

1993 No. 469

HEALTH AND SAFETY**Ionising Radiations (Outside Workers) Regulations
(Northern Ireland) 1993***Made* 2nd December 1993*Coming into operation* 1st January 1994

The Department of Economic Development, being a Department designated by the European Communities (Designation) (No. 3) Order 1991(a) for the purposes of section 2(2) of the European Communities Act 1972(b) for laying down the basic safety standards for the health protection of the general public and workers against the dangers from ionising radiation, acting in exercise of the power conferred on it by the said section 2(2) and acting as the Department concerned(c), in exercise of the powers conferred by Articles 17(1), (2), (4), (5) and (6) and 55(2) of, and paragraphs 7(1), 10, 12(2) and (3), 13, 14(1) and 15 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(d) and of every other power enabling it in that behalf, after consultation in accordance with Article 46(1) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to it to be appropriate, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Ionising Radiations (Outside Workers) Regulations (Northern Ireland) 1993 and shall come into operation on 1st January 1994.

Interpretation

2.—(1) In these Regulations—

“the 1985 Regulations” means the Ionising Radiations Regulations (Northern Ireland) 1985(e);

“activities” means any service provided by an outside worker in a controlled area for which the operator is responsible;

(a) S.I. 1991/2289

(b) 1972 c. 68

(c) See Article 2(a) of S.I. 1978/1039 (N.I. 9)

(d) S.I. 1978/1039 (N.I. 9)

(e) S.R. 1985 No. 273

“the Basic Safety Standards Directive” means Council Directive 80/836/Euratom(a) laying down the basic safety standards for the health protection of the general public and workers against the dangers from ionising radiation as amended by Council Directive 84/467/Euratom(b);

“classified person” means—

- (a) in the case of a person employed by an outside undertaking in Northern Ireland, a person who has been designated as a classified person under regulation 9 of the 1985 Regulations; or
- (b) in the case of a person employed by an outside undertaking in Great Britain or in another member State, a person who has been designated as a Category A exposed worker within the meaning of Article 23 of the Basic Safety Standards Directive;

“competent authority” in relation to the competent authority of Great Britain or of a member State means the authority empowered to enforce the basic safety standards for the health protection of workers against dangers from ionising radiation in Great Britain or that member State;

“controlled area” means—

- (a) in the case of an area situated in Northern Ireland, an area which has been designated as a controlled area under regulation 8 of the 1985 Regulations; or
- (b) in the case of an area situated in Great Britain or in another member State, an area subject to special rules for the purposes of protection against ionising radiation and to which access is controlled as specified in Article 20 of the Basic Safety Standards Directive;

“dose assessment” means the dose assessment made and recorded by an approved dosimetry service in accordance with regulation 13 of the 1985 Regulations;

“dose estimate” means the estimate of the dose received by the outside worker made by the operator in accordance with regulation 6(2)(b);

“member State” means a member State of the European Communities;

“operator” means a person in a member State who is responsible for an area which is or is required to be designated as a controlled area and is—

- (a) in the case of an area situated in Northern Ireland, an area in which there is carried out work with ionising radiation which is required to be notified under regulation 5 of the 1985 Regulations, or would be so notifiable if it were not excepted from notification by regulation 5(1)(b) of those Regulations; or
- (b) in the case of an area situated in Great Britain or in another member State, an area in which there is carried out an activity

(a) O.J. No. L246, 17.9.80, p. 1

(b) O.J. No. L265, 5.10.84, p. 4

that is required to be reported under Article 3 of the Basic Safety Standards Directive;

“outside undertaking” means the employer established in a member State of a classified person who undertakes activities of any sort in the controlled area of an operator (other than itself);

“outside worker” means a classified person employed by an outside undertaking who undertakes activities of any sort in the controlled area of any operator (other than that of the outside undertaking which employs him);

“radiation passbook” means—

(a) in the case of an outside worker employed by an outside undertaking in Northern Ireland, a passbook approved for the purpose of these Regulations by the Department; or

(b) in the case of an outside worker employed by an outside undertaking in Great Britain or in another member State, a passbook authorised by the competent authority for Great Britain or that member State, as the case may be.

