

No. 22

THE HEALTH AND SAFETY AT WORK ORDINANCE, 1999
(Ordinance 6 of 1999)

REGULATIONS MADE UNDER SECTION 38

In exercise of the powers conferred upon him under section 38 of and the Schedule to the Health and Safety at Work Ordinance 1999^(a), the Administrator hereby makes the following Regulations:-

PART I

GENERAL PROVISIONS

Citation and commencement

1. These Regulations shall be cited as the Management of Health and Safety at Work Regulations 2003 and shall come into force on the date of their publication in the Gazette.

Interpretation

2. - (1) In these Regulations, unless the context otherwise requires:-

“assessment” means an assessment made in accordance with the provisions of regulation 3;

“employees’ representative with specific responsibility for the health and safety of employees” means any safety representative elected under the provisions of section 7 of the Ordinance, or where there is no safety representative, any person elected, chosen or designated by the majority of employees after consultations held amongst them to represent them where problems arise relating to the protection of their health and safety at work;

“health and safety register” means the register required by regulation 3(6);

“Minister” means the Minister of Labour and Social Insurance of the Republic;

“the Ordinance” means the Health and Safety at Work Ordinance 1999;

“preventive and protective measures” means the measures identified by the employer or by the self-employed person in consequence of the assessment, as the measures he needs to take, or ensure are taken, to comply with the requirements and prohibitions imposed upon him by or under the Ordinance;

“the Regulations” includes any regulations made under the Ordinance.

(2) Any reference in these Regulations to:-

(a) a numbered regulation is a reference to the regulation so numbered in these Regulations;

(b) a numbered paragraph is a reference to the paragraph so numbered in the regulation or Schedule in which the reference appears.

^(a) Ordinance 6 of 1999.

PART II
OBLIGATIONS OF EMPLOYERS AND SELF-EMPLOYED PERSONS

Assessment of risks

3. - (1) Every employer shall make a suitable and sufficient assessment of:-

- (a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and
- (b) the risks to the health and safety of any other persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the preventive and protective measures.

(2) Every self-employed person shall make a suitable and sufficient assessment of:-

- (a) the risks to his own health and safety to which he is exposed whilst at work; and
- (b) the risks to the health and safety of any other persons arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the preventive and protective measures.

(3) Any assessment made pursuant to paragraph (1) or (2) shall be reviewed by the employer or the self-employed person who made it if:-

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates,

and where, as a result of such a review, changes to the assessment are required, the employer or self-employed person shall make them.

(4) In making or reviewing an assessment, the employer or self-employed person shall evaluate the health and safety risks to employees and other persons, amongst other things, in the choice of work equipment, the chemical substances or preparations used and the fitting out of places of work.

(5) The employer shall draw up and keep the following documents:-

- (a) a record of the findings of the assessment, which shall include details of:-
 - (i) the risks to the health and safety of his employees, including, in particular, those facing groups of employees exposed to particular risks; and
 - (ii) the risks to the health and safety of persons not employed by him arising out of or in connection with the conduct by him of his undertaking; and
- (b) a record of the preventive and protective measures and, where appropriate, the protective equipment to be used.

(6) Where the employer employs five or more employees, he shall establish and keep a health and safety register, which shall include:-

- (a) the record of the assessment and particulars of the person who carried out the assessment;
- (b) the record of the preventive and protective measures;
- (c) particulars of those employees who are exposed to any health and safety risk;
- (d) particulars of those employees or any group of employees identified as being especially at risk.

(7) The employer shall make the documents referred to in paragraphs (5) and (6) available to any inspector, upon request.

Principles of prevention to be applied

4. – (1) Where the employer implements preventive and protective measures, he shall do so on the basis of the following general principles:-

- (a) avoiding risks;
- (b) evaluating the risks which cannot be avoided;
- (c) combating the risks at source;
- (d) adapting the work to the individual, especially as regards the design of the workplace, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health;
- (e) adapting to technical progress;
- (f) replacing the dangerous by the non-dangerous or the less dangerous;
- (g) developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors relating to the working environment;
- (h) giving collective protective measures priority over individual protective measures; and
- (i) giving appropriate instructions to employees.

