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**Draft**

**REGULATORY IMPACT ANALYSIS**

**Draft Safety, Health and Welfare at Work (Diving) Regulations 2010**

**(S.I. No. … of 2010)**

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# Foreword

The Health and Safety Authority, herein after referred to as the Authority, has prepared this updated Regulatory Impact Analysis (RIA) after a consultation process in 2008 on draft Safety, Health and Welfare at Work (Diving) Regulations.

The objective of this legislative proposal is to ensure that there is appropriate legislation to protect the health and safety of those who carry out diving operations in the course of their work.

The first RIA (issued for public consultation in 2008 together with the draft Regulations and associated Codes of Practice) analysed a range of options including self-regulation, co-regulation, advocacy and a do-nothing option. This updated RIA follows on from the decision to regulate and reflects the new information provided in consultation submissions and will outline the rationale for changes to the original proposal. The costs and benefits of the revised draft Regulations will be examined.

# BACKGROUND AND CONTEXT

The diving regulations that are currently in force are the Safety in Industry (Diving Operations) Regulations, 1981 (S.I. No. 422 of 1981) which were made under the Factories Act, 1955 (No. 10 of 1955). There are no relevant EU obligations with respect to diving operations.

An update of the current Regulations is necessary for several reasons. Firstly, the Regulations should be updated to take account of modern diving operations and technology. The Irish Regulations are now out of line with diving legislation in other member states, including Northern Ireland and Great Britain. Developing consistent legislation would facilitate interaction between Ireland and Northern Ireland and Great Britain in relation to training, qualifications and guidance for diving. Secondly, the current Regulations have limited scope. They are only applicable to diving operations coming within the scope of the Factories Act, 1955 and the Safety in Industry Act, 1980 (No. 9 of 1980) which amends the 1955 Act. This means that the regulations apply to diving operations which are carried out in, at or from a factory or dock, wharf or quay, warehouses, work carried out in a harbour or wet dock, building operations or works of engineering construction. For instance, commercial diving operations related to aquaculture (fish farms, mussel and oyster beds), scientific, research and archaeological activities and professional diving, or search and rescue activities are not covered by the current Regulations. Diving operations that require the use of Self Contained Underwater Breathing Apparatus (SCUBA) are also outside the scope of the current Regulations. The effectiveness of the current Regulations will continue to diminish as repeals of the Factories Act are enacted as part of the Repeals/Revocation/Replacement/Consolidation process provided for in the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005).

Commercial diving in Ireland is a relatively small industrial sector. It comprises mainly small-scale enterprises with operations concentrated around ports, aquaculture, survey, scientific and research activities. In the period 2003 to 2009 there were two recorded fatalities during diving operations at work.

# OBJECTIVES

The ultimate objective of the proposed Regulations is to protect the health, safety and welfare of all personnel involved in carrying out diving operations in the course of their work.

Other objectives achieved by the proposed Regulations include:

* To put in place updated and streamlined occupational safety, health and welfare provisions for modern diving operations. Many of the provisions in the current Safety in Industry (Diving Operations) Regulations, 1981 (S.I. No. 422 of 1981) are obsolete and the current Regulations will be revoked as part of this legislative proposal.
* To ensure that all diving operations in the course of work are covered by the regulations. The current Regulations cover only diving operations coming within the scope of the Factories Act, 1955 and the Safety in Industry Act, 1980 (No. 9 of 1980) which amends the 1955 Act.
* To introduce a clear framework of responsibilities to ensure that the health, safety and welfare of all personnel connected with diving operations at work are clearly outlined.

# OUTCOMES OF CONSULTATION PROCESS

Draft Regulations and CoPs were published for public consultation in August – September 2008. The notice of consultation was published on the Authority website and approximately one hundred emails were sent to stakeholders to invite comments.

Nineteen formal submissions were received. Ten of the submissions raised concerns over the application of the proposed Regulations and specifically the Inland Code of Practice to scientific diving (eight submissions) and aquaculture diving (two submissions). The remaining submissions raised issues in relation to the medical aspects of diving (three submissions), recreational diving (two submissions) and general comments on the proposed Regulations and the inland Code of Practice (four submissions).

Following the online consultation phase, the Authority met with a number of stakeholders for detailed discussion, including representatives from scientific and archaeological diving organisations, the Coast Guard and the Garda Síochána. Many of the issues raised in the consultation submissions and subsequent meetings were extremely valuable to the Authority and have been incorporated in the revised Regulations and CoPs.

A technical expert from the Health and Safety Laboratory UK was contracted in November 2009 to review the current version of the Regulations and CoPs.

Changes made in the current version of the proposed Regulations are outlined below:

1. Several consultees sought clarification regarding which sub-sectors within the diving industry were to be covered under the proposed Regulations and Codes of Practice. Regulation 3 states that it is intended that the Regulations and CoPs should apply to anybody who is diving in the course of their work – examples of the range of diving activities involved are listed in the application sections of the CoPs. Given the diverse range of diving activities with different associated risks it is more appropriate that the Regulations should include core general requirements while the specific measures to be taken in particular working environments and conditions should be based on a comprehensive risk assessment. Guidance on conducting a risk assessment in the context of diving operations is provided in the CoP for inland diving and inshore diving that accompanies the proposed Regulations.
2. The redrafted Regulations now require that recreational divers who are at work such as paid instructors or dive guide leaders have a certificate of medical fitness to dive issued by an approved medical examiner of divers.
3. Some consultees raised concerns in relation to the provision that surface supplied breathing apparatus was the preferred method of carrying out diving operations in the first draft Inland and Inshore CoP. Instead of prescribing conditions for surface-supply diving, the new draft Regulations require that the appropriate diving method should be based on the risk assessment.
4. The previous draft Regulations kept the requirement in the 1981 Regulations for diving contractors to notify the Authority of their intention to dive. This provision has been deleted from the current version of the proposed Regulations on the basis that a notification system would not offer any significant health and safety benefit and would introduce an administrative burden on clients and employers.

