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**How Employers Can Face Up to and
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HOW EMPLOYERS CAN FACE UP TO AND ENFORCE HIGH STANDARDS OF HEALTH AND SAFETY

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INTRODUCTION

This paper outlines the high standard to which employers must aspire in order to achieve compliance with their statutory responsibilities under the *Safety, Health and Welfare at Work Act 1989* and the many detailed Regulations on safety and health at work now in force. These duties are based on European and international standards in occupational safety and health. The paper discusses the implications of the 1989 Act for enforcement strategies within organisations, including disciplinary matters.

BACKGROUND TO THE 1989 ACT

Prior to 1989, legislation such as the *Factories Act 1955*, the *Mines and Quarries Act 1965* and the *Dangerous Substances Act 1972*, as well as numerous Regulations made under them, had regulated certain aspects of safety and health at work for many years. But it was accepted that this legislation was defective in two respects: it did not apply to all places of work and it had failed to reduce accident levels.

International research had also indicated that many accidents can be prevented by management-driven programmes. For example, research conducted some years ago by the Accident Prevention Advisory Unit of the British Health and Safety Executive suggested that in the case of 60% of accidents, the preventative measures were within the control of management. This figure reflects other international studies and is accepted as a good guide for Ireland by the Health and Safety Authority.

Based on this type of research, the British *Health and Safety at Work Act 1974* (followed by the Northern Ireland *Health and Safety at Work (Northern Ireland) Order 1978*) was one of the first laws in this area to apply to all places of work and to impose positive general duties on all people, particularly at senior levels in organisations, and require the formulation of preventative safety and health policies.

THE BARRINGTON COMMISSION REPORT

In Ireland, the 1983 Report of the (Barrington) *Commission of Inquiry on Safety, Health and Welfare at Work*¹ also identified management as the key to improving performance in the area of safety and health at work. Employees were also identified as playing an important co-operative role, but the Report argued for management-driven programmes. The Report also contained numerous other recommendations and these were implemented in the *Safety, Health and Welfare at Work Act 1989*. The concept of management responsibility was implemented in full in section 12 of the 1989 Act, which deals with the Safety Statement.

EUROPEAN COMMUNITY DIRECTIVES ON SAFETY AND HEALTH AT WORK

Another major influence on Irish law in this area has been the requirement to implement European Directives on safety and health at work. In the early 1980s, the European Directives tended to focus on fairly narrow points, such as the precautions to be taken to protect workers exposed to asbestos or noise. Obviously, these are important topics, but in the mid-to-late 1980s, it was decided to lay down general principles to be applied to all places of work. This resulted in the 1989 'Framework' Directive on safety and health,² which laid down general principles largely along the lines in the British *Health and Safety at Work Act 1974* and those now in the *Safety, Health and Welfare at Work Act 1989*. Since 1989, a number of detailed Directives have been agreed at European level and many of these have been implemented in Ireland by means of Regulations made under the 1989 Act or comparable legislation.³

¹Pl.1868, 1983.

²89/391/EEC.

³For example, the Safety, Health and Welfare at Work (General Application) Regulations 1993 (SI No.44 of 1993), made pursuant to the 1989 Act, implemented in Irish law seven Directives on safety and health at work, including the 1989 'Framework' Directive and six other detailed Directives. These deal with atypical workers (91/383/EEC), the workplace environment (89/654/EEC), work equipment (89/655/EEC), personal protective equipment (89/656/EEC), manual handling of loads (90/269/EEC) and visual display screens (90/270/EEC). A more complete listing of relevant legislation is contained in the Appendix to this paper.

OUTLINE OF THE 1989 ACT

As already indicated, the *Safety, Health and Welfare at Work Act 1989* was designed to lay down general principles for all places of work and to prevent accidents and ill-health. Some of the key elements are:

- The 1989 Act imposes general duties, comparable to those in compensation claims, on all people in all places of work, public and private sector, in connection with safety, health and welfare. This includes employers, employees, the self-employed, manufacturers, designers and builders. The difference between the duties in the 1989 Act and those applicable in compensation claims is that failure to comply with the duties in the 1989 Act may lead to a criminal prosecution.
- The 1989 Act requires all organisations, public and private sector, to compile a Safety Statement, setting out how safety, health and welfare is being managed and preventive strategies to protect those at work. Failure to comply with this obligation may lead to a criminal prosecution and be relevant in compensation claims.
- The 1989 Act established the National Authority for Occupational Safety and Health (which itself prefers the title Health and Safety Authority) to promote awareness and to enforce the law where necessary.
- The 1989 Act allows for the updating and replacement of pre-1989 laws on safety, health and welfare and Regulations made under them. A significant amount of updating and replacement has now occurred, particularly by the Safety, Health and Welfare at Work (Repeals and Revocations) Order 1995⁴ and by means of the detailed Regulations made under the 1989 Act.⁵ This has resulted in many provisions of the *Factories Act 1955* and *all of the Office Premises Act 1958* being repealed with effect from 21 December 1995. Some specialist legislation, such as the *Fire Services Act 1981* as well as a number of provisions in the *Factories Act 1955*, remain in place. Failure to comply with these detailed Regulations may lead to a criminal prosecution and may also be relevant in a compensation claim.

⁴SI No.357 of 1995.

⁵See Byrne, *A Guide to Safety, Health and Welfare at Work Regulations* (NIFAST, 1995) for a discussion of the more significant of these Regulations. A more complete list of relevant legislative provisions is contained in the Appendix to this paper.

THE GENERAL DUTIES IN THE 1989 ACT

The general duties imposed on different people by the 1989 Act are amplified in the detailed statutory Regulations concerning safety and health which have been made, in particular since 1989. While employers must consult these detailed Regulations and relevant guidance from the Health and Safety Authority, the 1989 Act nonetheless provides a good overall view of responsibilities.

The duties listed in the 1989 Act mirror those applicable in compensation claims: this was intentional, since the 1983 Barrington Commission Report recommended that the common law duties be the basis for the new statutory regime ultimately contained in the 1989 Act. The general duties are contained in sections 6 to 11 of the 1989 Act.

- Section 6 deals with the duties of employers to employees.
- Section 7 deals with the duties of employers and the self-employed to persons other than employees.
- Section 8 deals with the duties of those who have control over places of work to those who work there.
- Section 9 deals with the duties of employees and other persons.
- Section 10 deals with the duties of manufacturers and suppliers of articles and substances for use at work.
- Section 11 deals with the duties of designers and builders of places of work.

'REASONABLY PRACTICABLE' AND THE GENERAL DUTIES IN THE 1989 ACT.

The duties contained in sections 6 to 11 of the 1989 Act are subject to the limitation that employers and others are required to do only what is 'reasonably practicable'. This is very similar to the 'reasonable' duty of care that applies in compensation claims.⁶

When the 1989 Act was being passed in the Oireachtas, the Minister piloting the legislation was asked to explain the term 'reasonably practicable'. He did so by

⁶See McMahon and Binchy, *Irish Law of Torts*, 2nd ed (Butterworths, 1990), p.119, n.110, citing *Edwards* in the context of their discussion of the common law duty of care. It should, however, be noted that the courts have expressed the view that there are some distinctions at the margins between the common law duty of reasonable care and the 'reasonably practicable' standard: see White, *Civil Liability for Industrial Accidents*, 2 vols (Oak Tree Press, 1993), vol 1, pp.642-644.

turning to the English case *Edwards v National Coal Board*.⁷ In that case, Asquith LJ had linked 'reasonably practicable' with the question of risk. Where a risk is high, the judge stated that a great deal is expected in terms of money, time or trouble. Handling of chemicals and working with mechanised equipment would be two examples which experience shows are high risk situations. The same applies to situations such as manual handling which continue to result in so many injuries, even though very rarely fatal injuries. On the other hand, where a risk is low, Asquith LJ stated that a person will have done what is 'reasonably practicable' even if they failed to do something that was technically possible if the cost is 'grossly disproportionate' to the risk involved. In other words, there are some situations where an organisation will have done all that is required by law where a high risk has been tackled, though some residual or low risk remains.