(2) Any preventive and protective measures, working methods and production methods implemented by the employer, pursuant to the assessment, must:-

- (a) where practicable, secure an improvement in the level of protection afforded to employees with regard to health and safety; and
- (b) be integrated into all the activities of the undertaking and at all hierarchical levels.

Health and safety arrangements

5. - (1)(a) Every employer and self-employed person shall make and give effect to such arrangements as are appropriate, having regard to:-

- (a) the nature of his activities; and
- (b) the size of his undertaking,

for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.

(2) Where an employer employs five or more employees, he shall record details of the health and safety arrangements referred to in paragraph (1), in the health and safety register.

Preventive and protective services

6. - (1) Subject to paragraphs (7) and (8), every employer shall designate one or more competent employees to:-

- (a) implement the preventive and protective measures in his undertaking; and
- (b) provide professional advice to the employer in connection therewith.

(2) Where a safety officer has been appointed, pursuant to section 10 of the Ordinance, that officer shall be the employee designated or one of the employees designated pursuant to paragraph (1).

(3) Employees designated for the purposes of paragraph (1) must:-

- (a) not be discriminated against in any way by the employer as a result of their activities; and
- (b) be allowed adequate time to enable them to carry out those activities.

(4) The employer shall ensure that employees designated pursuant to paragraph (1) have the necessary capabilities and means and are sufficient in number to carry out their activities, taking into account:-

- (a) the size of the undertaking and the hazards to which the employees and other persons are exposed;
- (b) the distribution of those hazards throughout the undertaking.

(5) A person shall be regarded as competent for the purposes of paragraphs (1), (8) and (13) where he has the requisite:-

- (a) knowledge or training;
- (b) experience; and
- (c) other qualities,

to enable him to carry out his activities and provide professional advice.

(6) The employer shall include in the health and safety register:-

- (a) the names of the persons designated pursuant to paragraph (1); and
- (b) the documents certifying the knowledge, training experience and other abilities of such persons.

(7) Where the employer employs less than 5 employees, he may implement the preventive and protective measures himself, provided that he has:-

- (a) the means at his disposal; and
- (b) the requisite knowledge or training, experience and other abilities,

to enable him to carry out those activities.

(8) If the employees (or, in the case referred to in paragraph (7), the employer himself) cannot properly implement the preventive and protective measures because they are not competent, the employer shall enlist the services of competent persons from outside the undertaking (“outside personnel”).

(9) Where the employer enlists the services of outside personnel, pursuant to paragraph (8), he shall:-

- (a) ensure that they are informed of the factors known by him to affect, or suspected by him of affecting, the health and safety of his employees and other persons who may be affected by the conduct by him of his undertaking and have access to the information referred to in regulation 10(1)(c);
- (b) ensure that they have the necessary capabilities and means at their disposal, and are sufficient in number; to carry out the activities required of them, taking into account:-
 - (i) the size of the undertaking and the hazards to which the employees and other persons are exposed; and
 - (ii) the distribution of those hazards throughout the undertaking;
- (c) notify the inspector (a copy of which notification shall be included in the health and safety register) of the following particulars:-
 - (i) the names and addresses of the persons whose services have been enlisted; and
 - (ii) the services to be provided by them.

(10) Where an employer:-

- (a) designates two or more employees pursuant to paragraph (1); or
- (b) enlists the services of two or more outside personnel pursuant to paragraph (8);

he shall make arrangements for ensuring that they co-operate with each other.

(11) Outside personnel who wish to provide services to employers or self-employed persons for the purposes of paragraph (8) or (15) must submit an application for approval to the Chief Inspector, which application shall include details of the services they wish to provide and documentary proof that they or the persons employed by them have:-

- (a) the means at their disposal; and
- (b) the requisite knowledge or training, experience and other abilities,

to enable them to provide the said services.

(12) Where the Chief Inspector is satisfied that the applicant is competent to provide the services he wishes to provide he shall grant that person an approval in writing and where he is not so satisfied he shall notify the applicant, giving his reasons for rejecting the application.

