where—

- (a) a new or expectant mother works at night; and
- (b) a certificate from a registered medical practitioner or a registered midwife shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate

the employer shall, subject to section 46 of the 1978 Act, suspend her from work for so long as is necessary for her health or safety.

**13C.**—(1) Nothing in paragraph (2) or (3) of regulation 13A shall require the employer to take any action in relation to an employee until she has notified the employer in writing that she is pregnant, has given birth within the previous six months, or is breastfeeding.

(2) Nothing in paragraph (2) or (3) of regulation 13A or in regulation 13B shall require the employer to maintain action taken in relation to an employee—

- (a) in a case—
  - (i) to which regulation 13A(2) or (3) relates; and
  - (ii) where the employee has notified her employer that she is pregnant,

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<sup>(2)</sup> 1978 c. 44; section 33 was substituted by section 23 of, the Trade Union Reform and Employment Rights Act 1993 c. 19.

<sup>(3)</sup> OJ No. L348, 28.11.92, p.1.

where she has failed, within a reasonable time of being requested to do so in writing by her employer, to produce for the employer's inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant;

(b) once the employer knows that she is no longer a new or expectant mother; or

(c) if the employer cannot establish whether she remains a new or expectant mother.”

(4) Regulation 14 of the 1992 Regulations shall be amended by inserting in paragraph (1)(a), after “obligations”—

“other than those in regulations 13A to 13C,”.

(5) Regulation 15 shall be amended by substituting therefor the following regulation:

“**15.**—(1) Breach of a duty imposed by these Regulations shall not confer a right of action in any civil proceedings.

(2) Paragraph (1) shall not apply to any duty imposed by these Regulations on an employer to the extent that it relates to risk referred to in regulation 13A(1) to an employee.”.

Signed by order of the Secretary of State.

Department of Employment.  
7th November 1994

*Phillip Oppenheim*  
Parliamentary Under Secretary of State,

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

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

1. These Regulations amend the Management of Health and Safety at Work Regulations 1992 (the principal Regulations) so that they give effect in Great Britain, in combination with certain provisions of the [Trade Union Reform and Employment Rights Act 1993](#)(c. 19) to Articles 4 to 7 of Council Directive [92/85/EEC](#) (OJNo. L348, 28.11.92, p.1) on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
2. The Regulations amend regulation 1(2) of the principal Regulations by adding a definition of “new or expectant mother” and other definitions.
3. The Regulations add a new regulation 13A to the principal Regulations which—
  - (a) by paragraph (1), provides that an assessment of risk to health and safety at work made by an employer under regulation 3(1) shall include, in certain circumstances, an assessment of risk, by reason of her condition, to the health and safety of a new or expectant mother from any processes or working conditions, or physical, biological or chemical agents;
  - (b) by paragraphs (2) and (3), prescribes steps which an employer must take to avoid the risk; and
  - (c) by paragraph (4) describes the meaning of “risk” in the regulation.
4. The Regulations add a new regulation 13B to the principal Regulations which requires an employer of a new or expectant mother who works at night, where a medical certificate shows it to be necessary for her health and safety that she should not be at work, to suspend her from work if there is no suitable daytime work.
5. The Regulations add a new regulation 13C to the principal Regulations which limits the circumstances in which the duties imposed by regulation 13A(2) and (3) and 13B subsist.
6. The Regulations amend regulation 14 of the principal Regulations so as to exclude regulations 13A to C from the requirements of the principal Regulations from which an exemption may be given in the interests of national security.
7. The Regulations amend regulation 15 of the principal Regulations by excepting, from the exclusion of a right of action for breach of a duty imposed by the principal Regulations, a duty imposed on an employer to the extent that it relates to risk referred to in regulation 13A(1) to an employee.