An example of this can be seen in *Boyle v Marathon Petroleum (Irl) Ltd*,⁸ where the plaintiff was employed by the defendant company on the Kinsale offshore gas platform. When the platform was originally constructed, it consisted of two floors with a space of 22 feet between them. The bottom floor was built as a base from which to service the machinery at the top of each well head. The machinery consisted of seven fairly large structures called target blocks. Each block contained several hand-operated valves and also pressure gauges, some of which had to be inspected several times daily. Some of the valves and gauges were about five feet above the bottom floor and others about eight feet above it.

When the platform came into operation, it was necessary to use a ladder to reach the top valves and the ladder had to be shifted for each block. The bottom floor was very congested, containing fire-fighting equipment and electrical equipment, and it was difficult to use the ladder. In addition, the top of each block, about 12 or 13 feet from the bottom floor, had to be removed periodically for maintenance: this required scaffolding, which was also very difficult because of the obstacles on the bottom floor. Shortly before the platform came into operation, the company's employees complained that they considered this system to be dangerous. It was decided that the best solution would be to build a mid-floor so that all the valves and gauges could be reached from the standing position, and ladders would not have to be used. However, because of the position of the lowest valves, the height of the area between the mid-floor and the bottom floor was less than 5 feet and because the

⁷[1949] 1 KB 704.

middle floor was supported by girders or joists every 2 feet, which protruded downwards, this reduced the headroom to just over 4 feet. Work was required on the middle floor a number of times daily, while very little work was required on the bottom floor (about six times a year).

During cleaning work on the bottom floor in January 1990, the plaintiff struck his head on one of the girders and jerked his neck backwards. He was wearing a standard-issue helmet with visor. Because of the height restriction, he had to stoop and he claimed that the visor made it difficult for him to see. McCracken J stated that, in considering whether the company had done what was reasonably practicable,⁹ he had to balance the benefits and additional safety to people working on the blocks from the middle floor against the possible dangers to people working on the bottom floor. He accepted that working on the bottom floor was 'difficult, inconvenient and to some degree hazardous' and required the exercise of considerable care. However, on the other hand very little work was required on the bottom floor by comparison with the mid-floor. He noted also that the middle floor had been inserted following complaints about the previous system and that there had been no complaints in the ten years between then and the plaintiff's accident. On balance, therefore, he concluded that the insertion of the middle floor was the provision of a workplace that was safe, 'so far as is reasonably practicable', so that the plaintiff's claim was dismissed. I understand that an appeal against this decision is pending.

As well as being similar to the approach taken in compensation claims, these interpretations of what is 'reasonable' or 'reasonably practicable' underline the importance of ensuring the reliability of risk assessments which are carried out in compiling a Safety Statement under the 1989 Act.

THE GENERAL PRINCIPLES OF PREVENTION

Regulation 5(a) of the Safety, Health and Welfare at Work (General Application) Regulations 1993¹⁰ provides that where employers are taking the measures

⁸High Court, 1 November 1995.

⁹The case concerned the interpretation of the phrase in s.10 of the Safety, Health and Welfare (Offshore Installations) Act 1987. The interpretation placed on the provision by McCracken J may be moot, as the accident occurred in January 1990, but the 1987 Act did not come into force until November 1990: Safety, Health and Welfare (Offshore Installations) Act 1987 (Commencement) Order 1990 (SI No.271 of 1990).

¹⁰SI No.44 of 1993: see n.3, *supra*.

necessary to protect employees, they must take into account the nine General Principles of Prevention specified in the First Schedule to the Regulations. These nine General Principles have been taken directly from the 1989 'Framework' EC Directive on safety and health at work.¹¹ Since they are the basis for the approach in the many detailed EC Directives on safety and health at work, they provide a useful checklist by which an organisation can judge its approach.

The nine principles are as follows:

- 1) Avoid risks - not all risks can be avoided, but avoidance should be aimed for.
- 2) Evaluate unavoidable risks - this is clearly central to an effective Safety Statement.
- 3) Combat risks at source - an example would be engineering out high noise levels as a solution to the risk of noise-induced hearing loss.
- 4) Adapt work to the individual with a view to alleviating monotonous work and work at a predetermined rate - the need to combat stress and the detailed requirements on VDU work are an example of how this can be implemented.
- 5) Adapt to technical progress - employers must keep up to date with published information on safety and health, including complying with new Regulations as well as new technical standards and information in trade publications.
- 6) Replace the dangerous by the non-dangerous, for example, in relation to chemicals.
- 7) Develop a policy which takes account of technology, organisation of work, working conditions, social factors and the influence of the overall working environment
- 8) Give collective protective measures priority over individual protective measures, e.g. PPE as a last resort only.
- 9) Give appropriate training and instruction to employees - traditionally, training has been seen as primarily for the lowest levels of an organisation. However, it has been shown that, as in other areas, training in safety and health issues needs to be aimed at all levels of an organisation, from senior management down.

¹¹89/391/EEC.

CORPORATE AND PERSONAL RESPONSIBILITY: WHO CAN BE PROSECUTED?

In general it may be stated that civil compensation claims are brought against an organisation, such as a company or a local authority, whether an employer, occupier of property or possibly a designer or builder. This is largely due to the operation of the vicarious liability rule.¹²

However, the situation is different under the 1989 Act, especially in relation to the application of sections 6 to 11 of the Act. Where an employer fails to comply with sections 6, 7 or 8, there is the possibility that the employer can be prosecuted by the Health and Safety Authority. Where an employee is in breach of section 9 of the Act, there is also the possibility that the employee can be prosecuted by the Health and Safety Authority. The same approach applies with sections 10 and 11 of the Act, which deal with manufacturers, designers and builders. Sections 7 and 8 also apply to the self-employed, so there is no possibility of escaping responsibility under the 1989 Act.

Corporate Bodies

Most prosecutions under the 1989 Act and Regulations will continue, as in the past, to be against the employer as a corporate body (for example, a company or local authority) rather than any individual. The experience with the British *Health and Safety at Work Act 1974* indicates that the number of prosecutions may increase, and this has begun to happen, although the total number remains below 40 per year, a fraction of the annual number of compensation claims.

Corporate Officers

S.48(19) of the 1989 Act deals with the responsibility of senior corporate officers. It states that where an offence has been committed by a corporate body and that offence is shown to have been committed with the consent or connivance of, *or to have been attributable to any neglect* on the part of any director, manager, secretary, or other similar officer, he/she may also be prosecuted along with the corporate body. There is an identical provision in the British 1974 Act, and there have been some prosecutions of corporate officers since 1974.

¹²See McMahon and Binchy, *op cit*, pp.753-63.

In *Armour v Skeen*,¹³ the defendant Mr Armour was the Director of Roads for Strathclyde Regional Council, in other words the manager of Council employees in the Roads Division. A Council employee in the Roads Division was killed when he fell from a bridge during a repainting job. The Council did not have any written safety policy concerning the job in question, as required by the 1974 Act, nor had it notified the Health and Safety Executive of the job, as required by the British Factories Act 1961. The Council had, however, issued a circular to its departmental directors in 1975, which included a 'Statement of Safety Policy', setting out the 'bones' of a safety policy, requiring directors to prepare written policy documents relating to each director's department in order to comply with the 1974 Act and other existing legislation, to inform employees of the implications of the 1974 Act and ensuring the application of safe working practices. Mr Armour had not prepared a written policy for his department at the time of the fatal accident. The Council pleaded guilty to the charges brought. Mr Armour was also prosecuted personally, and was found guilty. This conviction was upheld on appeal to the Scottish High Court. The Court held that, bearing in mind his position as Director of Roads, it was Mr Armour's personal responsibility to have formulated the safety policy for his department. Therefore, he was guilty of an offence as well as the Council, the corporate body.

