

REGULATORY IMPACT ANALYSIS (RIA)

**Draft Safety, Health and Welfare at Work (Construction) (Amendment No 2)
Regulations 2008**

**An Addendum to the REGULATORY IMPACT ANALYSIS (RIA)
on the
Safety, Health and Welfare at Work (Construction) Regulations 2006 (S.I. No.
504 of 2006)**

24 July 2008

1. Foreword

The Health and Safety Authority has prepared this Regulatory Impact Analysis (RIA) on the draft Safety, Health and Welfare at Work (Construction) (Amendment No 2) Regulations 2008. These Regulations are designed to amend the Safety, Health and Welfare at Work (Construction) Regulations 2006 (S.I. No. 504 of 2006) by substituting revised provisions for Regulation 97, relating to works on roads, footpaths and cycle tracks.

As the draft Amendment Regulations represent a modification to the 2006 Construction Regulations by clarifying the provisions of Regulation 97, rather than involving substantive policy changes or an increase in duties on the parties to whom the Regulations apply, this Regulatory Impact Analysis (RIA) is regarded as an Addendum to the Regulatory Impact Analysis (RIA) on the Safety, Health and Welfare at Work (Construction) Regulations 2006 (S.I. No. 504 of 2006) which was published by the Department of Enterprise, Trade and Employment in September 2006.

2. Background and Context

Currently Regulation 97 of the Construction Regulations 2006 applies to –

“a contractor responsible for a construction site, on which, any part of a road, footpath or cycle tract is opened, excavated, broken up or obstructed by plant or equipment or by materials for the purpose of performing construction work, shall ensure for that site that.....”.

This requirement is very broad and, in effect, includes all construction-related activities and not just those that take place on roadways where vehicular traffic must be managed. Regulation 97 also includes construction activities that occur outside the roadway though still on the road, e.g. painting a bollard on a footpath, a private contractor building a perimeter wall (where diverted pedestrian's safety remain protected in that they are not forced onto the carriageway), footpaths and cycleways in parks etc.

The primary intent in Regulation 97 was to protect all persons on roadways (that portion of the road which is provided primarily for the use of vehicles), to ensure that vehicular traffic on roadways must be managed and that the necessary skills required to do this are imparted to individuals who successfully complete the Signing, Lighting and Guarding at Roadworks, Construction Skills Certification System (CSCS) course.

The management of works on a footway, verge or off-roadway cycle track generally carries less risk since it would not interfere with roadway traffic and would not need a traffic management plan.

Regulation 97(c) requires the presence of a CSCS card holder on site at all times when the works are in progress on any part of the road, not just at the implementation of the signing, lighting and guarding (temporary traffic management) arrangements, which includes the installation, modification and removal of the temporary traffic management arrangements.

An “anomaly” also exists in that Regulation 97(c) does not clarify what CSCS card is actually required; essentially any CSCS card holder will meet the current requirement.

Furthermore, since the coming into operation of the Construction Regulations 2006 on 6 November 2006, the Department of Transport published a revised version of Chapter 8 of the Traffic Signs Manual and associated Guidance. Subsequently, the revised version of Chapter 8 formed the basis of the new FAS CSCS course for signing, lighting and guarding. The course, which is widely regarded as significantly more detailed than its predecessor, is primarily targeted at supervisor level by virtue of the complexity of setting out the temporary traffic arrangements and the required working relationship with the designer of the traffic management arrangements. The course is of 3 days duration and requires 2 tutors to be present. It has both class room and on site practical elements.

Primarily as a consequence of the new Chapter 8 and its associated guidance and the new CSCS course for signing, lighting and guarding, the key stake holders in the Industry including CIF, LGMSB, the County and City Managers Association and the Department of Transport have made several submissions, both written and verbal, to the Health and Safety Authority to review Regulation 97 in the light of these changes. The proposed amendment to the Regulation represents the outcome of ongoing involvement of all the stakeholders, including FAS, since early 2008 and reflects an approach which is generally accepted by all parties concerned.

3. Objectives.

The **ultimate objective** of this proposed amendment is to provide relevant, updated and clearer legislative backup in order to help prevent occupational injuries and fatalities on roads due to Construction Work in keeping with the aims of the Safety, Health and Welfare at Work Act, 2005 and related EU Directives.

The **immediate objectives** of the proposed amendment of Regulation 97 is -

- ❖ to take account of the various submissions from the relevant stakeholders particularly regarding workability,
- ❖ to be comprehensible to those who must comply with it,
- ❖ to introduce a clear framework of responsibilities for the signing, lighting and guarding at road related construction works throughout the construction industry,
- ❖ to ensure that the safety of employees and others is protected at road related construction works,
- ❖ to provide for the recognition of qualifications of the key duty holders involved in the road related construction works,
- ❖ to make specific requirements for the higher-risk elements of construction work on roads, and

- ❖ to increase safety competence and awareness at all road related construction work sites with the introduction of a new CSCS Health and Safety at Roadworks course.