(2) Except where otherwise expressly provided for in these Regulations, expressions used in these Regulations shall have the same meanings as in regulation 2(1) of the 1985 Regulations.

(3) In these Regulations, any reference to—

(a) an employer includes a reference to a self-employed person and any duty imposed by these Regulations on an employer shall extend to a self-employed person;

(b) an employee includes a reference to—

(i) a self-employed person; and

(ii) a trainee who but for the operation of this sub-paragraph and paragraph (4) would not be classed as an employee.

(4) For the purposes of these Regulations and Part I of the Health and Safety at Work (Northern Ireland) Order 1978—

(a) the word “work” shall be extended to include any instruction or training which a person undergoes as a trainee and the meaning of “at work” shall be extended accordingly; and

(b) a trainee shall, while he is undergoing instruction or training, be treated as the employee of the person whose undertaking (whether for profit or not) is providing that instruction or training and that person shall be treated as the employer of that trainee except that the duties to the trainee imposed upon the person providing instruction or training shall only extend to matters under the control of that person.

(5) Duties under these Regulations imposed upon the operator shall also be imposed upon the manager of a mine (within the meaning of section 156 of the Mines Act (Northern Ireland) 1969(a)) in so far as those duties relate to the mine of which he is the manager and to matters under his control.

(a) 1969 c. 6 (N.I.)

(6) Duties under these Regulations imposed upon the operator shall also be imposed upon the owner, occupier or agent of a quarry (within the meaning of Article 2 of the Quarries (Northern Ireland) Order 1983(a)) in so far as those duties relate to the quarry or part of the quarry of which he is the owner, occupier or agent and to matters under his control.

(7) Duties under these Regulations imposed upon the operator shall also be imposed on the holder of a nuclear site licence under the Nuclear Installations Act 1965(b) in so far as those duties relate to the licensed site.

(8) The Interpretation Act (Northern Ireland) 1954(c) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Application

3.—(1) Without prejudice to the requirements of regulation 4 of the 1985 Regulations (co-operation between employers), regulation 6(1)(b) (duties of the operator) shall not apply in relation to an outside worker who enters a controlled area of the operator in the exercise of powers conferred on him by law.

(2) In the case of an outside worker (working in a controlled area situated in Northern Ireland) employed by an outside undertaking established in Great Britain or in another member State, it shall be a sufficient compliance with regulation 13 (dose assessment) and regulation 16 (medical surveillance) of the 1985 Regulations, if the outside undertaking complies with—

- (a) where the outside undertaking is established in Great Britain, regulations 13 and 16 of the Ionising Radiations Regulations 1985(d);
or
- (b) where the outside undertaking is established in another member State, the legislation in that State implementing Chapters II and III of Title VI of the Basic Safety Standards Directive where such legislation exists.

(3) The duties imposed by regulations 4 and 5 on the outside undertaking shall only apply to outside undertakings established in Northern Ireland.

(4) The duties imposed by regulation 6 on the operator shall only apply to the operator of a controlled area situated in Northern Ireland.

(5) The duties imposed by regulation 7 on the outside worker shall only apply to an outside worker working in a controlled area situated in Northern Ireland.

(6) Subject to paragraph (2), nothing in these Regulations shall prejudice the requirements of the 1985 Regulations.

Duties of the outside undertaking

4.—(1) It shall be the duty of the outside undertaking which employs an outside worker to undertake activities in the controlled area of an operator—

(a) S.I. 1983/150 (N.I. 4)

(b) 1965 c. 57

(c) 1954 c. 33 (N.I.)

(d) S.I. 1985/1333

- (a) before commencing the activities, to make suitable arrangements to obtain from the operator information about the radiological risks relevant to the intended activities and to the controlled areas in which they are to be undertaken and any special training that may be required;
- (b) to ensure that the outside worker concerned has received the necessary information and training with a view to ensuring his safety in the course of those activities; and
- (c) to make suitable arrangements with the operator to ensure that an estimate is made of the dose received by the worker in the course of those activities.

