1994 No. 478

HEALTH AND SAFETY

Management of Health and Safety at Work (Amendment) Regulations (Northern Ireland) 1994

Made . . . . . *7th December 1994*

Coming into operation . . *9th January 1995*

The Department of Economic Development, being the Department concerned(**a**), in exercise of the powers conferred on it by Articles 17(1), (2) and (5) and 43(2) of, and paragraphs 6 and 7(1) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**b**) and of every other power enabling it in that behalf, after consultation in accordance with Article 46(1) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appear to it to be appropriate, 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 (Northern Ireland) 1994 and shall come into operation on 9th January 1995.

Amendment of the Management of Health and Safety at Work Regulations (Northern Ireland) 1992

2.—(1) The Management of Health and Safety at Work Regulations (Northern Ireland) 1992(**c**) (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 No. 2 Order" means the Industrial Relations (No. 2) (Northern Ireland) Order 1976';

(*b*) after the definition of "fixed-term contract of employment":

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

"maternity leave period" in relation to an employee is the period referred to in Article 14(1) of the No. 2 Order(**d**);

(**a**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**b**) S.I. 1978/1039 (N.I. 9)
(**c**) S.R. 1992 No. 459
(**d**) S.I. 1976/2147 (N.I. 28); Article 14 was substituted by Article 3 of, and Schedule 1 to, S.I. 1993/2668 (N.I. 11)

"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(**a**) 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 Article 27 of the No. 2 Order (right to offer of alternative work), suspend the employee from work for so long as it 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 Article 27 of the No. 2 Order (right to offer of alternative work), 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.

(**a**) O.J. No. L348, 28.11.92, p. 1