

# The Enterprise and Regulatory Reform Bill: Clause 62 civil liability for breach of health and safety duties

Thompsons' update

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## Amendment 80A removes Clause 62

The House of Lords has passed an amendment to the Enterprise and Regulatory Reform Bill that leaves out the part of Clause 62 (paragraph 3) that would remove civil liability from breaches of duty imposed by health and safety regulations. Amendment 80A reinstates that right of action.

The Labour amendment attempted to defeat the fundamental purpose of Clause 62 - neutering rather than removing the clause. All Conservative and Liberal Democrat Peers who voted tried to defeat the Labour amendment but it was passed by a narrow majority of two.

The Bill, as amended, will have a third reading in the House of Lords later this month and will then return to the House of Commons. In the House of Commons the government is likely to use its inbuilt majority (with Lib Dem support) to try to restore Clause 62 to its original form. Then the Bill would go into 'ping pong' between the Houses.

## Background

Clause 62 (3) (previously Clause 61) says:

(3) For subsection (2) substitute —

(2) Breach of a duty imposed by a statutory instrument containing (whether alone or with other provision) health and safety regulations shall not be actionable except to the extent that regulations under this section so provide.

(2A) Breach of a duty imposed by an existing statutory provision shall not be actionable except to the extent that regulations under this section so provide (including by modifying any of the existing statutory provisions).

(2B) Regulations under this section may include provision for  
(a) a defence to be available in any action for breach of the duty mentioned in subsection (2) or (2A);

(b) any term of an agreement which purports to exclude or restrict any liability for such a breach to be void.

Those amendments would overturn law in place since 1898 and result in:

1. The end of employers being automatically liable to pay compensation where there is really no excuse (strict liability cases) where, say, a failure to adequately guard a machine leads to a traumatic amputation.
2. The end of injured employees being able to rely on or refer to a breach of health and safety regulations, putting the onus on the worker injured through no fault of their own to prove foreseeability – that the employer knew or ought to have known that something was unsafe.
3. The end of enforcement in 98.7% of health and safety breaches. There are 78,000 civil claims for compensation following accidents at work every year but only about 1,000 HSE criminal prosecutions a year – over 90% of health and safety regulation enforcement is through the civil courts.