(2) Where an outside undertaking employs an outside worker to work in Great Britain or another member State, the outside undertaking shall make suitable arrangements to ensure that a continuing record of the assessment of the dose received by the outside worker is maintained by the approved dosimetry service throughout the period of his employment by the outside undertaking.

Radiation passbooks

5.—(1) The outside undertaking shall ensure that each outside worker employed by it is provided with an individual radiation passbook which shall be non-transferable and in which shall be entered the particulars set out in the Schedule.

(2) The outside undertaking shall make suitable arrangements to ensure that the particulars entered in the radiation passbook are kept up to date.

(3) The outside undertaking shall ensure that a suitable record is kept of the issue of any radiation passbook to each outside worker to whom one has been issued and of the loss of any radiation passbook which has been reported to it in accordance with regulation 7(1)(a) and such records shall be kept for at least 5 years after the radiation passbook has ceased to be used by the outside worker.

(4) Where the outside undertaking has had the loss of a radiation passbook reported to it in accordance with regulation 7(1)(a), it shall ensure that an investigation is made of the circumstances of that loss, and an assessment, or if that is not reasonably practicable, an estimate, is made of the dose received by the outside worker and shall ensure that the result of that investigation is entered in the record referred to in paragraph (3).

(5) When an outside worker has returned a radiation passbook to the outside undertaking in accordance with regulation 7(1)(c), the outside undertaking shall ensure that the radiation passbook is kept for at least 5 years from that date.

(6) Where the radiation passbook has been returned to the outside undertaking as it is full and requires renewal or its loss has been reported to the outside undertaking, the outside undertaking shall ensure that a new radiation passbook is issued forthwith to the outside worker and in a case where the radiation passbook has been lost, the new radiation passbook shall be clearly marked with the word “replacement”.

Duties of the operator

6.—(1) It shall be the duty of an operator who has an outside worker undertaking activities in any controlled area under his control, before the commencement of those activities—

- (a) to make suitable arrangements to provide the outside undertaking with the information referred to in regulation 4(1)(a);
- (b) to take all reasonable steps to ensure by reference to the radiation passbook or by other means that the outside worker—
 - (i) has received any specific training required for the activities;
 - (ii) is medically fit to undertake the activities; and
 - (iii) has been provided with and has been trained to use any personal protective equipment that may be necessary for the safe performance of the activities.

(2) It shall be the duty of the operator to ensure that—

- (a) the outside worker receives individual exposure monitoring, appropriate to the nature of the activities;
- (b) an estimate of the dose received by the outside worker is made; and
- (c) the radiation passbook is made available to the outside worker at his request.

(3) Subject to paragraph (4), as soon as is reasonably practicable after the activities referred to in paragraph (1) have been completed, it shall be the duty of the operator to ensure that an estimate of the dose received by the outside worker is entered into the radiation passbook of that outside worker.

(4) In a case where the operator no longer has access to the radiation passbook of the outside worker when the information required by paragraph (3) becomes available to him, he shall forthwith give that information to the outside undertaking.

(5) The duty imposed on the operator under paragraph (3) to ensure that an estimate of the dose received by the outside worker is entered into the radiation passbook of that outside worker when the activities have been completed, shall not apply in any case where having regard to—

- (a) the nature and duration of the activities undertaken in the controlled areas under the control of the operator; and
- (b) the pattern of past and present activities undertaken by the outside worker and the estimates of the dose previously received entered in the radiation passbook,

and after consulting the outside undertaking, the operator, with the agreement of the outside undertaking, is satisfied that the outside worker will be most unlikely to receive in the month in which the activities are undertaken a radiation dose which exceeds one thirty-sixth part of any annual dose limit for that worker and in such a case the operator shall enter a cumulative estimate of the dose received each month.