In *R v Boal*,¹⁴ the defendant Mr Boal was the assistant manager in a bookshop who was in day-to-day charge of the shop when the manager was not present. On one day when the manager was not present Mr Boal was in charge, and an inspection of the shop found defects in the fire precautions. The owners were then prosecuted under the British *Fire Precautions Act 1971* and found guilty of an offence. Mr Boal was also prosecuted personally under a provision in the British 1971 Act which is identical to s.48(19) of the 1989 Act. However, the case against him was dismissed on the basis that, although he was in charge on the day that the premises were inspected, he had no control over the shop's policy on fire safety.

On the basis of the *Armour* and *Boal* cases, therefore, s.48(19) of the 1989 Act only seems to apply to those managers and other officers who have an input into corporate policy, that is who have executive functions in an organisation.

¹³[1977] IRLR 310.

¹⁴[1992] QB 591.

Employees

Other individuals, such as supervisors or 'ordinary' employees, face the possibility of prosecutions under s.9 of the 1989 Act. There has been an increasing number of such prosecutions in Britain in recent years, though they remain less common in Ireland.

Self-Employed

Self-employed persons face the prospect of prosecutions under sections 7 and 8 of the 1989 Act. These are relatively common in Ireland, particularly in the construction sector.

PROSECUTIONS AND PENALTIES

As already indicated, where the 1989 Act or any Regulations impose a requirement on any person (whether a corporate body or an individual), failure to comply with that requirement leaves the person open to a possible prosecution by the Health and Safety Authority. About 30 prosecutions are brought annually.

To date, all prosecutions are by way of summary trial in the District Court, where the maximum fine is, in general, £1,000.¹⁵ It is also possible to bring a prosecution by way of an indictment, but this would be reserved for extremely serious cases and would be heard by a judge and jury in the Circuit Criminal Court or the Central Criminal Court (the High Court). On indictment, there is no limit to the fine that can be imposed on conviction. In Britain, under equivalent provisions, a fine of £500,000 has been imposed in a number of cases. No prosecutions on indictment have taken place to date (May 1997) under the 1989 Act.

On indictment also, there is the additional power to impose a term of imprisonment of up to two years, but this can only happen in three cases:

- 1) failure to obey a Prohibition Notice
- 2) unlawful disclosure of information obtained under the 1989 Act (in effect, revealing secret trade processes or identifying individuals where this is not authorised)
- 3) breaking the terms of a licence issued under the 1989 Act (no licensing arrangements exist yet under the 1989 Act).

THE RELEVANCE OF STANDARDS AND GUIDANCE

An important factor in compensation claims, whether based on the common law duty of care or breach of statutory duty, is compliance with relevant national, international or industry standards. In assessing whether employers have met the relevant common law or statutory standard, a judge dealing with a compensation case hears evidence from technical experts, such as engineers. Generally, the judge will decide on liability with the benefit of this expert guidance.

In some instances, a specific national technical standard, such as an IS or BS standard may be relevant. The development of IS standards is the responsibility of the National Standards Authority of Ireland (formerly Eolas and, before that, the Institute for Industrial Research and Standards) under the Industrial Research and Standards Act 1961. Many of the national IS and similar BS standards are rapidly being replaced by European Norms (ENs). Many of these ENs are connected with European Community Technical Standards Directives, implemented in Irish law largely by means of Ministerial Regulations. A number of these (by no means a complete list) are referred to in the Appendix to this paper under the heading 'Technical Standards'.

In addition, in many instances, guidelines or published material from the safety literature, such as booklets published by the Irish Health and Safety Authority or the British Health and Safety Executive, will be taken as indicating 'best practice.'

By way of example, in *Dunne v Honeywell Control Systems Ltd and Virginia Milk Products Ltd*¹⁶ Honeywell had installed equipment at the Virginia premises and also maintained it. Mr Dunne worked for Honeywell and was doing maintenance work on the equipment at Virginia. To get to the job, he had to climb a vertical ladder fixed to the wall of the building. Coming down, and carrying his tools in a case, he lost his balance and sustained a very severe injury to his foot. Honeywell used to give its electricians a satchel for their tools, but had replaced these with cases to give their work a better image. The fixed ladder had been built after Virginia's premises was completed. The High Court judge, Barron J, was greatly influenced in finding Virginia

¹⁵Section 41 of the Organisation of Working Time Act 1997 proposes to increase the penalties in the District Court to £1,500. At the time of writing (May 1997), it is expected that the 1997 Act will be brought into effect in September 1997.

¹⁶[1991] ILRM 595.

liable that the narrowness and depth of the steps on the ladder in that case were not in accordance with a 1985 British Standard for ladders. He thus found Virginia in breach of s.37 of the *Factories Act 1955*, which required 'safe access and egress' to a place of work.¹⁷

Similarly, in *Firth v South Eastern Health Board*,¹⁸ the plaintiff was a ward attendant employed by the defendant board at St Patrick's Hospital, Waterford, which catered largely for long-term geriatric and psychiatric patients. She had joined the staff in 1970 and worked almost continuously at the hospital from then until December 1990 when she sustained a back injury while lifting a patient. In 1970, she had been shown how to lift patients by the then matron of the hospital, but had not received any further training in patient lifting. On the night of the back injury, the plaintiff was preparing to lift a patient of about 11 stone with the staff nurse on duty. The technique used was described as the orthodox or cradle lift. Just after the lift commenced, as the patient was being lifted away from the plaintiff and as she was bent inwards over the bed, she felt a severe pain in her lower back and left side and was forced to let go the patient. On the technique used, evidence was given that the Cork Regional Hospital had published a pamphlet on patient handling in 1985 in which it stated that the orthodox or cradle lift should be avoided whenever possible. In 1987, a book entitled *The Handling of Patients*, published in Britain by the Back Pain Association in collaboration with the Royal College of Nursing, had recommended a total ban on the cradle lift as it involved bending over the patient, the lifting fulcrum was moved away from the lifter's body and it was not possible for the lifter to keep her back straight. Evidence given in the case by an acknowledged authority was to the effect that the plaintiff and other staff should have been retrained in lifting techniques from time to time, as the training given in 1970 had become obsolete. Keane J concluded that the hospital had been negligent in this case as it had failed to keep up to date with training techniques and had failed to retrain staff, and had therefore exposed the plaintiff to an unreasonable risk of back injury. He was greatly influenced by the publication in 1987 of *The Handling of Patients*. In this case, taking account of future loss of earnings total damages of £135,658 were awarded (£60,000 of this being general damages for pain and suffering).

¹⁷S.37 of the 1955 Act has since been replaced by the provisions of Part III of the Safety, Health and Welfare at Work (General Application) Regulations 1993, the Workplace Regulations 1993, made under the Safety, Health and Welfare at Work Act 1989.

¹⁸High Court, 27 July 1994.

IS COMPLIANCE WITH STATUTORY DUTIES SUFFICIENT?

Many organisations, viewing the extent of the statutory duties imposed on them, would probably feel that surely that is the extent of their obligations. In many respects, they would be right, because the legislation on safety and health at work to some degree extends beyond what is required by the common law duty of care of employers. This is especially so with some of the comfort/welfare matters such as sanitary facilities, meal-making facilities and similar requirements imposed by, for example, Part III of the Safety, Health and Welfare at Work (General Application) Regulations 1993, the Workplace Regulations 1993. Nonetheless, in other respects, the statutory regime is an incomplete statement of an organisation's duties, in at least two respects.

First, detailed Regulations may not be in place to deal with specific topics, such as repetitive strain injury, smoking, stress or violence but these matters may easily give rise to compensation claims. The English decision on stress, *Walker v Northumberland County Council*,¹⁹ illustrates this. Mr Walker had been a senior area officer in social services for 15 years. Although he did not work particularly long hours, the job was particularly stressful due to its content. He made recommendations to senior management to assist him in managing the case load of his front line social work staff, but no action was taken on these. He suffered a stress-induced breakdown and took three months leave, explaining to senior management that the breakdown had been caused by work-related pressures. Senior management promised to take steps to alleviate the pressure if he returned. He agreed to return on the basis that these promises would be fulfilled, but they were not. Mr Walker continued working for some time, but eventually had a second nervous breakdown. The English High Court accepted that the health authority owed a duty of care to prevent harmful stress to its employees and had been in breach of this duty in relation to Mr Walker. The Court accepted that they could not have foreseen the first breakdown but were liable in respect of the second. The Court awarded over £200,000 in damages. The Council appealed this, but the case was settled, for about £160,000. The decision indicates that liability may arise even in the absence of detailed statutory Regulations on the topic.²⁰

¹⁹[1995] 1 All ER 737.