(13) Any person whose application pursuant to paragraph (11) is rejected may appeal to the Chief Officer, within a month of receiving the notice, who, upon considering the appeal, may dismiss the appeal or grant an approval.

(14) Outside personnel shall:-

(a) keep records of:-

- (i) the particulars of those employers and self-employed persons to whom they provide services (including their names, addresses and the nature of their activities); and
- (ii) the services provided to those employers and self-employed persons;

(b) submit to the Chief Inspector by the end of the first two months of each new year an annual report of their activities; and

(c) keep confidential the records referred to in sub-paragraph (a) above and any professional or trade secrets disclosed to them by any employer or self-employed person during the course of their activities.

(15) Subject to paragraph (16), every self-employed person shall enlist the services of competent outside personnel to implement the preventive and protective measures and provide advice in relation thereto, unless he has the:-

(a) the means at his disposal; and

(b) the requisite knowledge or training, experience and other abilities,

to enable him to implement the preventive and protective measures himself.

(16) Paragraph (15) shall not apply to any self-employed person who conducts an undertaking jointly in the form of a co-operative together with other employers or self-employed persons, provided that at least one of the persons who forms part of the co-operative has the means and the requisite knowledge or training, experience and other abilities to enable him to implement his own preventive and protective measures and to assist his fellow members of the co-operative in implementing their preventive and protective measures.

(17) An employer or self-employed person who enlists the services of outside personnel, pursuant to paragraph (8) or (15), as the case may be, shall not be relieved of any of the obligations imposed upon him by these Regulations.

First aid, fire-fighting and evacuation of employees

7. - (1) Every employer shall:-

- (a) implement the necessary measures for first-aid, fire-fighting and evacuation of employees adapted to the nature of the activities and the size of the undertaking and taking account of other persons present;
- (b) arrange any necessary contacts with external services, particularly in relation to first aid, emergency medical care, rescue work and fire-fighting.

(2) Pursuant to paragraph (1), the employer shall designate the employees required to implement the measures referred to therein.

- (3)(a) The number of employees designated pursuant to paragraph (2), their training and the equipment available to them shall be adequate, taking account of the size and specific hazards of the undertaking; and
- (b) the names of the designated employees, the particulars certifying their training and the equipment available to them shall be recorded in the health and safety register.

Procedures to be followed in the event of serious and imminent danger

8. - (1) Where the nature of the activities in the undertaking are such that certain employees are or may be exposed to a serious and specific danger, the employer shall:-

- (a) as soon as possible, inform those employees of:-
 - (i) the risks involved; and
 - (ii) the measures taken or to be taken to protect them.
- (b) take actions and give instructions to those employees to enable them in the event of serious, imminent and unavoidable danger to immediately:-
 - (i) stop work,
 - (ii) leave their workstation or the danger zone; and
 - (iii) proceed to a place of safety; and
- (c) save in exceptional cases, for reasons duly substantiated, refrain from asking those employees to resume work in a situation where there is still a serious and imminent danger.

(2) The employer shall take appropriate steps to ensure that only those employees who have received adequate instructions have access to areas within the undertaking where there is a serious and specific danger.

(3) Employees who, in the event of serious, imminent and unavoidable danger, leave their workstation or a danger zone must not be discriminated against in any way by the employer because of their actions and shall be protected against any harmful and unjustified consequences, in accordance with the provisions of the Termination of Employment (Consolidation) Ordinance.⁽²⁾

(4) The employer shall ensure that all employees are able, in the event of a serious and imminent danger to their own safety or that

⁽²⁾ Ordinance 5 of 1980 and Ordinances 1/81, 4/83, 5/88, 5/90, 2/91 and 4/95.

of other persons, and where the immediate superior responsible cannot be contacted, to take the appropriate steps in the light of their knowledge and the technical means at their disposal, to avoid the consequences of such danger.

(5) Employees must not be penalised in any way for any steps they take in the circumstances referred to in paragraph (4), unless they acted carelessly or there was negligence on their part.

