

Draft
Safety, Health and Welfare at Work
(Reporting of Accidents, Illnesses and Dangerous Occurrences) Regulations 2012

I,, Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 58 of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) as adapted by the Enterprise, Trade and Innovation (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 245 of 2011) and for the purpose of giving further effect to Council Directive 89/391/EEC of 12 June 1989¹ on the introduction of measures to encourage improvements in the safety and health of workers at work and after consultation with the Health and Safety Authority, hereby make the following regulations:

Citation and commencement.

1. (1) These Regulations may be cited as the Safety, Health and Welfare at Work (Reporting of Accidents, Illnesses and Dangerous Occurrences) Regulations 2012.

(2) These Regulations shall come into operation on 2012.

Interpretation

2. (1) In these Regulations-

"Act" means the Safety, Health and Welfare at Work Act 2005 (No.10 of 2005);

"dangerous occurrence" means an occurrence listed in Schedule 1 which occurs at any place of work other than at a mine within the meaning of the Mines and Quarries Act 1965 (No. 7 of 1965);

"occupational illness" means an illness, that is the direct result of a discrete event including an accident, listed in an approved list.

"pipeline" means a pipe or system of pipes used for the conveyance of relevant fluid across the boundaries of premises, together with any apparatus for inducing or facilitating the flow of relevant fluid through, or through a part of, the pipe or system, and any valves, valve chambers, pumps, compressors and similar works which are annexed to, or incorporated in the course of, the pipe or system;

"responsible person" means—

(a) in the case of any event required to be reported under Regulation 3 involving an employee at work, his or her employer;

(b) in any other case, except where subparagraph (c) applies, the person having control of a place of work for the purpose of any trade, business or undertaking (whether for profit or not) at which the accident, occupational illness or dangerous occurrence required to be reported under Regulation 3 occurs; and

¹ OJ No. L183, 29.6.1989, p.1

(c) where a self-employed person is fatally injured at a place of work, the person who owns the place of work or, in the case of a tenancy existing in respect of the place of work, the tenant.

(2) In these Regulations, a reference to an accident, an occupational illness or a dangerous occurrence arising at or in connection with work includes a reference to an accident, illness or dangerous occurrence which is attributable to the manner of conducting the undertaking concerned or to any article or substance used for the purposes of the undertaking concerned or to the condition of any part of the place of work where the undertaking concerned is carried on.

Reporting of Accidents, Illnesses and Dangerous Occurrences

3. (1) Where—

- (a) an employee dies as a result of an accident at their place of work or in the course of carrying out their work in a location other than their normal place of work,
- (b) an employee, as a result of an accident at their place of work or in the course of carrying out their work in a location other than their normal place of work, is prevented from performing their normal work for more than three consecutive days, excluding the day of the accident but including any days which would not have been working days,
- (c) an employee notified under (b) dies within one year as a result of that accident at their place of work or in the course of carrying out that work in a location other than their normal place of work,
- (d) any person who is not at work but who as a result of an accident related to a place of work or a work activity dies, within one year of the accident,
- (e) any person who is not at work but who as a result of an accident related to a place of work or a work activity suffers any injury or condition which, due to the nature or severity of the injury or condition, results in the person being taken from the site of the accident to a hospital for treatment in respect of that injury,
- (f) A person dies or is prevented from performing their normal work for more than three consecutive days as a result of an occupational illness at a place of work, or
- (g) there is a dangerous occurrence,

the responsible person shall—

- (i) in the case of a death, supply the Authority by the quickest practicable means with the name of the deceased, brief particulars and the location of

the accident and, within 5 working days of the death, send a written report to the Authority in the approved form,

(ii) in the case of a non-fatal injury, occupational illness or dangerous occurrence, as soon as reasonably practicable and not later than 10 working days after the event, send a written report to the Authority in the approved form, or

(iii) in the case of a death within one year of a notified non fatal injury, as soon as practicable, within 5 working days of the death, send a written report to the Authority in the approved form,

(2)(a) Where an accident which is reportable under paragraph (1) occurs and causes loss of life to a person no person shall disturb the place where it occurred or tamper with anything thereat before—

(i) that place has been inspected by an inspector, or

(ii) the expiration of three clear days after notification, in accordance with paragraph (1), of the accident.

(b) Nothing in this Regulation shall prohibit the doing of anything by or with the consent of an inspector, or anything required to be done in compliance with any other statutory provision.

(c) In any proceedings taken in respect of a contravention of this paragraph consisting of the doing of any act, it shall be a defence to prove that the doing of the act was necessary for securing the safety or health of any person.

Keeping of Records

4. (1) The responsible person shall keep a record of any accident, occupational illness or dangerous occurrence which is required to be reported under Regulation 3 to the Authority, for a period of ten years from the date of the accident or dangerous occurrence, or the diagnosis of the illness.