²⁰The Organisation of Working Time Act 1997 will require employers to consider stress-related issues of work organisation. The 1997 Act, and associated Regulations to be made under the Safety, Health and Welfare at Work Act 1989, implement the 1993 EC Working Time Directive, 93/104/EC. At the time of writing (May 1997), it is expected that the 1997 Act will be brought into force in September 1997

Second, although statutory duties are sometimes expressed in strict terms, beyond the 'reasonable' standard expressed by the common law, in other instances they may not express the full extent of an organisation's duty of care. For example, in the context of personal protective equipment, statutory Regulations typically impose a high duty to *provide* eye or ear protection, but do not always express any view on whether the organisation is required to encourage its use through supervisors or team leaders. In *Bux v Slough Metals Ltd*,²¹ the plaintiff was employed by the defendant company in a metal foundry. He was involved in pouring molten metal into vats and there was a clear risk of damage to eyes in this. As required by Reg.13 of the (British) *Non Ferrous Metals (Melting and Founding) Regulations 1962*,²² the defendant company had provided goggles to him, though it had no policy of encouraging employees to wear them nor was there effective supervision in this area. On one occasion, the plaintiff was not wearing his goggles and he sustained a severe eye injury when a molten metal splash entered his eye. The English Court of Appeal held the defendant company had fully complied with its statutory duty to supply goggles. Nonetheless, the Court held it was liable because the common law duty of reasonable care required it to encourage the wearing of goggles, though not necessarily to order employees to do so. In the absence of any system of encouraging use of goggles, it was held negligent. The Court also found the plaintiff was 40% contributorily negligent, thus considerably reducing the amount awarded. A similar case today would probably be conservatively valued at £80,000, assuming 100% liability.

ENFORCEMENT OF SAFETY RULES

Some further comments on the implications of the 1989 Act for the internal enforcement of safety rules should be mentioned here. S.9(1) of the 1989 Act places a number of obligations on every employee while at work:

- to take reasonable care for his/her own safety, health and welfare and that of any other person who may be affected by his/her acts or omissions

²¹[1974] 1 All ER 262.

²²Reg.13 of the British 1962 Regulations was identical to Reg.15 of the Irish *Factories (Non Ferrous Metals) (Melting and Founding) Regulations 1975*, since replaced by Reg.21 of the *Safety, Health and Welfare at Work (General Application) Regulations 1993*, contained in Part V of the 1993 Regulations, the Provision of Personal Protective Equipment at Work Regulations 1993.

- to co-operate with the employer and any other person to enable the employer or other person to comply with statutory obligations
- to use any suitable appliance, protective clothing, convenience, equipment or other means provided intended to secure the employee's safety, health and welfare *and* to report to the employer or immediate supervisor, without unreasonable delay, any safety/health defects in plant, equipment, place of work or system of work, of which s/he becomes aware.

In addition, s.9(2) also requires *all persons* (including visitors, contractors or trainees as well as employees) not intentionally or recklessly to interfere with or misuse any appliance, protective clothing, convenience, equipment or other means provided to ensure safety, health and welfare.

Many of the detailed Regulations on safety and health referred to in the Appendix to this paper also impose specific duties on employees and others to comply with safety procedures implemented by the employer.

Section 9 also has another important, indirect, legal effect. Employees who do not comply with safety and health rules will find it extremely difficult to object if their employer takes disciplinary action for non-compliance with safety rules. Even before the 1989 Act, the Employment Appeals Tribunal had decided that dismissals for breach of safety rules were not unfair dismissals under the Unfair Dismissals Act 1977, provided the employer complied with proper procedures. For example, in *Kellegher v Power Supermarkets Ltd*,²³ the applicant had been involved in a form of 'horseplay' with a fork lift truck in one of the company's *Crazy Prices* supermarkets. Another company employee had been unloading dog food from a pallet on the fork lift truck driven by the applicant. It appeared that the applicant decided to lift the forks, with the other employee on board, about 17 to 20 feet in the air. He was also apparently encouraged by another employee to 'rattle the forks', that is, driving forward or backwards and then stopping quickly. When the nightcrew manager noticed this, he ordered the applicant to stop. The applicant was later dismissed. The Employment Appeals Tribunal unanimously decided that the applicant's dismissal for breach of safety rules was not unfair in the circumstances of that case.

²³UD720/89 (decided 9 March 1990).

Of course, disciplinary action should always be a last resort, but s.9 of the 1989 Act clearly supports an employer who enforces safety rules. In *Bux v Slough Metals Ltd*²⁴ it was pointed out that employers are under a common law duty to encourage the wearing of personal protective equipment where necessary.

In addition, failure to enforce safety rules may have implications in terms of compensation claims. In *Hough v Irish Base Metals Ltd*,²⁵ the plaintiff was injured when jumping away from a gas fire that had been placed near him by another employee in the repair shop where they worked. This had happened a number of times, but it had begun only shortly before the accident. It was regarded as 'a bit of fun' and nobody had reported previous occurrences to any supervisor. It was also difficult to detect because it would usually be over in an instant. The Supreme Court decided that the company had not fallen below the reasonable level of supervision required. Therefore, no compensation was awarded in this case. By contrast, in *Hudson v Ridge Manufacturing Co Ltd*,²⁶ the plaintiff had been injured in a 'prank' by one of his fellow employees. This other employee had a history of tripping people up and otherwise engaging in horseplay, though without intending to injure or bully them. He had been reprimanded repeatedly by his foreman that if he did not stop somebody would be injured. On a particular occasion, he had taken hold of the plaintiff from behind and then forced him on to the ground. In the course of this, the plaintiff put out his hand to save himself and fractured his right wrist. The English High Court held that the company had been negligent in failing to take any adequate precautions to prevent this incident.

It is therefore clear that an organisation must be able to indicate that it has taken sufficient precautions to ensure that it is seen to be proactive in the monitoring of safety standards.

SOME GENERAL APPROACHES TO MANAGING SAFETY AND HEALTH

For many larger organisations, it is no easy task to implement in practice the requirements imposed by s.12 of the 1989 Act in connection with the Safety Statement, as amplified by the Safety, Health and Welfare at Work (General Application) Regulations 1993. In reality, there is no 'standard' format for managing

²⁴[1974] 1 All ER 262, discussed above.

²⁵Supreme Court, 8 December 1967.

²⁶[1957] 2 All ER 229.

safety and health, though a number of approaches have been developed. These include the following.

Compliance with Regulations/General Principles of Prevention

A starting point for compliance might be to ensure that the organisation is aware of the relevant legislation, including the detailed Regulations listed in the Appendix to this Paper. Many such Regulations specify precise standards, eg noise levels, Occupational Exposure Limits (OELs), to which organisations must comply. In addition the General Principles of Prevention in the General Application Regulations 1993 provide a useful guide in terms of the general approach to be adopted. As already indicated, published guidance and other material from the vast safety literature may also prove of assistance. Many valuable data bases, including computer-based data, now exist to assist organisations in sourcing international 'best practice'.

Safety Audit

This is usually carried out by appropriately qualified personnel, including safety professionals. An audit should include, among other things, management policy, the design, layout and construction of the place of work, operating procedures, emergency plans, personal protective standards and accident records. The audit would be followed by a formal report, action plan and subsequent monitoring.

Safety Survey

This involves a detailed examination in depth of, for example, major key areas revealed by an audit to require further examination. As with the audit, the survey would be followed by a formal report, action plan and subsequent monitoring.

Safety Inspection

This is a routine, scheduled inspection of a department which can be carried out by personnel from the department but possibly accompanied by someone from outside. It would involve checks on maintenance standards, employee involvement and ensure that work is carried out in accordance with agreed procedures.

