

S.I. No. 11 of 2000.

SAFETY, HEALTH AND WELFARE AT WORK (NIGHT WORK AND SHIFT WORK) REGULATIONS, 2000.

I, TOM KITT, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by [section 28 of the Safety, Health and Welfare at Work Act, 1989](#) ([No. 7 of 1989](#)) in relation to matters set out in paragraphs (1), (2), (3), (4), (21) and (24) of the Fourth Schedule to that Act, as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order, 1997 ([S.I. No. 305 of 1997](#)), and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) (No. 2) Order, 1997 ([S.I. No. 330 of 1997](#)), and after consultation with the National Authority for Occupational Safety and Health, and for the purpose of giving effect, in part, to Council Directive 93/104/EC of 23 November, 1993 concerning certain aspects of the organisation of working time, hereby make the following Regulations:

Citation. 1. These Regulations may be cited as the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations, 2000.

Revocation. 2. The Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations, 1998 ([S.I. No. 485 of 1998](#)) are hereby revoked.

Interpretation. 3. (1) In these Regulations—

“Principal Act” means [the Safety, Health and Welfare at Work Act, 1989 \(No. 7 of 1989\)](#) ;

“1997 Act” means [the Organisation of Working Time Act, 1997 \(No. 20 of 1997\)](#) ;

“Directive” means Council Directive 93/104/EC of 23 November, 1993 concerning certain aspects of the organisation of working time;¹

“night work” and “night worker” have the same meaning as they have in the 1997 Act;

“Principal Regulations” means the Safety, Health and Welfare at Work (General Application) Regulations, 1993 ([S.I. No. 44 of 1993](#)).

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the meaning in these Regulations that it has in the Directive.

(3) In these Regulations a reference to a paragraph is a reference to a paragraph of the Regulation in which the reference occurs, unless it is indicated that reference to some other Regulation is intended.

Application. 4. (1) These Regulations shall apply to—

(a) an employee and employer to whom the 1997 Act applies,

and

(b) a self-employed person as they apply to an employer and as if that self-employed person was an employer and his or her own employee.

(2) The provisions of these Regulations are in addition to, and not in substitution for, Part II of the Principal Regulations.

General duty with respect to night workers and shift workers.

5. It shall be the duty of every employer—

(a) to take such steps as, having regard to the nature of the work concerned, are appropriate for the protection of the safety and health of an employee who is a night worker or a shift worker,

(b) in taking steps to comply with Regulation 8 of the Principal Regulations, to have regard to his or her duty under paragraph (a).

Risk assessment.

6. (1) For the purposes of section 16(2) (a) of the 1997 Act, it shall be the duty of an employer to carry out an assessment in relation to the risks, being risks to the safety and health of the employee concerned, that attach to the work that a night worker is employed to do so as to determine whether that work involves special hazards or a heavy physical or mental strain.

(2) An assessment referred to in paragraph (1) shall take into account the specific effects and hazards of night work.

(3) In determining for the purposes of this Regulation whether particular work involves special hazards or a heavy physical or mental strain, regard shall be had to the assessment of risks at the place of work concerned referred to in section 12(3) of the Principal Act and Regulation 10 of the Principal Regulations.

Health assessment and transfer to day work.

7. (1) It shall be the duty of an employer—

(a) before he or she employs a person as a night worker, and

(b) at regular intervals during the period that that person is employed as such a worker,

to make available to that person, free of charge, an assessment in relation to the effects, if any, on the health of that person by reason of his or her being employed as such a worker.

(2) Such assessment—

(a) shall be carried out by a registered medical practitioner or a person acting under his or her supervision,

(b) if the employee has such an entitlement, may be made available to the employee by informing him or her of his or her entitlement to

have such an assessment carried out by the State, free of charge, and facilitating the employee in his or her availing himself or herself of that entitlement.

(3) The person who carries out an assessment referred to in paragraph (1) shall—

(a) endeavour to detect if the health of the employee concerned is being or will be adversely affected by reason of the fact that he or she performs or will perform night work,

(b) on the completion of the assessment, inform the employer and employee concerned of his or her opinion as to whether the employee is fit or unfit to perform the night work concerned and, if that opinion is that the employee is unfit to perform that night work by reason only of the particular conditions under which that work is performed, of his or her opinion of what changes in those conditions could be made that would result in his or her being able to consider the employee fit to perform that work.

(4) Neither a registered medical practitioner nor a person acting under his or her supervision shall disclose—

(a) the clinical details of the assessment referred to in paragraph (1) to any person other than the employee concerned or an occupational medical adviser,

or

(b) the results of such an assessment to any person other than the employee and employer concerned.

(5) If a night worker becomes ill or otherwise exhibits symptoms of ill-health, and that illness or those symptoms is or are recognised as being connected with the fact that he or she performs night work, the employer shall, whenever

possible, assign duties to the worker to perform that do not involve his or her performing any night work and to which he or she is suited.

(6) References in paragraphs (2), (3) and (4) to the employee shall be construed as including references to the person proposed to be employed as the night worker concerned.

GIVEN under my hand this 25th day of January, 2000.

TOM KITT, T.D.

Minister of State at the Department of Enterprise, Trade and
Employment.

EXPLANATORY NOTE.

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

The purpose of these Regulations is to give effect, in respect of night workers and shift workers, to the safety and health protection provisions of Article 9 of EU Directive 93/104/EC of 23 November, 1993 concerning certain aspects of the organisation of working time. *Inter alia* they require employers, who employ night workers, to carry out — for the purposes of the maximum hours of night working permitted under sections 16(2)(a) and 16(2)(b) of the [Organisation of Working Time Act, 1997](#) (i.e., the Act by which the main provisions of the Directive have been implemented domestically) — an assessment of the health and safety risks attaching to the work of night workers whom they employ with a view to determining whether that work involves special hazards or a heavy physical or mental strain. They also require employers, whose night workers become ill or exhibit symptoms of ill-health as a result of performing night work, to re-assign such workers to day work suited to them whenever possible.

These Regulations also revoke and replace the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations, 1998 ([S.I. No. 485 of 1998](#)

). Their purpose is to avoid possible confusion as regards the application of the provisions of Regulation 6 of [S.I. No. 485 of 1998](#) to night workers (Regulation 7 of these Regulations refers). The Regulations do not involve new obligations or conditions not intended in the 1998 Regulations.

¹ O.J. No. L.307, 13.12.1993, p. 18.