

EXPLANATORY MEMORANDUM TO
THE FIRE SAFETY (EMPLOYEES' CAPABILITIES) (ENGLAND) REGULATIONS
2010

2010 No. 471

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument requires employers to take employees' capabilities as regards health and safety, so far as they relate to fire, into account when entrusting tasks to them.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Regulatory Reform (Fire Safety) Order 2005 (S.I. 2005/1541; "the Order") forms the legal framework for the general fire precautions required for non-domestic premises. Article 24 of the Order confers the power on the Secretary of State to make provision, by regulations, as to precautions to be taken or observed in relation to the risk to relevant persons as regards premises in relation to which the Order applies. This instrument is made under that power.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - *What is being done and why*
 - 7.1 Under article 6(3)(b) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ("the Framework Directive"), an employer must "where he entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety".
 - 7.2 This requirement is intended to ensure that all tasks are allocated to employees with the necessary skill and experience to do them safely. It applies to all tasks carried out in the course of the business, not just those (such as carrying out risk assessments) which relate directly to health and safety.

7.3 This provision was implemented, as regards England, Wales and Scotland, by regulation 11(1) of the Management of Health and Safety at Work Regulations 1992 (S.I. 1992/2051), which was replaced by article 13(1) of the Management of Health and Safety at Work Regulations 1999 (S.I. 1992/3242). Both of those instruments were made under section 2 of the European Communities Act 1972 and powers in the Health and Safety at Work Act 1974.

7.4 Under article 47(1) of the Order, the Health and Safety at Work Act 1974 and any regulations made under that Act do not apply to premises to which the Order applies so far as they relate to any matter in relation to which requirements are or could be imposed under the Order. This has the effect of disapplying regulation 13(1) of the Management of Health and Safety at Work Regulations 1999, so far as they relate to fire safety. In order to ensure that article 6(3)(b) of the Framework Directive is completely implemented, it is necessary to make regulations replicating the duty in regulation 13(1) of the Management of Health and Safety at Work Regulations 1999, so far as it relates to fire safety, and this is the effect of this instrument.

- ***Consolidation***

7.5 This is not an amending instrument.

8. Consultation outcome

8.1 A consultation paper *Proposals to complete the transposition of the Framework Directive on Health and Safety of Workers 89/391/EEC into the Regulatory Reform (Fire Safety) Order 2005* was published in July 2009, with a closing date for comments of 6 October 2009. The consultation paper is at <http://www.communities.gov.uk/publications/fire/consultationhealthsafetyrro>. A summary of responses has been published and can be found at <http://www.communities.gov.uk/publications/fire/consultationframeworkrro>. 31 responses were received. 27 respondents agreed with the Department's preferred option of making regulations under article 24 of the Regulatory Reform (Fire Safety) Order 2005.

9. Guidance

9.1 Because this instrument will not impose any substantive additional burdens, it is not proposed to issue any specific guidance, although it will be drawn to the attention of fire and rescue authorities, and the Department's guidance on enforcement will be amended to explain the meaning of "capabilities".

10. Impact

10.1 Careful consideration of the consultation responses has not identified any significant impact for employers. There was never any intention that regulation 13(1) of the Management of Health and Safety at Work Regulations 1999 should not apply as regards fire safety and these regulations simply re-impose a duty which was already on employers prior to the implementation of the Order. As such this instrument has no significant impact on business, charities or voluntary bodies. An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 As stated in paragraph 10.1 above, the Department does not consider that this instrument has any significant impact on business, including small businesses.

12. Monitoring and review

12.1 Since this instrument is intended to remedy a minor gap in the implementation of the Framework Directive, the Department does not consider that any specific review of it is necessary.

13. Contact

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