Safety Tour

This is an unscheduled examination of a work area, carried out to ensure that, for example, standards of housekeeping are at an acceptable level and that safety

standards are being observed. This could be carried out by a range of personnel, including managers, safety representatives or safety committee members.

Safety Sampling

This involves a specific type of inspection or tour, designed to measure by random sampling the accident potential by counting safety defects. Such sampling would take about 15 minutes and might be conducted at weekly intervals. They are useful in detecting trends in the safety situation.

Hazard and Operability Studies (HAZOP)

This involves the use of a highly formal critical examination of the process and engineering elements of equipment. This complex technique was initially developed for the particular needs of the chemical process industry and its application is somewhat limited.

Checklists

Many organisations will choose to use a checklist system. Here an organisation must compile its own list, bearing in mind the relevant Regulations that apply to it as well as other particular matters which may not be dealt with in Regulations. These checklists might be broken down for different departments within an organisation, depending on its size.

Incentives

Some organisations have introduced a variety of incentives to encourage improved safety performance; but whether this is suitable for your organisation is very much dependent on your 'culture'. A great deal of thought must be given to whether an incentive scheme would be appropriate and, if so, the precise form or forms they might take.

BENEFITS OF SUCCESSFUL SAFETY AND HEALTH MANAGEMENT

An example of successful safety and health management given in the 1996 Deloitte & Touche *Report on the Economic Evaluation of Insurance Costs in Ireland*²⁷ was that of Waterford Stanley. In 1985, its employer's liability insurance premium was £200,000, it had about 25 accidents per year, with average absenteeism of 16 weeks

²⁷Department of Enterprise and Employment, October 1996.

per accident. In 1989, its accident rate had reached 5.4%. The company decided to change its approach to safety and health. It introduced the following initiatives:

- allocation of health and safety responsibilities to managers
- identification and rectification of hazards in the workplace
- training and consultation
- allocation of people and money resources
- preparation of safety statements
- caring for injured employees
- payment of full net wages to employees due to accidents at work
- introduction of self-insurance
- management of employer's liability claims
- use of private investigators.

By 1994, the company had had no employer's liability claims for three years, it had fewer serious accidents, absenteeism due to accidents was down to 0.2% and it had reduced considerably its employer's liability insurance costs. While the particular initiatives in that instance may be not be suitable to all organisations, the benefits of an effective safety and health programme are clear.

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APPENDIX

LISTING OF THE MAIN ACTS AND REGULATIONS

In this Appendix, the most significant detailed Acts and Regulations on safety, health and welfare at work are listed for reference purposes. Most of these apply to all places of work (unless their title indicates otherwise: e.g. some of the chemical agents/transport of goods Regulations). Many of them also involve the implementation of EC Directives.

The Acts and Regulations are listed in alphabetical order (apart from the first), with their British and Northern Ireland counterparts also referred to (later amendments to British or NI Regulations are not included). Approved Codes of Practice (ACoPs) and Guidelines from the Health and Safety Authority (HSA) are also referred to. For virtually all their British counterparts there are associated ACoPs or Guides.

EC Directives due for implementation or at proposal stage are also included.

Also listed are some other items of interest (eg fire, smoking, stress, violence) even where no specific Regulations exist but where the specific points seem to come up on a regular basis.

A full list of all Acts and Regulations in force is available as a separate publication from the Irish Health and Safety Authority, Hogan Place, Dublin 2. The HSA's list is not in alphabetical order and it does not include any legislation for which others are responsible, eg radiological protection, but it is complete up to the end of 1995 and also contains a very helpful list of the sections of Acts currently in force, taking account of the Safety, Health and Welfare at Work (Repeals and Revocations) Order 1995 (SI No.357 of 1995).

1. General Provisions/Management

Safety, Health and Welfare at Work Act 1989 and General Provisions Regulations 1993: Part II of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993) (implemented 1989 Framework Directive, 89/391/EEC): equivalent to British Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1992; and Northern Ireland

Health and Safety at Work (NI) Order 1978 and Management of Health and Safety at Work Regulations (NI) 1992. Note that the General Provisions Regulations 1993 also incorporate fixed-term and temporary employees into the definition of 'employee'.

Guidelines: Guidelines on Safety Statements (1990, revised 1994) and Guidelines on Safety Consultation and Safety Representatives (1990, revised 1994) available. Also videos on Safety Statement and Safety Representative (1991). See also *Guide to 1989 Act and 1993 Regulations* (published by the HSA, December 1995).

2. Asbestos

- (a) European Communities (Protection of Workers) (Exposure to Asbestos) Regulations 1989 (S.I. No.34 of 1989) and European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 1993 (S.I. No.276 of 1993) (implemented Directives 83/477/EEC and 91/382/EEC): equivalent to British Asbestos (Licensing) Regulations 1983 and British Control of Asbestos at Work Regulations 1987 and Asbestos (Licensing) Regulations (NI) 1984 and Control of Asbestos at Work Regulations (NI) 1988;
- (b) European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 1994 (S.I. No.79 of 1994): equivalent to British Asbestos (Prohibitions) Regulations 1992 and Asbestos (Prohibitions) Regulations (NI) 1993.

3. Biological agents/pathogens/ infectious diseases

- (a) Safety, Health and Welfare at Work (Biological Agents) Regulations 1994 (S.I. No.146 of 1994) (implemented Directive 90/679/EEC and 93/88/EEC): covered by British Control of Substances Hazardous to Health Regulations 1994 and Control of Substances Hazardous to Health Regulations (NI) 1990 (COSHH).
- (b) Genetically Modified Organisms Regulations 1994 (S.I. No.345 of 1994) (GMOs): equivalent to the British Genetic Manipulation Regulations 1989 and the Genetically Modified Organisms (Contained Use) Regulations 1992 and the Genetic Manipulation Regulations (NI) 1991 and the Genetically Modified Organisms Regulations (NI) 1991.

4. Carcinogens

Safety, Health and Welfare at Work (Carcinogens) Regulations 1993 (S.I. No.80 of 1993) (implemented Directive 90/394/EEC): covered by British Control of Substances Hazardous to Health Regulations 1994 and Control of Substances Hazardous to Health Regulations (NI) 1990 (COSHH). Guidelines on Prevention of Cancer arising from Exposure to Substances at Work (1991) predates 1993 Regulations. Preventing Workplace Cancer (1993) also available. Note: amending EC Directive on Carcinogens agreed September 1996.

5. Chemical agents/COSHH

- (a) Safety, Health and Welfare at Work (Chemical Agents) Regulations 1994 (S.I. No.445 of 1994) (implemented Directives 88/642/EEC and 91/322/EEC): broad principles similar to British Control of Substances Hazardous to Health Regulations 1994 and Control of Substances Hazardous to Health Regulations (NI) 1990 (COSHH). ACoP: January 1997, replacing similar ACoP of December 1994: list of chemical agents with OELs virtually identical to British HSE's EH/40, published annually for COSHH Regulations 1994.
- (b) Safety, Health and Welfare at Work Act 1989 (Control of Specific Substances and Activities) Regulations 1991 (S.I. No.285 of 1991): severe restrictions on four aromatic amines, also included in COSHH;
- (c) European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 1994 (S.I. No.79 of 1994): many of the restrictions on use are also included in COSHH;
- (d) European Communities (Protection of Workers) (Exposure to Chemical, Physical and Biological Agents) Regulations 1989 (S.I. No.251 of 1989): information requirements for arsenic, cadmium, mercury and lead overlap with Chemical Agents Regulations 1994.

Note: COSHH also incorporates biological agents (but not GMOs) and carcinogens: see above. See also Major accident hazards, below.

6. Chemicals agents/CHIP

- (a) European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations 1994 (S.I. No.77 of 1994).
- (b) European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations 1995 (S.I. No.272 of 1995);

These CPL Regulations of 1994 and 1995 are broadly equivalent to the British Chemicals (Hazard Information and Packaging) Regulations 1993 and Chemicals (Hazard Information and Packaging) Regulations (NI) 1993 (CHIP), which cover both substances and preparations.