# IMPACT ASSESSMENT – BENEFITS AND COSTS

## Benefits

**Health and safety benefits:** The proposed Regulations will extend protection of health and safety to diving operations that are currently outside the scope of the Factories Act, 1955 and the Safety in Industry Act, 1980 (No. 9 of 1980). While it was clear from the consultation process that many within these sectors are already in compliance with the UK Code of Practice and International Standards, the introduction of legislation will allow the Authority to influence improvements in health and safety performance and take enforcement actions where the consequences of non-compliance are severe i.e. risk of injury and illness. The proposed Regulations also provide a clear account of the health and safety standards that are expected across all sectors in the diving industry in Ireland.

**Business benefits:** Reduced levels of injury and illness in the sector should lead to a reduction in the costs associated with lost time, incident inquiries, fines, insurance premium increases, compensation and legal costs. Bringing national diving legislation in line with legislation in other EU Member States should also enhance the competitiveness of the diving industry in Ireland.

**Compliance benefits:** Those involved in commissioning, controlling and supervising diving operations will benefit from the simplified framework of responsibilities outlined in the proposed Regulations. This core framework of responsibilities, together with the relevant CoPs, should facilitate the development of appropriate and effective systems of work in relation to diving operations.

**Enforcement benefits:** The clarification of roles and responsibilities in relation to diving operations as set out in the proposed Regulations should also enhance the efficiency of the Authority inspection and enforcement processes.

## Costs

Additional costs arising from the proposed Regulations will be minimal for clients, contractors, supervisors and divers who already comply with the Safety in Industry (Diving Operations) Regulations 1981 (S.I. No. 422 of 1981) and the relevant provisions of the Safety, Health and Welfare at Work Act 2005 (No.10 of 2005) and the Safety Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) and industry best practice such as the Health and Safety Commission’s Approved Codes of Practice for:

* Commerical diving projects inland/inshore
* Scientific and archaeological diving projects
* Commercial diving projects offshore
* Media diving projects.

**Compliance costs:** The only additional cost introduced by the proposed Regulations relates to the requirement for all persons involved in diving at work to be medically certified on an annual basis. It is estimated that the cost of a medical fitness test will be approximately €300. Currently there are only a small number of medical practitioners qualified to conduct these tests but it is anticipated that costs will become more competitive as the number of qualified medical practitioners increases in response to demand.

The proposed Regulations do not require any additional investment in respect of work procedures or equipment.

**Enforcement costs:** The main cost associated with this option would relate to the printing of new regulations and the associated Codes of Practice and guidance.

## Other Impacts

**Impacts on national competitiveness:** The implementation of the proposed Regulations would have a positive effect on national competitiveness by bringing Irish regulations in line with that of other EU Member States.

**Human health and environmental Issues:** The proposed Regulations would ensure that personnel carrying out diving operations for work are medically fit to do so.

**Impacts upon consumers and competition:**  The proposed Regulations would not have a widespread impact on consumers. However, they would clarify requirements for people who hire diving contractors to conduct commercial diving projects.

**Impacts on the rights of citizens:** The proposed Regulations would safeguard the rights of persons engaged in diving operations at work to operate in an environment and conditions that protect their safety, health and welfare.

# DISCUSSION

The current diving legislation is almost thirty years old. The legislation has limited scope and many provisions are obsolete in the context of modern diving operations.

The proposed Regulations have been developed to address these limitations. They take account of developments in diving operations and technology. The scope of the regulations is extended to ensure that all industries and workplaces involving commercial diving operations are protected by the appropriate health and safety legislation. Roles and responsibilities in relation to diving at work are clarified. Finally, the proposed Regulations will bring the Irish legislation in line with that of other EU Member States.

This draft of the proposed Regulations and Codes of Practice has been significantly improved through the inputs received in the public consultation process. This version of the Regulations achieves the primary objective of protecting the health and safety of those involved in diving operations at work. The approach has been altered so that the proposed Regulations now contain the core requirements for diving at work while the specific health and safety measures appropriate in different industries and conditions are to be determined on the basis of a risk assessment. User-friendly Codes of Practice for inshore and inland diving and offshore diving will facilitate the implementation of the proposed Regulations.

# REVIEW

The Authority will continue with its role of reviewing the impact of legislation. Monitoring of enforcement statistics, identification of trends via analysis of requests for information, incident and dangerous occurrence data and complaints will form part of legislative reviews. The annual report of the Authority would provide an ongoing public review of progress and performance.

**References**

Revised RIA Guidelines - How to Conduct a Regulatory Impact Analysis, Department of the Taoiseach, June 2009

Health and Safety Commission Approved Code of Practice: Media Diving Projects (L106)

Health and Safety Commission Approved Code of Practice: Commercial Diving Projects Inland/Inshore (L104)

Health and Safety Commission Approved Code of Practice: Scientific and Archaeological Diving Projects (L107)

Health and Safety Commission Approved Code of Practice: Commerical Diving Projects Offshore (L103)

Health and Safety Commission Approved Code of Practice: Recreational Diving Projects (L105)