

Sections of the Health Safety and Welfare at Work Act 2005 directly affecting maintenance management.

PART 2

General Duties

Chapter 1

General Duties of Employer

8.—(1) Every employer shall ensure, as far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(2) Without prejudice to the generality of *subsection (1)*, the employer's duty extends, in particular, to the following:

(a) Managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;

(b) Managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk;

(c) As regards the place of work concerned, ensuring, so far as is reasonably practicable—

(i) The design, provision and maintenance of it in a condition that is safe and without risk to health,

(ii) The design, provision and maintenance of safe means of access to and egress from it, and,

(iii) The design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;

(d) ensuring, so far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;

(e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;

(f) Providing and maintaining facilities and arrangements for the welfare of his or her employees at work;

(g) Providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;

(h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under *section 19* or when preparing a safety statement under

section 20 and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in *Schedule 3*;

(i) having regard to the general principles of prevention in *Schedule 3*, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;

(j) Preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;

(k) Reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under *section 33*, as appropriate, and

(l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(3) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed term employee or a temporary employee.

(4) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.

(5) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

9.—(1) Without prejudice to the generality of *section 8*, every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information—

(a) Is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and

(b) Includes the following information—

(i) The hazards to safety, health and welfare at work and the risks identified by the risk assessment,

(ii) The protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work, and

(iii) The names of persons designated under *section 11* and of safety representatives selected under *section 25*, if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.

(3) Every employer shall ensure that employees appointed under *section 18* and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to—

(a) The risk assessment carried out under *section 19*,

(b) Information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under *section 33* under the relevant statutory provisions, and

(c) Any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under *section 33*, or a person referred to in *section 34(2)*.

(4) (a) Where an employer proposes to use the services of a fixed term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to—

(i) Any potential risks to the safety, health and welfare of the employee at work,

(ii) Health surveillance,

(iii) Any special occupational qualifications or skills required in the place of work, and

(iv) Any increased specific risks which the work may involve.

(b) Where an employer proposes to use the services of a temporary employee, the employer shall—

(i) Specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required, and

(ii) Ensure that the temporary employment business gives the information referred to in *paragraph (a)* to the employee.

(5) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)(i)*.

10.—(1) Without prejudice to the generality of *section 8* and having regard to *sections 25* and *26*, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that—

(a) Instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned,

(b) Employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency,

(c) In relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account,

(d) In the case of—

(i) A class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply, or

(ii) Any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions, the employees concerned are protected against the dangers that specifically affect them.

(2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.

(3) Training under this section shall be provided to employees—

(a) On recruitment,

(b) In the event of the transfer of an employee or change of task assigned to an employee,

(c) On the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work, and

(d) On the introduction of new technology.

(4) Where, in respect of any particular work, competency requirements are prescribed, the employer shall provide for the release of employees, during working hours, where appropriate, and without loss of remuneration, for the purpose of attending training in matters relating to safety, health and welfare at work as regards the particular work.

(5) Every employer shall ensure that persons at work in the place of work concerned who are employees of another employer receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate.

(6) Every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience.

13.—(1) An employee shall, while at work—

(a) Comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work,

(b) Ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person,

(c) If reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed,

(d) Co-operate with his or her employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate,

(e) Not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person,

(f) Attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee,

(g) Having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment,

(h) Report to his or her employer or to any other appropriate person, as soon as practicable—

(i) Any work being carried on, or likely to be carried on, in a manner which may endanger the safety, health or welfare at work of the employee or that of any other person,

(ii) Any defect in the place of work, the systems of work, any article or substance which might endanger the safety, health or welfare at work of the employee or that of any other person, or

(iii) Any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person, of which he or she is aware.

(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed under *subsection (1)(f)*.

16.—(1) A person who designs, manufactures, imports or supplies any article for use at work shall—

(a) Ensure, so far as is reasonably practicable, that the article is designed and constructed so as—

(i) To be safe and without risk to health when properly used by a person at a place of work, and

(ii) To comply with the relevant statutory provisions and with the provisions of any relevant enactment implementing any relevant directive of the European Communities,

(b) Ensure that the article undergoes appropriate levels of testing and examination to ensure compliance with *paragraph (a)*,

(c) Provide or arrange for the provision of adequate information about the article to the persons to whom it is supplied to ensure its safe use,

(d) Ensure that persons to whom the article is supplied are provided with any revisions of the information provided under *paragraph (c)* as are necessary by reason of it becoming known that anything relating to the article gives rise to a serious risk to safety or health,

(e) If the person has responsibility under a rental, leasing or other arrangement to do so, maintain the article in a safe condition and in compliance with the relevant statutory provisions,

(f) Comply with the relevant statutory provisions.