Duties of the outside worker

7.—(1) It shall be the duty of every outside worker—

- (a) to take reasonable care of the radiation passbook issued to him, and if it is lost report the loss forthwith to the outside undertaking and in such a case co-operate with the outside undertaking in any investigation made in accordance with regulation 5(4);
- (b) not to misuse the radiation passbook issued to him or falsify or attempt to falsify any of the information contained in it;
- (c) if he leaves the employment of the outside undertaking or the radiation passbook is full and requires renewal, forthwith to return the radiation passbook to the outside undertaking; and
- (d) to make the radiation passbook available to the operator of any controlled area in which he undertakes activities and to take the radiation passbook with him when his activities in that controlled area have been completed.

(2) It shall also be the duty of the outside worker to take such steps as are reasonable for a person in his position to take to ensure that an estimate of the dose that he receives in the course of those activities is either entered in his radiation passbook or notified to the outside undertaking.

(3) Where an outside worker who has lost a radiation passbook subsequently finds it, he shall forthwith report its finding to the outside undertaking and return that radiation passbook to the undertaking.

Defences under these Regulations

8.—(1) In any proceedings against an outside undertaking for a breach of a duty under these Regulations it shall be a defence for that outside undertaking to show that—

- (a) it had entered into a contract in writing with the operator for him to perform that duty on its behalf; and
- (b) the breach of duty was a result of the operator's failure to fulfil that contract.

(2) In any proceedings against an operator for a breach of a duty under these Regulations it shall be a defence for the operator to show that—

- (a) he had entered into a contract in writing with the outside undertaking for it to perform that duty on his behalf; and
- (b) the breach of duty was a result of the outside undertaking's failure to fulfil that contract.

(3) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in paragraph (1) or (2) unless, within a period ending 7 clear days before the hearing, he has served on the prosecutor a notice in writing that he intends to rely on the defence and this notice shall be accompanied by a copy of the contract on which he intends to rely and, if that contract is not in English, an accurate translation of that contract into English.

(4) For the purpose of enabling the other party to the contract to be charged with and convicted of an offence by virtue of Article 34 of the Health and Safety at Work (Northern Ireland) Order 1978, a person who establishes a

defence under this regulation shall nevertheless be treated for the purposes of that section as having committed the offence.

Enforcement and civil liability

9. In so far as any provision of regulation 4, 5, 6 or 7 is made under section 2 of the European Communities Act 1972—

- (a) the provisions of the Health and Safety at Work (Northern Ireland) Order 1978 which relate to the approval of codes of practice and their use in criminal proceedings, enforcement and offences shall apply to that provision as if that provision had been made under Article 17 of that Order; and
- (b) that provision shall, in the event of a breach of any duty imposed thereby, confer a right of action in civil proceedings in so far as that breach of duty causes damage.

Exemption certificates

10.—(1) Subject to paragraph (2), the Department may by a certificate in writing, exempt—

- (a) any person or class of persons; or
- (b) any premises or class of premises,

from all or any of the requirements or prohibitions imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Department shall not grant any such exemption unless, having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, that it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any statutory provision which applies to the case,

it is satisfied that—

- (c) the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it; and
- (d) compliance with the fundamental radiation protection provisions underlying regulations 6(1) and (2), 7, 8(1) and (2), 9(1), 13(2), 16(3), 24(1), 27(1) and 33(1) of the 1985 Regulations will be achieved.

Modifications relating to the Ministry of Defence etc—

11.—(1) In this regulation any reference to—

- (a) “visiting forces” is a reference to visiting forces within the meaning of any provision of Part I of the Visiting Forces Act 1952(a); and
- (b) “headquarters or organisation” is a reference to a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964(b).

(a) 1952 c. 67

(b) 1964 c. 5

(2) The Secretary of State for Defence may, in the interests of national security, by a certificate in writing exempt—

- (a) Her Majesty's Forces;
- (b) visiting forces;
- (c) any member of a visiting force working in or attached to any headquarters or organisation; or
- (d) any person engaged in working with ionising radiation for, or on behalf of, the Secretary of State for Defence,

from all or any of the requirements or prohibitions imposed by these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked at any time by a certificate in writing, except that, where any such exemption is granted, suitable arrangements shall be made for the assessment and recording of doses of ionising radiation received by persons to whom the exemption relates.