7. Chemicals agents/dangerous substances: LPG (Dangerous Substances Act 1972)

Dangerous Substances (Storage of Liquefied Petroleum Gas) Regulations 1990 (S.I. No.201 of 1990): broadly similar to British Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972 (made under British Factories Act 1961) and Highly Flammable Liquids and Liquefied Petroleum Gases Regulations (NI) 1975 (made under Factories Act (NI) 1954. ACoP (August 1990): approved IS 3213: 1987; IS 3216:1988; and IS 3216: Part 2: 1989 for the purposes of the 1990 Regulations. See also the Gas Acts 1976 and 1977, which concern the safety of the gas transmission pipelines constructed for Bord Gáis Éireann, the Irish Gas Board.

8. Chemicals agents/dangerous substances: petroleum (Dangerous Substances Act 1972)

- (a) Dangerous Substances (Retail and Private Petroleum Stores) Regulations 1979 and 1988 (S.I. No.311 of 1979 and S.I. No.303 of 1988);
- (b) Dangerous Substances (Oil Jetties) Regulations 1979 (S.I. No.312 of 1979);
- (c) Dangerous Substances (Petroleum Bulk Stores) Regulations 1979 (S.I. No.313 of 1979);
- (d) Dangerous Substances (Conveyance of Petroleum by Road) Regulations 1979 and 1996 (S.I. No.314 of 1979 and S.I. No.386 of 1996);

- (e) Dangerous Substances (Method and Apparatus for Testing Petroleum) Regulations 1988 (S.I. No.128 of 1988);
- (f) Dangerous Substances (Amendment) Regulations 1995 (S.I. No.103 of 1995) (amended definition of 'container' in (a) to (e) to allow certain ADR containers to be used).

9. Chemicals agents/dangerous substances: transport by road (Dangerous Substances Act 1972)

- (a) Dangerous Substances (Conveyance of Scheduled Substances by Road) (Trade or Business) Regulations 1980 to 1996 (S.I. No.235 of 1980, S.I. No.268 of 1986 and S.I. No.389 of 1996): equivalent to British Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1992 and Road Traffic (Carriage of Dangerous Substances in Packages etc.) Regulations 1992 (which updated British Regulations of 1981 and 1986) and Road Traffic (Carriage of Dangerous Substances in Road Tankers and Tank Containers) Regulations (NI) 1992 and Road Traffic (Carriage of Dangerous Substances in Packages etc.) Regulations (NI) 1992 (which updated NI Regulations of 1983 and 1988). HSA approved as a code of practice for the Regulations sections 2, 3, 4 and 6 of UK Liquefied Petroleum Gas Industry Technical Association Code of Practice 2 (1974) for the 1980 and 1986 Regulations in relation to propane and butane. Guidelines on Regulations also available.
- (b) Dangerous Substances Act 1972 (Part IV Declaration) Order 1996 (S.I. No.387 of 1996) (declaring certain substances listed in ADR Agreement to be 'dangerous substances' under 1972 Act and replacing 1986 Order);
- (c) Dangerous Substances Act 1972 (European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR)) Regulations 1996 (S.I. No.388 of 1986) (replacing 1986 Regulations);
- (d) European Communities (Vocational Training for Drivers of Vehicles Carrying Dangerous Goods) Regulations 1992 (S.I. No.204 of 1992): equivalent to British Road Traffic (Training of Drivers of Vehicles Carrying Dangerous Goods)

Regulations 1992 and Road Traffic (Training of Drivers of Vehicles Carrying Dangerous Goods) Regulations (NI) 1992.

10. Confined space entry

Detailed provisions in Factories Act 1955 only, but covered more generally in the Workplace Regulations 1993: Part III of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993).

11. Construction/civil engineering

Safety, Health and Welfare at Work (Construction) Regulations 1995 (S.I. No.138 of 1995) (implemented Directive 92/57/EEC): Parts II and III (Design and Management) equivalent to British Construction (Design and Management) Regulations 1994 and Construction (Design and Management) Regulations (NI) 1995 (CONDAM). Parts IV to XVIII (detailed operational Regulations) equivalent to British Construction (Health, Safety and Welfare) Regulations 1996. Guidelines on Irish Regulations: expected.

12. Display screen equipment (VDUs)

Display Screen Equipment Regulations 1993: Part VII of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993) (implemented Directive 90/270/EEC): equivalent to British Health and Safety (Display Screen Equipment) Regulations 1992 and Health and Safety (Display Screen Equipment) Regulations (NI) 1992. Guidelines: December 1995.

13. Diving operations

Safety in Industry (Diving Operations) Regulations 1981 (S.I. No.422 of 1981): applies to factories only. British equivalent, Diving Operations at Work Regulations 1981, apply to wider range of places of work.

14. Docks and quays

Docks (Safety, Health and Welfare) Regulations 1960 (S.I. No.279 of 1960): equivalent to much-updated British Docks Regulations 1988.

15. Electricity

Use of Electricity Regulations 1993: Part VIII of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993): equivalent to British Electricity at Work Regulations 1989 and Electricity at Work Regulations (NI) 1991.

Guidelines: December 1995. See also discussion above of the Electricity (Supply) Acts 1927 to 1988, which concern the safety elements of the national transmission grid.

16. Environmental protection

See, eg, Environmental Protection Agency Act 1992 and Waste Management Act 1996: detailed discussion is outside the scope of this paper. See Scannell, *Environmental and Planning Law in Ireland* (Round Hall Press, 1995).

17. Explosive atmospheres

Proposed Directive on workers exposed to Explosive Atmospheres. This will deal with different situations eg offshore operations, mining, quarrying and also general industry eg dust explosions, currently dealt with in Factories Act 1955.

18. Factories

Some important provisions of Safety in Industry Acts 1955 and 1980 (equivalent to British Factories Act 1961 and Factories Act (NI) 1954) and Regulations made under them remain in place. These include:

- Entry into confined and other spaces (in the 1955 and 1980 Acts)
- Prevention of dust explosions (in the 1955 and 1980 Acts)
- Examination and testing of lifting equipment (in the 1955 and 1980 Acts)
- Examination and testing of pressure vessels (in the 1955 and 1980 Acts)
- Factories (Notification of Industrial Diseases) Regulations 1956
- Factories (Report of Examination of Hoists and Lifts) Regulations 1956
- Docks (Safety, Health and Welfare) Regulations 1960
- Factories (Woodworking Machinery) Regulations 1972
- Shipbuilding and Ship-Repairing (Safety, Health and Welfare) Regulations 1975
- Safety in Industry (Diving Operations) Regulations 1981
- Safety in Industry (Abrasive Wheels) Regulations 1982.

19. Fire

For most places of work, there are no specific Regulations in place as yet to deal with the 'operational' side of fire safety. S.6 of the 1989 Act and Reg.9 of the General Application Regulations 1993 require employers to have in place 'emergency plans', while s.55 of the 1989 Act brought factories (but not other places of work) under the Fire Services Act 1981. The fire safety elements of the 1989 EC Directive on the

Workplace have not yet been implemented either in this State or in the UK: draft British Regulations, the Fire Safety in Places of Work Regulations, were published in 1994. The fire safety elements of the Construction Regulations 1995 indicate the type of specifics that we might get. Note also the fire safety requirements of the Building Regulations 1991 (S.I. No.306 of 1991) and also the need to obtain a fire safety certificate under the Building Control Regulations 1991 (S.I. No.305 of 1991). These Regulations apply to new (post-June 1992) buildings as well as 'material alterations' to existing (pre-June 1992) buildings. The Fire Safety in Places of Assembly (Ease of Escape) Regulations 1985 (S.I. No.249 of 1985), made under the Fire Services Act 1981, are not very specific but they are important for any place to which the public have access e.g. theatre, cinema, sports stadium, disco. See also the Explosive Atmospheres heading, above.