(2) For the purposes of *subsection (1)(c)*, adequate information includes information relating to—

(a) The use for which the article has been designed, manufactured or tested, as the case may be, and

(b) Any conditions necessary to ensure its safe installation, use, maintenance, cleaning, dismantling or disposal without risk to safety or health.

(3) A person who undertakes the design or manufacture of any article for use at work shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to safety or health to which the design or article may give rise.

(4) A person who erects, assembles or installs any article for use at a place of work where that article is to be used by persons at work shall ensure, so far as is reasonably practicable, that nothing in the manner in which it is erected, assembled or installed makes the article unsafe or a risk to health when used at the place of work.

(5) A person who manufactures, imports or supplies a substance for use at work shall—

(a) Ensure, so far as is reasonably practicable, that the substance is safe and without risk to health when properly used by a person at a place of work,

(b) Ensure that the substance undergoes appropriate levels of testing and examination to ensure compliance with *paragraph (a)*,

(c) Provide or arrange for the provision of adequate information about the substance to the persons to whom it is supplied to ensure its safe use, and

(d) Comply with the relevant statutory provisions and with the provisions of any relevant enactment implementing any relevant directive of the European Communities.

(6) For the purposes of *subsection (5)(c)*, adequate information includes information relating to—

(a) The identification of the substance,

(b) Any risk to safety or health associated with its inherent properties,

(c) The results of any relevant tests or examination which have been carried out on or in connection with the substance that are relevant to its safe use, and

(d) Any conditions necessary to ensure its safe use, handling, processing, storing, transportation or disposal without risk to safety or health.

(7) A person who undertakes the manufacture of a substance, or in the case where the manufacture was undertaken outside the State, the importer, shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably

practicable, the elimination or minimisation of any risks to safety or health to which the substance may give rise when in use.

(8) Nothing in *subsections (1) to (7)* shall be read as requiring a person to repeat any testing, examination or research which has been carried out otherwise than by or on behalf of the person, in so far as it is reasonable for the person to rely on the results of that testing, examination or research, for the purposes of those subsections.

(9) Any duty imposed on a person by *subsections (1) to (7)* extends only to things done in the course of a trade, undertaking or business (whether for profit or not) carried on by the person and to matters within his or her control.

(10) Where a person designs, manufactures, imports or supplies an article or substance for use at work and does so for or to another person on the basis of a written undertaking by that other person to take specified steps that are sufficient to ensure, so far as is reasonably practicable, that the article or substance shall be safe and without risk to health or safety when it is used at a place of work, the undertaking has the effect of relieving the person who designs, manufactures, imports or supplies the article or substance from the duty imposed by *paragraphs (a) and (b) of subsection (1)* and *paragraphs (a) and (b) of subsection (5)* to such extent as is reasonable having regard to the terms of the undertaking.

(11) Nothing in *subsection (9) or (10)* relieves any person who imports any article or substance from any duty in respect of anything which—

(a) In the case of an article designed outside the State, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article, or

(b) In the case of an article or substance manufactured outside the State, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.

(12) Where a person (in this subsection referred to as “the supplier”) supplies to another person (in this subsection referred to as “the customer”) any article or substance for use at work under a hire-purchase agreement, a leasing agreement or credit-sale agreement, and the supplier—

(a) Carried on the business of financing the acquisition of goods by others by means of those agreements, and

(b) In the course of that business acquired his or her interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third party, then that third party and not the supplier shall be treated for the purposes of this section as supplying the article or substance to the customer and any duty imposed by this section on suppliers shall, accordingly, fall on that third party and not on the supplier.