(2) A record required to be kept under this Regulation shall contain the same information as in the approved form referred to in Regulation 3(1).

(3) A record required to be kept under this Regulation shall be kept at the place where the work to which it relates is carried on or, if this is not practicable, at the usual place of business of the responsible person.

(4) Where an employer is required by or under statute (other than the Act) to keep a record of injuries, illnesses or deaths at work, such a record shall be sufficient compliance with paragraph (1) if it contains the particulars specified in paragraph (2).

(5) Where the Authority requests a responsible person to send it extracts from a record required to be kept by this Regulation, the responsible person shall comply with such a request as soon as possible.

Non-Application of Regulations

5. The provisions of these Regulations do not apply in a case where a person dies or is injured or suffers ill health and such person is a patient undergoing medical treatment carried out by a registered medical practitioner or a registered dentist when the death, injury or ill health occurs and the person is not undergoing treatment for an accident at a place of work, an occupational illness or an injury due to a dangerous occurrence.

Defence in Proceedings

6. It shall be a defence in any proceedings against any person for an offence under these Regulations for such person to prove that he or she was not aware of the accident, illness or dangerous occurrence in relation to which he or she was required by Regulation 3 to send a report to the Authority and that he or she had taken all reasonable steps to have such accident, illness or dangerous occurrence brought to his or her notice.

Examinations and Tests

7. (1) Where there is an accident, an occupational illness or a dangerous occurrence at a place of work and the Authority is satisfied that the accident, illness or occurrence may have been caused (whether wholly or partly) by any article, if the Authority considers it necessary for the proper investigation of the accident, illness or occurrence, it may, by a notice in writing, require the employer, self-employed person or the owner of the article concerned:—

(a) to have such article or part thereof, examined and tested forthwith by a competent person,

(b) to have a report of the results of the examination and test prepared and submitted to the employer, self-employed person or such owner, as may be appropriate, by the person by whom the examination and test was carried out, as soon as may be and in any case not later than 28 days after the completion of the examination and test, and

(c) to give to the Authority a copy of such report within seven days of its receipt in pursuance of subparagraph (b).

(2) A report required under paragraph (1) of this Regulation shall include particulars of—

(a) the manner in which the relevant examination was carried out,

(b) the method used when making tests,

(c) any defect which in the opinion of the person carrying out the examination could account for or contribute to any failure in the article examined, and

(d) such other matter as the Authority may specify when making the requirement.

(3) Where the Authority is not satisfied as to the adequacy of a report under this Regulation, or as to the competence of a person employed to make an examination and test referred to in this Regulation or as to the adequacy of such an examination and test, it may require the employer, self-employed person or owner of the article concerned to have it re-examined and tested at the expense of such employer, self-employed person or owner by a person nominated by the Authority, and where the Authority makes a requirement under this paragraph, such employer, self-employed person or owner shall give any necessary facilities for such re-examination and test.

(4) In any proceedings for an offence under this Regulation it shall be a good defence for the accused to prove that he or she used all due diligence to comply with the requirements of the relevant notice.

Revocation

8. Part X of and the Twelfth Schedule to the Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No. 44 of 1993) are revoked.

Schedule 1

Regulations 2 and 3

Prescribed Dangerous Occurrences

Vehicles, lifting and mobile machinery, etc.

1. (1) The collapse of, the overturning of, or the failure of any load-bearing part of—
 - (a) any lift or lifting equipment;
 - (b) any excavator; or
 - (c) any pile-driving frame or rig having an overall height, when operating, of more than seven metres.
- (2) The overturning of any vehicle or 'ride-on' mobile work equipment or its towing equipment.
- (3) The load shift or loss of load from—
 - (a) any vehicle;
 - (b) any mobile machine; or
 - (a) any towing equipmentcausing a serious risk to a person at work
- (4) The failure or malfunction of any lifting equipment associated with a diving project which puts a diver at risk.

Pressure and vacuum vessels

2. The explosion, collapse or bursting of any closed vessel, including a boiler or boiler tube, in which the internal pressure was above or below atmospheric pressure.

Explosion or fire

3. An explosion or fire occurring in any plant or place of work,

Escape of flammable substances

4. The sudden uncontrolled release of one tonne or more of highly flammable liquid, liquified flammable gas, flammable gas or flammable liquid above its boiling point from any system, plant or pipe-line.

Collapse of scaffolding

5. The collapse or partial collapse of any scaffold more than five metres high, including, where the scaffold is slung or suspended a collapse or part collapse of the suspension arrangements (including an outrigger) which causes a working platform or cradle to fall more than five metres.

Collapse of building or structure

6. Any unintended collapse or partial collapse of —

(a) any building or structure under construction, reconstruction, alteration or demolition, or of any falsework, involving a fall of more than five tonnes of material; or

(b) any building being used as a place of work, not being a building under construction, reconstruction, alteration or demolition.

