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REGULATORY IMPACT ANALYSIS (RIA)

Proposal to update and rename the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 as the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations

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1 Foreword

The Health and Safety Authority has prepared this screening Regulatory Impact Analysis (RIA) under the terms of the revised RIA Guidelines – “How to conduct a Regulatory Impact Analysis” (Department of the Taoiseach, June 2009).

This review of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 aims to ensure the maximum protection for workers in the modern extractive industry through the update of the relevant legal instruments. Two options were considered in the analysis, retaining the current legislation or new revised onshore and offshore drilling regulations.

This Regulatory Impact Analysis (RIA) has been prepared to assess the proposal to update and rename the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 and rename them as the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations . The RIA describes the range of options considered and the potential impacts on key stakeholders. This analysis recommends a simple updating of the regulations to take account of other legislative changes.

The revised regulations will re-transpose the relevant provisions of Council Directive 92/91/EEC on the minimum requirements for improving safety and health protection of workers in the mineral extracting industry through drilling and in conjunction with other proposed legislative changes will facilitate the repeal of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 (S.I. No. 467 of 1997).

It is the Authority’s view that the proposed Regulations will be welcomed by the onshore and offshore drilling industries as they will be specific and bring clarity to those operating in those industries on the requirements of Council Directive 92/91/EEC.

2 Policy Context

As part of the national policy to review and rationalise existing legislation, a Repeals/Revocations/Replacement/Consolidation process was provided for in the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005). The need for progress in this process was highlighted in the Oireachtas debates during the passing of the Act in 2005.

The Safety, Health and Welfare at Work Act 2005 together with the Safety, Health and Welfare at Work (General Application) Regulations 2007 provide a framework of core health and safety responsibilities for all sectors. It is intended that individual sectors should align and consolidate their regulations within this framework and draft supplementary regulations as required to address specific hazards in each sector.

Ongoing and completed work to rationalise and modernize legislation in the Mining and Quarrying sectors have resulted in the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 become outdated and, to a significant extent, irrelevant. Therefore all of the issues to be addressed by this proposal are due to external factors. Ongoing and existing legislative change and consolidation mean that large parts including entire sections of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 no longer apply. The Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 gave effect to Council Directives 92/91/EEC on the minimum requirements for improving safety and health protection of workers in the mineral extracting industry through drilling and to Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries. Proposed and current legislation requires that only Council Directive 92/91/EEC is addressed by the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations.

Another issue that has emerged is a number of obsolete references to enactments and regulations within the text of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 that require updating, and this will be addressed in the proposed Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations.

3 Objectives

The primary objective of this proposal is to improve protection for those working in and affected by the drilling industry by simplifying the legislative basis for implementing and enforcing safety, health and welfare at work requirements. This objective is in line with both the Government's Better Regulation programme and the European Commission's objective of simplifying the legislative framework and reducing administrative demands on companies (Community Strategy 2007-2012 on Health and Safety at Work).

To achieve the primary objective of this proposal it is necessary to amend and edit the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 so that it can be understood and applied in the industries to which it still has relevance and that references to other enactments and regulations are correct. The legislative basis for implementing and enforcing safety, health and welfare at work requirements will thereby be simplified.

An associated and important objective is to ensure that the national legislation complies with current EU Directives, and the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations will adequately transpose Council Directives 92/91/EEC on the minimum requirements for improving safety and health protection of workers in the mineral extracting industry through drilling.

Another objective to be achieved by the review is offering the stakeholders within the onshore and offshore drilling industries the opportunity to shape and tailor any new regulations so that they are fully relevant.

4 Options

- Option 1: Do nothing - Continue to enforce the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997.
- Option 2: Develop amended Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations.

The Authority must address the current situation whereby the existing Regulations contain large sections of out of date and anomalous provisions. The Authority has a mandate to review and rationalise existing legislation under the repeals / revocations / replacement / consolidation process provided for in the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005).