(13) For the purposes of this section, an absence of safety or a risk to health shall be disregarded in so far as the case is or, in relation to which it would arise is shown to be, one the occurrence of which could not reasonably be foreseen and, in determining whether a duty imposed by *paragraphs (a) and (b) of subsection (1)* or *paragraphs (a) and (b) of subsection (5)* has been performed, regard shall be had to any relevant information or advice which has been provided to any person by the person who designed, manufactured, imported or supplied the article or by the person who manufactured, imported or supplied the substance.

17.—(1) A person who commissions or procures a project for construction work shall appoint in writing a competent person or persons for the purpose of ensuring, so far as is reasonably practicable, that the project—

- (a) Is designed and is capable of being constructed to be safe and without risk to health,
- (b) Is constructed to be safe and without risk to health,
- (c) Can be maintained safely and without risk to health during subsequent use, and
- (d) Complies in all respects, as appropriate, with the relevant statutory provisions.

(2) A person who designs a project for construction work shall ensure, so far as is reasonably practicable, that the project—

- (a) Is designed and is capable of being constructed to be safe and without risk to health,
- (b) Can be maintained safely and without risk to health during use, and
- (c) Complies in all respects, as appropriate, with the relevant statutory provisions.

(3) A person who carries out construction work shall ensure, so far as is reasonably practicable, that it is constructed to be safe and without risk to health and that it complies in all respects, as appropriate, with the relevant statutory provisions.

(4) For the purposes of this section, ‘project’ means any development which includes or is intended to include construction work.

20.—(1) Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under *section 19*, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.

(2) Without prejudice to the generality of *subsection (1)*, every employer shall ensure that the safety statement specifies—

- (a) The hazards identified and the risks assessed,
- (b) The protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates,
- (c) The plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with *sections 8* and *11*,
- (d) The duties of his or her employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility under the relevant statutory provisions in matters relating to safety, health and welfare at work,
- (e) The names and, where applicable, the job title or position held of each person responsible for performing tasks assigned to him or her pursuant to the safety statement, and
- (f) The arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance

with *sections 25 and 26*, including the names of the safety representative and the members of the safety committee, if appointed.

(3) Every employer shall bring the safety statement, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of—

(a) His or her employees, at least annually and, at any other time, following its amendment in accordance with this section,

(b) Newly-recruited employees upon commencement of employment, and

(c) Other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.

(4) Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out—

(a) The risk identified,

(b) The risk assessment, and

(c) The protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

(5) Every employer shall, taking into account the risk assessment carried out under *section 19*, review the safety statement where—

(a) There has been a significant change in the matters to which it refers,

(b) There is another reason to believe that the safety statement is no longer valid, or

(c) An inspector in the course of an inspection, investigation, examination, inquiry under *section 64* or otherwise directs that the safety statement be amended within 30 days of the giving of that direction, and, following the review, the employer shall amend the safety statement as appropriate.

(6) Every employer who is conducting activities, as may be prescribed in accordance with this subsection, who contracts with another employer for that employer to provide services to him or her shall require that that employer is in possession of an up-to-date safety statement as required under this section.

(7) A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.

(8) It shall be sufficient compliance with this section by an employer employing 3 or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.

(9) Every person to whom *section 12 or 15* applies shall prepare a safety statement in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Other regulations

Part III and Part IV of the 1993 Safety ,Health and Welfare at Work(General Application) Regulations[S.I.44 of 1993] as amended by S.I. 188 of 2001 deal with design of the workplace and use of work equipment and have implications for maintenance. General requirements for electrical equipment including maintenance (Regulation 36) are found in Part VIII of S.I.44 of 1993. Revisions to these regulations are scheduled for early 2007.

Because much maintenance activity comes within the description of construction activity the Safety, Health and Welfare at Work (Construction) Regulations 2006 (S.I. No. 504 of 2006) could be relevant in conjunction with the Safety, Health and Welfare at Work (Work at Height) Regulations 2006 (S.I. No. 318 of 2006).

Noise and vibration are specifically addressed in the Safety, Health and Welfare at Work (Control of Noise at Work) Regulations 2006 (S.I. No. 371 of 2006) and the Safety, Health and Welfare at Work (Control of Vibration at Work) Regulations 2006 (S.I. No. 370 of 2006).

Where exposure to asbestos is an issue the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 (S.I. No. 386 of 2006) is relevant

- **The more recent regulations can be found on the Health and Safety Authority website: www.hsa.ie**