

<p>Title: The Health and Safety at Work etc. Act 1974 (Civil Liability) (Exceptions) Regulations 2013</p> <p>PIR No: HSE-PIR2023-004</p> <p>Original IA/RPC No: N/A</p> <p>Lead department or agency: Department for Work and Pensions</p> <p>Other departments or agencies: Health and Safety Executive</p> <p>Contact for enquiries: Jeremy Bevan (jeremy.bevan@hse.gov.uk)</p>	Post Implementation Review
	Date: 10/08/2023
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 01/10/2013
	Recommendation: Keep
	RPC opinion: N/A

1. What were the policy objectives of the measure? (Maximum 5 lines)

The Enterprise and Regulatory Reform Act 2013 (ERRA) removed the link between a breach of health and safety legislation and the right to bring a civil action for damages. These regulations reinstated an exception repealed the same day by ERRA s69, preserving the existing right of pregnant workers and new mothers to bring a civil action for damages consequent on a breach of statutory duty. This ensured continued effective transposition of two European Directives.

2. What evidence has informed the PIR? (Maximum 5 lines)

Review of relevant case law on legal databases found no relevant data: such cases are usually settled out of court. Stakeholder engagement indicates continuing concern about employer compliance with *criminal* law duties (e.g. for risk assessment during the Covid pandemic), and they may be apprehensive about any erosion of REUL-derived maternity law duties. Further work to determine impacts is likely to be disproportionate, given the lack of evidence available.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The intention was to ensure the rights of workers protected under Article 12 of the Pregnant Workers Directive 92/85/EEC and Article 5 of the Temporary Agency Work Directive (2008/104/EC) were preserved. Regulations implementing the Directives' requirements remain in force unamended as Retained EI Law (REUL), and so the policy objective continues to have full effect.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: **Edward Woolley**

Date: 16/08/2023

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? (Maximum 5 lines)

It was anticipated that the regulatory changes would have no effect, as the measure preserved the status quo for the group of workers it covered.

5. Were there any unintended consequences? (Maximum 5 lines)

None have been identified.

6. Has the evidence identified any opportunities for reducing the burden on business?
(Maximum 5 lines)

No, though the downward trend in the number of workplace injury claims noted in the previous PIR continues. It is not possible from the evidence (see 2 above) to determine if this SI assisted in bringing any cases. Recent EU case law held employers to must, as soon as they are aware a worker is pregnant, make an individual assessment of risk, and review it as the pregnancy develops, a position HSE has adopted. This is likely to reduce flow-through to civil actions.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business? (Maximum 5 lines)

N/A, as the UK has now left the EU.

Annex 1 Evidence review

Data from case law databases and other sources

1. Government Legal Department (GLD) reviewed case law on the Westlaw and Lexis Nexus case law databases to gauge the extent to which the regulations were cited in relevant civil liability claims settled through the civil court system. No citations were found. GLD additionally observed that the number of cases for breach of *any* criminal law health and safety duties towards pregnant women/new and nursing mothers was disproportionately low, as was also the case for matters brought to Employment Tribunal.
2. GLD offered two explanations for this lack of evidence. Firstly, the sensitivity of such cases makes it likely that employers are predisposed to settle before the case reaches the courts and possibly attracts unwelcome publicity. Cases settled pre-trial feature in aggregate data available from the UK Claims Portal, but it is not possible to mine the data for information on precise legal breaches alleged.

Clarification of duties - stakeholder engagement

3. The Covid-19 pandemic led to significant concern among maternity employment rights stakeholders about employer compliance with *criminal law* health and safety responsibilities towards pregnant women and new/nursing mothers. In particular, they expressed concern about the adequacy of risk assessment towards this group of workers. HSE took steps to reiterate its guidance on this topic to employers early in the pandemic.
4. Case law from the European Court of Justice on risk assessment for this group of workers has also clarified employer responsibilities for risk assessment. A recent decision emphasized that employers have a responsibility for both individualised and continuing assessment throughout the period of pregnancy. HSE has amended its guidance to reflect this decision. This more focused attention to the individual should reduce the likelihood of breaches and hence the flow-through to civil actions.
5. HSE's assessment of the current climate is that any further changes at present to the law as it relates to health and safety protections for this group of workers could be counter-productive, given the above recent work to clarify the responsibilities of employers. Stabilising the legislative framework post-EU Exit is a key priority for HSE in order to minimise employer uncertainty.

Wider legal reforms

6. Continuing reforms to the civil law regime following publication of Lord Jackson's 2009 *Review of Civil Litigation Costs* have led to a downward trend in work-related injury claim numbers, as measured by claims lodged with the online claims portal (a larger figure than the number that eventually proceed to court). This is a further factor making it difficult to isolate any possible effects due to the regulations.
7. Data from DWP's Compensation Recovery Unit (CRU) indicates that claims for *all* causes of injury or illness against Employers' Liability insurance policies are now running at roughly 40% of the number in 2013 – just under 44,000 for the period April 2022 - March 2023, compared to just over 105,000 for the period April 2013 -

March 2014. It is impossible to disaggregate from this data any effects that may be due to implementation of the Health and Safety at Work etc. Act (Civil Liability) (Exceptions) Regulations 2013, though we would expect these effects to be nil or negligible given that the regulations preserved the status quo.