Because there is no proposed change to the legislative content of that part of the regulations that address Council Directive 92/91/EEC the option to do nothing will not be considered further in this analysis as the effort to be expended to redraft these regulations is minimal.

On this basis it is recommended to proceed with Option 2 which would require:

- renaming the regulations as the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations;
- the deletion of definitions and schedules that seek to address Council Directive 92/104/EEC as this is addressed by the Safety, Health and Welfare at Work (Quarry) Regulations, 2008 as amended by the Safety, Health and Welfare at Work (Quarries) (Amendment) Regulations 2013, and the proposed consolidated replacement regulations, and the proposed Safety, Health and Welfare at Work (Mining) Regulations;
- The updating of all remaining legislative references within the revised Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations.

The impacts of Option 2 are assessed in the following section.

5 Impact analysis

Option 1.

Retaining the current arrangements involves no extra benefits or costs over and above those currently prevailing. However, in the longer term, this option means that the onshore and offshore drilling industries must continue to operate within a legislative document that is not fit for purpose. Because of the limited effort required to modernize the legislation and the

lack of clarity in the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 Option 1 is not considered a reasonable or long term consideration.

Option 2.

The Authority has a mandate to review and rationalise existing legislation under the repeals / revocations / replacement / consolidation process provided for in the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) and, as it is a relatively simple exercise to update and modernize the legislation, it is recommended to proceed with Option 2, the impacts of which are assessed below:

Health and safety: There will be no diminution of existing health, safety and welfare standards resulting from this process to modernize the legislation and remove unnecessary definitions and schedules. Amended regulations should facilitate improved health and safety management through update and clarification of the legislation that applies.

Business: The amended regulations will not create any new obligations or costs for employers as the remaining text of the regulations are already enacted. There may be a reduction in the regulatory burden as there will be greater clarity of what will be required by the regulations and there will be an opportunity to tailor the amending regulations to the specific needs of the onshore and offshore drilling industries through the consultation process.

Enforcement: The proposed option should improve the efficiency of the enforcement process as inspectors will operate on the basis of a simplified legislative framework.

Other impacts: It is not expected that the proposed option will have impacts on national competitiveness, socially excluded and vulnerable groups, the environment, consumers and competition, the rights of citizens, compliance burdens or North-South and East-West relations.

6 Consultation

In the drafting of proposals for regulations and codes of practice, the Authority is obliged under Section 57 (2) of the Safety, Health and Welfare at Work Act, 2005 to consult “any other person or body that appears to the Authority to be appropriate having regard to the proposals to be submitted or as directed by the Minister”.

It is not the intention of the Authority to impose any additional regulatory burden by modernizing the legislative text and renaming as the Safety, Health and Welfare at Work (Onshore and Offshore Drilling) Regulations. The requirements would not change but would be specific to the onshore and offshore drilling industries.

The proposed draft Regulations and this RIA will be made available on the Authority’s website for a one month period in accordance with the Authority’s standard public consultation policy. The selected stakeholders overleaf will be contacted directly by the Authority and invited to make submissions.

Stakeholders:

- Internal stakeholders within the Authority

- Department of Communications, Energy and Natural Resources
- Oil and Gas Producers with interests in Ireland
- Oil and Gas Prospecting companies with interests in Ireland
- ICTU

If this procedure was followed then submissions would be assessed by the Authority and relevant additions or amendments considered for incorporation in the proposed Regulations and reflected in an updated RIA. The revised Regulations and RIA will be submitted to the Legislation and Guidance Sub-Committee of the Board and the Board of the Authority for consideration and approval. Any resultant proposals for legislative change will be submitted to the Minister at the Department of Jobs, Enterprise and Innovation for consideration with a view to formal legal settlement by the Office of the Parliamentary Counsel to the Government.

7 Review

The Authority will maintain and monitor records of accident reports and inspection and enforcement actions in the onshore and offshore drilling sector to ensure that there is no diminution in the protection of the health and safety of workers arising from the proposed action.