20. First aid

First Aid Regulations 1993: Part IX of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993): equivalent to British Health and Safety (First Aid) Regulations 1981 and Health and Safety (First Aid) Regulations (NI) 1982. Guidelines: July 1994 and see also December 1995 Guide to 1989 Act and 1993 Regulations.

21. Fishing vessels

1992 and 1993 Fishing Vessels Directives (due to be implemented: December 1994 and November 1995).

22. Lead

European Communities (Protection of Workers) (Exposure to Lead) Regulations 1988 (S.I. No.219 of 1988) and European Communities (Protection of Workers) (Exposure to Chemical, Physical and Biological Agents) Regulations 1989 (S.I. No.251 of 1989) (the 1989 Regulations setting out detailed health surveillance requirements) (implemented Directives 82/605/EEC and 80/1107/EEC): equivalent to British Control of Lead at Work Regulations 1980 and Control of Lead at Work Regulations (NI) 1986.

23. Lifting equipment

Detailed provisions on examination and testing in Factories Act 1955 only (general duty covered by 1989 Act and the Work Equipment Regulations 1993, and

implementation of 1995 EC Directive on Work Equipment, discussed below, will update these provisions).

24. Major accident hazards

European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations 1986, 1989 and 1992 (S.I. No.292 of 1986, S.I. No.194 of 1989 and S.I. No.21 of 1992) (implemented 82/501/EEC, 87/216/EEC and 88/610/EEC): equivalent to British Control of Industrial Major Accident Hazards Regulations 1984 and Control of Industrial Major Accident Hazards Regulations (NI) 1985. Guide available. Will be replaced when new 1996 Directive on this area is implemented.

25. Manual handling of loads

Manual Handling of Loads Regulations 1993: Part VI of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993) (implemented Directive 90/269/EEC): equivalent to British Manual Handling Operations Regulations 1992 and Manual Handling Operations Regulations (NI) 1992. Guidelines: December 1995.

26. Merchant shipping

Regulated by the Merchant Shipping Acts 1894 to 1992 through the Department of the Marine.

27. Mines and quarries

Currently regulated by Mines and Quarries Act 1965 and Regulations: equivalent to British Mines and Quarries Act 1954. Regulations due in 1997 to implement 1992 Extractive Industries Directive [Mining and Quarrying] (due to be implemented: December 1994).

28. Noise

European Communities (Protection of Workers) (Exposure to Noise) Regulations 1990 (S.I. No.157 of 1990) (implemented Directive 86/166/EEC): equivalent to British Noise at Work Regulations 1989 and Noise at Work Regulations (NI) 1990. Guidelines: Medical Guidance Notes on Hearing Checks and Audiometry (June 1990, revised 1992) as well as general Guide to the Regulations.

29. Notification of accidents and dangerous occurrences

Notification of Accidents and Dangerous Occurrences Regulations 1993: Part X of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993): equivalent to British Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 and Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (NI) 1986 (RIDDOR), but 1993 Regulations do not cover notifying/reporting diseases. Approved Forms for Reporting Accidents and Dangerous Occurrences: IR 1 and IR 3. Guidelines: December 1995.

30. Public/occupiers liability

General duties in ss.7 and 8 of 1989 Act include responsibility to persons other than employees, including contractors, visitors and others. Certain duties in General Application Regulations 1993 and Construction Regulations 1995 also encompass persons other than employees/sharing premises. See also Regulations under chemical safety, above. Occupiers Liability Act 1995 expressly stated to be without prejudice to duties of employer under safety at work legislation.

31. Offices

The Office Premises Act 1958 and all Regulations made under it were repealed in 1995: now covered by 1989 Act and relevant Regulations.

32. Offshore and onshore drilling

Safety, Health and Welfare (Offshore Installation) Act 1987 and Regulations cover offshore exploration: equivalent to UK Mineral Workings (Offshore Installations) Act 1971. On-shore drilling covered by Mines and Quarries Act 1965: equivalent to British Mines and Quarries Act 1954. Further Regulations, applicable to offshore and on-shore drilling, expected in 1997 to implement 1992 Extractive Industries Directive [Drilling] (due to be implemented: November 1994).

33. Personal protective equipment

Personal Protective Equipment Regulations 1993: Part V of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993) (implemented Directive 89/656/EEC): equivalent to British Personal Protective Equipment at Work Regulations 1992 and Personal Protective Equipment at Work Regulations (NI) 1993. See also the European Communities (Personal Protective Equipment) Regulations 1993 to 1994, which deal with the CE marking of PPE.

Guidelines: December 1995. Overlap with other Regulations, e.g. Noise Regulations 1990.

34. Poisons

See the Poisons Act 1961 and Poisons Regulations 1982 and the chemical agents heading above for Regulations made under the European Communities Act 1972 governing chemicals in general.

35. Pregnant and breastfeeding employees

Safety, Health and Welfare at Work (Pregnant Employees etc.) Regulations 1994 (S.I. No.446 of 1994) and Maternity Protection Act 1994 (implemented Directive 92/85/EEC): 1994 Regulations equivalent to British Management of Health and Safety at Work (Amendment) Regulations 1994 and Management of Health and Safety at Work (Amendment) Regulations (NI) 1995 (New and Expectant Mothers). HSA Guidelines (1996) based on HSE Guidance Note (1994).

36. Pressure vessels

Factories Act 1955 and Regulations made under it contain provisions requiring regular examination and testing of certain pressure vessels by competent persons. Likely to be replaced with equivalent of British Pressure Systems and Transportable Gas Containers Regulations 1989 and Pressure Systems and Transportable Gas Containers Regulations (NI) 1991. See also Explosive Atmospheres heading, above.

37. Radiation: ionising

The Radiological Protection Act 1991 and associated provisions are regulated by the Radiological Protection Institute of Ireland (RPII), the successor to the Nuclear Energy Board (NEB).

- (a) European Communities (Medical Ionising Radiation) Regulations 1988 (S.I. No.188 of 1988) (implemented Directive 84/466/Euratom): equivalent to British Ionising Radiations (Protection of Persons Undergoing Medical Examination or Treatment) Regulations 1988;
- (b) European Communities (Ionising Radiation) Regulations 1991 (S.I. No.43 of 1991) (implemented in part Directive 80/836/Euratom and

84/467/Euratom): equivalent to British Ionising Radiations Regulations 1985 and Ionising Radiations Regulations (NI) 1985;

- (c) Radiological Protection Act 1991 (General Control of Radioactive Substances, Nuclear Devices and Irradiating Apparatus) Order 1993 (S.I. No.151 of 1993) (implemented in part Directive 84/467/Euratom): also covered by British and NI Ionising Radiations Regulations 1985;
- (d) European Communities (Radiological Emergency Warning to Public) Regulations 1993 (S.I. No.209 of 1993) (implemented Directive 89/6186/Euratom): equivalent to British Public Information for Radiation Emergencies Regulations 1992;
- (e) European Communities (Protection of Outside Workers from Ionising Radiation) Regulations 1994 (S.I. No.144 of 1994) (implemented Directive 90/641/Euratom): equivalent to British Ionising Radiations (Outside Workers) Regulations 1993.
- (f) headings (a)-(d) will be replaced in 2000 when the 1996 Consolidating EC Directive on Ionising Radiation is due to be implemented.

38. Radiation: non-ionising

Proposed Directive on Physical Agents includes non-ionising electromagnetic radiation (fields and waves).

39. Radiation: optical

Proposed Directive on Physical Agents includes optical radiation.

40. Repetitive strain injury

Can include physical strain (manual handling, VDU work) and mental strain (long hours, nature of position). See Working Time, below.

41. Signs and signals

Safety, Health and Welfare at Work (Signs) Regulations 1995 (S.I. No.132 of 1995) (implemented Directive 92/58/EEC): equivalent to British Safety Signs Regulations

1980 and Safety Signs Regulations(NI) 1981. HSA Guide to signs only (1991) available.

42. Shipbuilding and ship-repairing

Shipbuilding and Ship-Repairing (Safety, Health and Welfare) Regulations 1975 (S.I. No.322 of 1975): equivalent to British Shipbuilding and Ship-Repairing Regulations 1960.