Information for employees

9. - (1) Every employer shall ensure that his employees or their representatives in the undertaking receive all the necessary relevant information (which information must be comprehensible to them), concerning:-

- (a) the risks to their health and safety;
- (b) the preventive and protective measures;
- (c) the identities of the employees designated to implement the first-aid, fire-fighting and evacuation measures pursuant to regulation 7(2);
- (d) any health and safety risks notified to him by other employers pursuant to regulation 10(1)(c);
- (e) the obligations imposed upon the employer by or under the Ordinance in relation to the conduct of his undertaking.

(2) Without prejudice to the generality of paragraph (1), the employer shall ensure that:-

- (a) employees who carry out particular tasks in the protection of the health and safety of employees; or
- (b) employees' representatives with specific responsibility for the health and safety of employees,

have access, (for the purpose of carrying out their tasks or representing the employees, as the case may be) to:-

- (c) the records of the assessment and of the preventive and protective measures referred to in regulation 3(5) and, where one is required to be kept, the health and safety register referred to in regulation 3(6);
- (d) the list of work accidents referred to in regulation 11(1) and the reports of any serious work accidents or dangerous incidents referred to in regulation 11(2); and
- (e) the information yielded by the implementation of the preventive and protective measures and any inspections carried out by the inspectors.

Co-operation and co-ordination

10. - (1) Where two or more employers share a place of work (whether on a temporary or a permanent basis), each such employer shall:-

- (a) co-operate with the other employers concerned, so far as is necessary, to enable those employers to comply with the requirements and prohibitions imposed upon them by or under the Ordinance;

- (b) taking into account the nature of his activities, co-ordinate the implementation of the preventive and protective measures for his undertaking with the implementation of the preventive and protective measures required for the undertakings of the other employers concerned; and
- (c) inform the other employers concerned of the risks to their employees' health and safety arising out of the conduct by him of his undertaking.

(2) Paragraph (1) shall apply to:-

- (a) employers sharing a place of work with self-employed persons,
- (b) self-employed persons sharing a place of work with employers; and
- (c) self-employed persons sharing a place of work with other self-employed persons,

as it applies to employers sharing a place of work with other employers; and the references in that paragraph to "employers" and "their employees" shall be construed accordingly.

Work accidents and dangerous incidents

11. - (1) Every employer shall keep a list of every work accident resulting in any employee being unfit for work for more than three working days and record the total number of working days lost by that employee.

(2) Every employer shall prepare a report in respect of every mortal or otherwise serious work accident or dangerous incident which occurs in his undertaking, which report shall include the following details:-

- (a) the cause of the accident or incident;
- (b) the date it occurred;
- (c) the persons involved in it; and
- (d) the measures taken to avoid the occurrence of any similar accident or incident in future.

(3) The employer shall record the work accidents and incidents referred to in paragraphs (1) and (2) in the health and safety register, where he is required to keep such a register.

(4) The employer shall make available to any inspector, upon request, the documents referred to in paragraphs (1) to (3).

(5) This regulation shall apply without prejudice to the application of the Accidents and Occupational Diseases (Notification) Ordinance.^(c)

Consultation and participation of employees

12. - (1) Every employer shall:-

- (a) consult his employees or their representatives on all questions relating to health and safety at work;
- (b) allow them to submit proposals for consideration by him; and

^(c) Cap. 176.

(c) permit their balanced participation in safety committees..

(2) Without prejudice to the generality of paragraph (1), when planning the introduction of any new technology, the employer shall consult with employees or their representatives, as regards the consequences for their health and safety of:-

- (a) the choice of equipment;
- (b) any changes in working conditions; and
- (c) any changes in the working environment.

(3) Employees or employees' representatives with specific responsibility for the health and safety of employees shall be consulted in advance and in good time by the employer with regard to:-

- (a) any measure which may substantially affect health and safety;
- (b) the designation of employees referred to in regulation 6(1) and regulation 7(2) and the activities referred to in regulation 6(1);
- (c) the information referred to in regulation 3(5), regulation 9(1) and (2) and regulation 11(1) and (2);
- (d) the enlistment, where appropriate, of competent outside personnel, pursuant to regulation 6(8); and
- (e) the planning and organisation of the training referred to in regulation 13.