4. Consideration of Alternatives

‘Do Nothing’ Scenario

Currently Regulation 97 requires contractors to apply equal level of controls to work on all parts of the road irrespective of the levels of risk involved.

The ‘do nothing’ scenario will result in -

- Controls used disproportionate to the risk involved,
- High levels of non compliance on off roadway works due to contractors unable to secure adequately trained persons possessing the CSCS for signing lighting and guarding,
- High costs to industry for the training of suitable persons on the CSCS signing, lighting and guarding courses for off roadway works (estimated to involve an extra 13,000 persons requiring training).

Alternatives to Regulation

In general, where lives are at risk, it is recognized that alternatives to regulation as a standalone option are less appropriate. The Health and Safety Authority act as advocates of preventive health and safety actions as well as enforcers for non-compliance with legislation. The main alternative to regulation, i.e. advocacy, guidance support and information campaigns, is already being implemented to an appreciable level. Advocacy alone can be a poor model for reform, since such information tends to only reach good practitioners who are receptive to awareness campaigns and not those operating with disregard to the regulatory regime.

In the case of the current Regulation 97, advocacy alone has little relevance as the central issue is the nature of the legislative requirement itself rather than the method of application per se

Alternative Implementation Models

The Construction Industry by its nature is a high-risk business that employs high numbers and continues to have high accident and fatality rates.

Self-regulation may be described as the “Control of activities by the private parties concerned without the direct involvement of public authorities”. Self-regulation as an alternative in the construction sector is considered unlikely to be effective and, therefore, not appropriate. Many of the fatalities in the Construction sector occur in small and poorly-managed companies that are unlikely to respond well to self-regulation. The consequences of non-compliance (i.e. injury, death to persons) are too severe to exclude the potential involvement of the Courts in enforcement actions.

Co-regulation describes “the control of activities by a combination of private parties and public authorities”. Co-regulation would require the development of an

appropriate professional body across the industry. Currently, a number of professional bodies operate within the industry, reflecting the varied roles and responsibilities of engineers, architects, designers and surveyors. Also within the mix of concerned parties are the unions, who represent some of the employees at ground level in the industry, and the Construction Industry Federation (CIF) representing employers. Outside of these organizations, there are various clients who may include private persons or registered companies with financial investments in property and non-unionised employees. In light of these many stakeholders, co-regulation would likely prove unwieldy and ineffective.

Alternative Compliance Incentives

Liability insurance for employers is available from insurance companies. Employer liability insurance (ELI) is compulsory in some EU states such as the UK but not in Ireland. The construction industry is a high-risk industry and as such the cost of insurance of this type is likely to be high. Compelling the industry to seek such insurance could inflate the price of premiums and add a significant cost to the industry.

Regulation

The consequences of non-compliance with good safety and health practice in the construction sector are too severe to exclude the possible involvement of the Courts. The implementation of the proposed amendment to Regulation 97, while ensuring that the relevant requirements are clear, practical and fair, would allow for this possibility.

Regulation plus Advocacy

This option would improve the effectiveness of the proposed amended Regulations. A package of clear, practical and fair legislation and advocacy is seen as a balanced approach to dealing with safety and health in the particular context of Regulation 97. Each element of the package has its advantages; in this case, good legislation, when enforced, has a powerful incentive effect. The Regulations would be supported by advocacy and awareness initiatives carried out by the Authority to include clear, illustrated Guidelines to the amended Regulation.

Conclusion

A construction industry request has been made for an amendment of Regulation 97 of the Construction Regulations 2006 to clarify the provisions relating to “Works on roads, footpaths and cycle tracks” and the phrase “at all times when the works are in progress”.

Having considered the matter, the Health and Safety Authority’s proposes that Regulation 97 of the Construction Regulations 2006 be amended so as to clarify the provisions applicable to ensure that, in respect of construction roadworks, adequate guarding and lighting is provided, that traffic signs are placed and maintained and, where necessary, operated as reasonably required for the safe guidance or direction of persons, having regard, in particular, to the needs of people with disabilities.

There must be on site, at all times when the works are in progress, at least one person who has been issued with a valid CSCS card relating to health and safety at roadworks and the works must be supervised by a competent person who has been issued with a valid CSCS card relating to signing, lighting and guarding on roads.

Where any construction work which obstructs the roadway or where pedestrians, people with disabilities or cyclists on a cycle track that forms part of a footway are diverted on to the roadway due to construction work, that there is on that site at all times when road signing, lighting and guarding is being installed, modified or removed, at least one person who has been issued with a valid CSCS card.

For better clarity and conformity with other legislation it is proposed that a number of relevant words be defined in the amended Regulations as follows –

- (i) “cycle track” - corresponding to definition in Traffic Regulations 1997,
- (ii) “footpath” - corresponding to definition in the Roads Act 1993,
- (iii) “footway” - corresponding to definition in the Roads Act 1993,
- (iv) “road” - expanded definition of that in the Construction Regulations 2006, corresponding to definition in the Roads Act 1993,
- (v) “roadway” corresponding to definition in the Roads Act 1993.

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