43. Shops

The Shops (Conditions of Employment) Act 1938 and 1942 contain some provisions, but otherwise shops are covered by the 1989 Act and the relevant headings discussed in this listing. The 1938 Act will be repealed by the Organisation of Working Time Act 1997.

44. Smoking/environmental tobacco smoke

The Workplace Regulations 1993 mention this issue, and the 1989 Act might be relevant in general, but 'best practice' currently would be to follow the approach in the Department of Health's booklet, *Working Together for Clean Air* (1993). The Tobacco (Health Promotion and Protection) Regulations 1995 (S.I. No.359 of 1995) have an indirect impact, e.g. concerning smoking in canteens.

45. Social welfare

The Social Welfare (Consolidation) Act 1993 and associated Regulations govern occupational injuries and occupational illness benefits and also health and safety leave benefit (the latter under the Maternity Protection Act 1994 and the Pregnant Employees etc Regulations 1994).

46. Stress

See Working Time, below. HSA leaflet on Workplace Stress (1992) available: see also repetitive strain injury heading, above.

47. Technical standards

Irish standards (IS), made by National Standards Authority of Ireland (NSAI) under Industrial Research and Standards Act 1961 and National Standards Authority of Ireland Act 1996 (equivalent to BS standards from British Standards Institution, associated with BS 'kitemark') are being gradually replaced by European standards

or European Norms (ENs) associated with the 'CE' safety marking as well as the global ISO standards of the International Standards Organisation. The following Regulations have implemented EC Directives and are linked to relevant EN/ISO technical standards which are replacing the national standards. By laying down technical safety requirements for manufacturers/suppliers in respect of products, they mirror those for chemicals already referred to. See also the Liability for Defective Products Act 1991, which deals with the liability to consumers.

- European Communities (Electrical Equipment for Use in Potentially Explosive Atmospheres) Regulations 1981 to 1991 (SI No.61 of 1981, SI No.244 of 1986 and SI No.289 of 1991).
- European Communities (Electro-Medical Equipment Used in Human or Veterinary Medicine) Regulations 1988 (SI No.90 of 1988).
- European Communities (Construction Plant and Equipment) (Permissible Noise Levels) Regulations 1988 to 1996 (SI No.320 of 1988, SI No.297 of 1990 and SI No.359 of 1996).
- European Communities (Lawnmowers) (Permissible Noise Levels) Regulations 1989 (SI No.102 of 1989).
- European Communities (Electrically, Hydraulically or Oil-Electrically Operated Lifts) Regulations 1989 and 1991 (SI No.227 of 1989 and SI No.41 of 1991).
- European Communities (Appliances Burning Gaseous Fuels) Regulations 1992 and 1995 (SI No.101 of 1992 and SI No.150 of 1995).
- European Communities (Construction Products) Regulations 1992 and 1994 (SI No.198 of 1992 and SI No.210 of 1994).
- European Communities (Low Voltage Electrical Equipment) Regulations 1992 and 1994 (SI No.428 of 1992 and SI No.307 of 1994).
- European Communities (Personal Protective Equipment) Regulations 1993 to 1994 (SI No.272 of 1993, SI No.13 of 1994 and SI No.457 of 1994).
- European Communities (Medical Devices) Regulations 1994 (SI No.252 of 1994).
- European Communities (Active Implantable Medical Devices) Regulations 1994 (SI No.253 of 1994).
- European Communities (Machinery) Regulations 1994 and 1995 (SI No.406 of 1994 and SI No.372 of 1995)
- European Communities (Simple Pressure Vessels) Regulations 1996 (SI No.33 of 1996)
- European Communities (General Product Safety) Regulations 1997

The following EC Directives are due for implementation:

- 1989 Directive on Electromagnetic Compatibility (EMC)
- 1994 Directive on Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres
- 1994 Directive on Recreational Craft
- 1995 Directive on Lifts

The following topics are due to be dealt with in EC Directives:

- Pressure Equipment (wider than the Simple Pressure Vessels Directive)
- Used Machinery
- Equipment for Fairgrounds and Amusement Parks
- Cableway Equipment

48. Transport

See the Road Traffic Acts 1961 to 1995, the Railway Employment (Prevention of Accidents) Act 1900, the Notice of Accidents Act 1894, the Regulation of Railways Act 1842, the Regulation of Railways Act 1871 and the Air Navigation and Transport Acts 1936 to 1988. The Proposed EC Directive on Means of Transport will apply to road, rail and air transport.

49. Vibration

Proposed EC Directive on Physical Agents includes mechanical vibration (hand and whole body).

50. Violence

No specific Regulations, but HSA leaflet on Violence at Work (1993) available.

51. Women: employment equality

See the Employment Equality Act 1977 (to be replaced if Employment Equality Bill 1996 overcomes constitutional objections), the Maternity Protection Act 1994 and the Safety, Health and Welfare at Work (Pregnant Employees) Regulations 1994.

52. Work equipment

- (a) Work Equipment Regulations 1993: Part IV of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993) (implemented Directive 89/655/EEC): equivalent to British Provision and Use of Work Equipment Regulations 1992 and Provision and Use of Work Equipment Regulations (NI) 1993 (PUWER), but note that the Irish Regulations came fully into force immediately, while the British Regulations allowed a transitional period up to 1 January 1997. See also the European Communities (Machinery) Regulations 1994 and other 'Product' Regulations which deal with CE marking: see Technical Standards heading above. Guidelines: December 1995. Guidelines on Safe Use of Guards for Mechanical Power Presses (1989) available.
- (b) 1995 Work Equipment Directive requires examination and testing of certain work equipment, mainly lifting equipment. Due to be implemented: December 1998. Existing provisions for testing certain equipment: see Safety in Industry Act 1955 and 1980.
- (c) Regulations applicable to factories and other premises covered by the Safety in Industry Acts 1955 and 1980: Factories (Woodworking Machinery) Regulations 1972 (S.I. No.203 of 1972) (equivalent to British Woodworking Machines Regulations 1974) and Safety in Industry (Abrasive Wheels) Regulations 1982 (S.I. No.30 of 1982) (equivalent to British Abrasive Wheels Regulations 1970).

53. Working time and hours of work

The Organisation of Working Time Act 1997, which implements Directive 93/104/EEC, will replace the Conditions of Employment Acts 1936 and 1944 and similar legislation, deals with the 48 hour week, rest breaks, night work, stress prevention. See also repetitive strain injury and stress, above.

54. Workplace layout and welfare (other than construction, farms, forestry, mining, quarrying)

Workplace Regulations 1993 (Part III of Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No.44 of 1993)) (implemented Directive 89/654/EEC) and Safety, Health and Welfare at Work (Miscellaneous Welfare Provisions) Regulations 1995 (S.I. No.358 of 1995): equivalent to British Workplace

(Health, Safety and Welfare) Regulations 1992 and Workplace (Health, Safety and Welfare) Regulations (NI) 1993. Guidelines: December 1995. The 1993 Regulations cover the following topics:

- (a) Stability and solidity of buildings.
- (b) Ventilation of enclosed places of work.
- (c) Room temperature.
- (d) Lighting.
- (e) Floors, walls, ceilings and roofs, including access to confined spaces.
- (f) Doors and gates.
- (g) Movement of pedestrians and danger areas.
- (h) Escalators and moving walkways.
- (i) Loading bays and ramps.
- (j) Room dimensions and air space.
- (k) Rest rooms and rest areas.
- (l) Facilities for pregnant women and nursing mothers.
- (m) Sanitary facilities and equipment.
- (n) Employees with disabilities.
- (o) Outdoor places of work (special provisions).
- (p) General requirements: emergency exits and equipment.

The 1995 Regulations deal with removal of rubbish, seating, drinking water and accommodation for meals.

55. Works councils

See the Transnational Information and Consultation of Employees Act 1996.

56. Young persons

Protection of Young Persons (Employment) Act 1996 implemented most provisions of Directive 94/33/EC; health and safety elements not yet implemented.