Sealed with the Official Seal of the Department of Economic Development on 2nd December 1993.

(L.S.)

Philip B. Strong

Assistant Secretary

Particulars to be entered in the radiation passbook

1. The individual serial number of the radiation passbook.
2. A statement that the radiation passbook has been approved by the Department for the purpose of these Regulations.
3. The date of issue of the radiation passbook by the approved dosimetry service.
4. The name, telephone number and mark of endorsement of the issuing approved dosimetry service.
5. The name, address, telephone and telex or fax number of the outside undertaking.
6. The full name (that is to say, surname and all forenames), date of birth, sex and National Insurance number of the outside worker to whom the passbook has been issued.
7. The date of the last entry in the health record relating to the outside worker made and maintained pursuant to regulation 16 of the 1985 Regulations and the relevant medical classification in that record as fit, fit subject to conditions (which shall be specified and, for the purposes of these Regulations, shall include any special dose limit applicable to the outside worker) or unfit, as the case may be, and the name and signature of a person authorised to make that entry.
8. The cumulative dose assessment in mSv for the year to date for the outside worker, external (whole body, organ or tissue) or internal or both as appropriate and the date of the end of the last assessment period.
9. In respect of activities performed by the outside worker, (except where regulation 6(5) applies)—
 - (a) the name and address of the relevant operator;
 - (b) the period covered by the performance of the activities;
 - (c) estimated dose information, which shall be, as appropriate—
 - (i) an estimate of any whole body effective dose equivalent in mSv received by the outside worker;
 - (ii) in the event of non-uniform exposure, an estimate of the dose equivalent in mSv to organs and tissues as appropriate;
 - (iii) in the event of internal exposure, an estimate of the committed dose in mSv;
 - (d) the name and signature of the person making the entry, who shall be a person authorised by the operator to make such entries.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations implement as respects Northern Ireland Council Directive 90/641/Euratom (O.J. No. L349, 13.12.90, p. 21) on the operational protection of outside workers exposed to the risk of ionising radiation during their activities in controlled areas.

2. In addition to defining the terms used in these Regulations, for example "outside worker" and "outside undertaking", regulation 2 applies certain of the interpretation provisions in regulation 2 of the Ionising Radiations Regulations (Northern Ireland) 1985 ("the 1985 Regulations") to these Regulations.

3. Regulation 4 imposes duties on the outside undertaking which employs an outside worker to obtain from the operator information about the radiological risks relevant to the controlled areas in which an outside worker is to undertake activities, to ensure that the outside worker receives necessary information and training and to ensure that the dose of ionising radiation received by the outside worker is estimated. Regulation 5 sets out the requirements in relation to a uniquely identified radiation passbook with which the outside undertaking must provide the outside worker; the particulars to be entered in that passbook are set out in the Schedule.

4. Regulation 6 imposes duties on the operator to provide the outside worker with certain information and training, to ensure that the outside worker is medically fit, to provide suitable radiation monitoring and to enter into the outside worker's radiation passbook an estimate of the dose of ionising radiation received by the outside worker. Regulation 7 imposes duties upon the outside worker in relation to the radiation passbook and in relation to steps to ensure that an estimate of the radiation dose he receives is entered in it or notified to the outside undertaking.

5. Regulation 8 provides for a defence against a breach of duty under these Regulations where—

- (a) the outside undertaking has entered into a written contract with the operator; or
- (b) the operator has entered into a written contract with the outside undertaking,

and, in either case, the breach of duty by the one party was a result of a failure by the other party to fulfil the contract. In addition, certain conditions must be satisfied with respect to reliance upon this defence.

6. Regulation 9 relates to enforcement and civil liability.

7. Regulation 10 provides for the grant of exemption certificates by the Department of Economic Development and regulation 11 relates to the grant of exemption certificates by the Secretary of State for Defence in the interests of national security.