Escape of a substance

7. The uncontrolled or accidental release or the escape of any substance, which, having regard to the nature of the substance and the extent and location of the release or escape, might have been liable to cause personal injury to any person.

Explosives

8. Any unintentional ignition or explosion of explosives.

Freight containers

9. (1) The failure of any container or of any load bearing part thereof while it is being raised, lowered or suspended.

(2) In this paragraph—

"container" means an article of transport equipment which is—

(a) of a permanent character and accordingly strong enough for repeated use, and

(b) designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading, and

(c) designed to be secured or readily handled or both, having corner fittings for these purposes, and

(d) of a size such that the area enclosed by the outer bottom corners is either

(i) if the container is fitted with top corner fittings, at least 7 square metres, or

(ii) in any case at least 14 square metres

and includes a container when carried on a chassis but does not include a vehicle or packaging or any article of transport equipment designed solely for use in air transport, or a swap body except when it is carried by or on board a sea-going ship and is not mounted on a road vehicle or rail wagon.

"corner fittings" means an arrangement of apertures and faces at either the top or the bottom or both at the top and the bottom of the container for the purposes of handling, stacking and securing or any of those purposes.

Pipe-lines

10. Either of the following incidents in relation to a pipe-line—

- (a) the bursting, explosion or collapse of a pipe-line or any part thereof;
- (b) the unintentional release of a substance whether it ignites or not, which by its nature is liable to cause personal injury to any person.

Carriage of dangerous goods by road

11. Any incident in which a vehicle or tank being used for the carriage of dangerous goods by road—

- (a) (i) overturns; or
(ii) suffers damage to the package, container, bulk container or tank in which the dangerous goods are being conveyed, and
- (b) in which there is, in relation to such a package, container, bulk container or tank —
 - (i) an uncontrolled release or escape of the dangerous goods being conveyed; or
 - (ii) a fire which involves the dangerous goods being conveyed.

Breathing apparatus

12. Any incident where breathing apparatus while being used to enable the wearer to breathe independently of the surrounding environment malfunctions in such a way as to be likely either to deprive the wearer of oxygen or, in the case of use in a contaminated atmosphere, to expose the wearer to the contaminant to the extent in either case of posing a danger to his health, but excluding such apparatus while it is being used in a mine or is being maintained or tested.

Overhead electric lines and underground electric cables

13. Any incident in which plant or equipment, or a person, either comes into contact with an overhead electric line or underground electric cable in which the voltage exceeds 200 volts or causes an electrical discharge from such an electric line or cable by coming into close proximity to it, unless in either case the incident was intentional, arising from or in connection with work activities.

Locomotives

14. Any accidental collision between a train and any other vehicle at a factory or at dock premises.

Bursting of vessel, etc.

15. The bursting of a revolving vessel, wheel, grindstone, or grinding wheel moved by mechanical power.

GIVEN under my Official Seal,

_____ 2012

Minister for Jobs, Enterprise and Innovation.

Public Consultation Draft

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations, which are made under the provisions of Section 8(2)(k) and paragraphs (37) and (39) of Schedule 7 of the Safety, Health and Welfare at Work Act 2005, specify the occupational accidents, illnesses and dangerous occurrences that are reportable to the Health and Safety Authority. The 2005 Act contains the following definitions that are relevant for the purposes of the Regulations –

“accident” means an accident arising out of or in the course of employment which, in the case of a person carrying out work, results in personal injury;

“dangerous occurrence” means an occurrence arising from work activities in a place of work that causes or results in—

(a) the collapse, overturning, failure, explosion, bursting, electrical short circuit discharge or overload, or malfunction of any work equipment,

(b) the collapse or partial collapse of any building or structure under construction or in use as a place of work,

(c) the uncontrolled or accidental release, the escape or the ignition of any substance,

(d) a fire involving any substance, or

(e) any unintentional ignition or explosion of explosives,

as may be prescribed;

“pipeline” means a pipe or system of pipes used for the conveyance of a dangerous substance or preparation across the boundaries of premises, together with any apparatus for inducing or facilitating the flow of such substance or preparation through, or through a part of, the pipe or system, and any valves, valve chambers, pumps, compressors and similar works which are annexed to, or incorporated in the course of, the pipe or system;

“personal injury” includes—

(a) any injury, disease, disability, occupational illness or any impairment of physical or mental condition, or

(b) any death,

that is attributable to work.

“substance” includes any natural or artificial substance, preparation or agent in solid or liquid form or in the form of a gas or vapour or as a micro-organism.

Within those parameters these Regulations specify the types of work-related occupational accidents, illnesses and dangerous occurrences that are reportable to the Authority and the method of reporting and record keeping.

Public Consultation Draft