

EXPLANATORY MEMORANDUM TO
THE ENTERPRISE AND REGULATORY REFORM ACT 2013 (HEALTH
AND SAFETY) (CONSEQUENTIAL AMENDMENTS) ORDER 2013

2013 No. 1666

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department of Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This order removes references to section 47 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”) in several sets of regulations. These references will not be necessary when section 69 of the Enterprise and Regulatory Reform Act 2013 (“the 2013 Act”) is brought into force.

2.2 This instrument is one of two which implement the provisions of section 69 of the 2013 Act. The other is the Health and Safety at Work etc. Act 1974 (Civil Liability) (Exceptions) Regulations 2013 (SI 2013/1667).

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

None.

4. Legislative Context

4.1 The 2013 Act received Royal Assent on 25 April 2013. Section 69 of that Act amended section 47 of the 1974 Act and is to be brought into force on 1 October 2013. Previously, section 47(2) of the 1974 Act provided a right of action for breach of a duty contained in a health and safety regulation (a regulation made under section 15 of the 1974 Act) if that breach caused damage. In addition, section 47(1)(b) provided that nothing in Part 1 of the 1974 Act affected the extent to which a breach of a duty in one of the “existing statutory provisions”¹ gave rise to a right of action.

4.2 As amended, section 47 provides that there is no right of action for a breach of a statutory duty contained in either a health and safety regulation or one of the existing statutory provisions except to the extent that regulations made under section 47 make provision for this.

¹ The “existing statutory provisions” are statutes listed in Schedule 1 to the 1974 Act that existed before the Act came into force (for example the Factories Act 1961) and secondary legislation made under those statutes. The effect of this was that if a right of action for breach of statutory duty existed (or had been excluded) under one of these statutes the position was not altered after the 1974 Act was enacted.

4.3 This instrument removes references in several other regulations to section 47 of the 1974 Act. In two cases,² the references to section 47 were included as those regulations created exceptions to the general rule that there was a right of action for breach of statutory duty. The references are no longer required. The other two sets of regulations³ were made under section 2(2) of the European Communities Act 1972 as well as section 15 of the 1974 Act. Section 47 was explicitly applied to provisions within those sets of regulations which relied on section 2(2) vires. This is no longer necessary, as amended section 47 applies to a statutory duty contained within a statutory instrument whether that instrument relies solely on section 15 vires or on section 15 together with additional vires.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

• *What is being done and why*

7.1 In his independent report '*Reclaiming health and safety for all: An independent review of health and safety legislation*', published in November 2011, Professor Löfstedt identified the potential unfairness that arises, in his view, where health and safety at work regulations impose a strict liability on employers, making them legally responsible to pay compensation despite having done all that was reasonable to protect their employees. Professor Löfstedt recommended that regulatory provisions which impose strict liability should be reviewed.

7.2 In its response to the report, the Government confirmed its recognition of this potential unfairness and committed to look at ways to redress the balance, in particular by preventing civil liability from attaching to a breach of such provisions.

7.3 Section 69 of the 2013 Act fulfils this commitment by amending section 47 of the 1974 Act with the effect that there will be no right to bring a claim for breach of statutory duty in relation to a breach of a duty contained in health and safety regulations or the existing statutory provisions. This approach is intended to address the potential unfairness identified by Professor Löfstedt, as in future claimants will only be able to bring claims under the common law (principally in negligence). This means that the duty holder, usually an employer, will have the opportunity to defend themselves on the basis of having taken reasonable steps to avoid, or reduce, the risk of accidents.

² The Railway Safety(Miscellaneous Provisions) Regulations 1997 (S.I. 1997/553) and the Construction (Design and Management) Regulations (S.I. 2007/320).

³ The Genetically Modified Organisms (Contained Use) Regulations 2000 (S.I. 2000/2831) and the Chemicals (Hazard Information and Packaging for Supply) Regulations 2009.(S.I. 2009/716).

7.4 For the purpose of legal certainty this instrument removes references to section 47 of the 1974 Act which will become redundant when section 69 of the 2013 Act comes into force.

- **Consolidation**

7.5 The amendments contained in the Order are minor changes, so the Department does not consider consolidation to be necessary.

8. Consultation outcome

No consultation has been carried out because the Order only makes consequential changes required to update existing provisions when section 69 of the 2013 Act is brought into force.

9. Guidance

The Department does not intend to issue guidance alongside this Order.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is none.

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11. Regulating small business

The legislation applies to small business but does not impose any new requirements.

12. Monitoring & review

This instrument revokes regulations which are redundant, so no monitoring or review is necessary.

13. Contact

Sarah Mallagh at the Health and Safety Executive (tel: 0151 951 4560); or email: sarah.mallagh@hse.gsi.gov.uk can answer any queries regarding the instrument.