(4) Employees' representatives with specific responsibility for the health and safety of employees shall have the right to ask the employer to take appropriate measures and to submit proposals to him to that end to mitigate hazards for employees and to remove sources of danger.

(5) Employees and employees' representatives must not be discriminated against in any way by the employer because of any views expressed or proposals submitted by them, pursuant to this regulation.

(6) The employer shall:-

- (a) allow employees' representatives with specific responsibility for the health and safety of employees adequate time off work, without loss of pay; and
- (b) provide them with the necessary means to enable them to exercise their rights and functions under these Regulations.

(7) Employees and their representatives may appeal to an inspector if they consider that the measures taken and the means employed by the employer are inadequate for the purposes of ensuring health and safety at work.

(8) Employees' representatives shall be given the opportunity to submit their observations during inspection visits by the inspector.

Training of employees

13. - (1) Every employer shall, in entrusting tasks to his employees, take into account their capabilities as regards health and safety.

(2) Every employer shall ensure that each employee receives adequate and appropriate health and safety training, in particular in the form of information and instructions specific to his workstation or job at the following times:-

- (a) on recruitment;
- (b) in the event of a transfer or a change of job;
- (c) in the event of the introduction of any new work equipment or any change in existing equipment;
- (d) in the event of the introduction of any new technology;
- (e) in the event of the introduction of any new working or production method or any change in existing working or production methods.

(3) The training provided pursuant to paragraph (2) shall be:-

- (a) adapted to take account of new or changed risks; and
- (b) repeated periodically, if necessary.

(4) The employer shall ensure that employees' representatives with specific responsibility for the health and safety of employees receive appropriate training.

(5) The employer shall ensure that employees from outside undertakings and self-employed persons engaged in work in his undertaking have received appropriate instructions regarding any health and safety risks arising out of or in connection with the conduct by the employer of his undertaking.

(6) The training referred to in paragraph (2) must take place during working hours.

(7) The training referred to in paragraph (4) must take place during working hours either within or outside the undertaking.

PART III

EMPLOYEES' OBLIGATIONS

Employees' obligations

14. - (1) Every employee shall take care, so far as is practicable, of his own health and safety and that of other persons affected by his acts or omissions at work, in accordance with his training and the instructions given by his employer.

(2) For the purposes of paragraph (1), the employee shall, in particular:-

- (a) make correct use of machinery, apparatus, tools, dangerous substances, transport equipment and other means of production;
- (b) make correct use of the personal protective equipment supplied to him and, after use, return it to its proper place;

- (c) refrain from disconnecting, changing or removing arbitrarily safety devices fitted, for example to machinery, apparatus, tools, plant and buildings, and use such safety devices correctly;
- (d) immediately inform the employer and the employees with specific responsibility for the health and safety of employees of any work situation he has reasonable grounds for considering represents a serious and imminent danger to health and safety and of any shortcomings in the protection arrangements;
- (e) co-operate with the employer and employees with specific responsibility for the health and safety of employees, for as long as may be necessary to enable any tasks or requirements imposed by any inspector to protect the health and safety of employees at work, or other persons who may be affected by work activities, to be carried out;
- (f) co-operate with the employer and employees with specific responsibility for the health and safety of employees, for as long as may be necessary to enable the employer to ensure that the working environment and working conditions are safe and pose no risk to health and safety within their field of activity.

PART IV MISCELLANEOUS PROVISIONS

Health surveillance

15. - (1) Every employer shall ensure that his employees are provided with such health surveillance as is appropriate, having regard to the risks to their health and safety.

(2) The health surveillance referred to in paragraph (1) shall be such that each employee, if he so wishes, may be provided with health surveillance at regular intervals.

(3) Health surveillance may be provided privately or by the Government of the Republic.

Sensitive risk groups

16. Every employer shall ensure appropriate preventive and protective measures are taken to protect any particularly sensitive risk group against the dangers which specifically affect that group.

Dated this 18th day of February 2003.

By the Administrator's Command,
J.C.A. JARVIS CBE,
Chief Officer,
Sovereign Base Areas.