

REGULATORY IMPACT ANALYSIS

SAFETY, HEALTH AND WELFARE AT WORK (QUARRIES) REGULATIONS 2008

**Safety, Health and Welfare at Work (Quarries) Regulations and associated draft
Safety, Health and Welfare at Work Act 2005 Quarries (Repeals and
Revocations) (Commencement) Order 2008**

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Foreword

The Health and Safety Authority has prepared this Regulatory Impact Analysis (RIA). The proposed new Regulations take account of engineering and other developments relevant to the quarrying industry that have taken place over the last 4 decades. They also take into account developments in other EU Member States, and are in line, particularly, with corresponding legislation in Great Britain and Northern Ireland.

This RIA can be considered a Screening RIA under the terms of the RIA Guidelines “How to Conduct a Regulatory Impact Analysis” (Department of the Taoiseach, 2005).

29 January 2008

1.0 POLICY, CONTEXT, BACKGROUND AND OPTIONS

1.1 Background and Context

The proposed Regulations are part of the Repeals/Revocations/Replacement/Consolidation process provided for in the Safety, Health and Welfare at Work Act 2005. The need for progress in this process was highlighted in the Oireachtas debates during the passing of the 2005 Act.

The process involves the repeal of all provisions of the Mines and Quarries Act 1965 relating to quarries and the revocation of 6 full sets of Regulations or the provisions of Regulations not previously revoked, as well as the partial revocation of 2 other sets of Regulations, as they apply to quarries.

A similar exercise is in train in relation to mines and when new Mines Regulations are developed, the remaining provisions of the Mines and Quarries Act 1965 and the Regulations made under it will be replaced by the provisions of the 2005 Act and two sets of Regulations. Completion of this exercise will also involve the complete replacement of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 (S.I. No. 467 of 1997).

The proposed new Regulations, which were drafted following a public consultation process, take account of engineering and other developments in the quarrying industry that have taken place over the last four decades. They also take into account developments in other EU Member States including Great Britain and Northern Ireland.

The proposed Regulations represent a consolidation of existing measures, reflect modern quarrying practice and contain limited new provisions and therefore are not a significant policy change for the sector.

Quarrying and related ancillary factories currently employ about 10,000 people in Ireland, producing approximately 35 million tonnes of product annually. This is the highest production per capita in Europe and contributes significantly to the growing Irish economy.

Quarrying operations in Ireland range from very small sand and gravel pits to relatively large hard rock quarries. While there are approximately 1,500 quarries registered with local authorities, about 550 are active at any one time, a number being seasonal and some opening and then closing for specific local projects.

In terms of deaths in relation to the number employed quarrying frequently has the highest annual fatal incident rate by sector in Ireland. There were six fatalities, in the quarrying sector in 2005, two in 2006 and two in 2007. Table 1.1 illustrates fatality rates for the sector (in tandem with the mining sector) in comparison with other sectors.

Table 1.1
Fatalities per 100,000 employed

| | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 |
|------------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Agriculture, Forestry and Fishing | 13.7 | 17.2 | 13.7 | 17.6 | 17.5 | 20.1 |
| Mining and Quarrying | 30.0 | 10.0 | 0.0 | 60.0 | 20.0 | 20.0 |
| Construction | 11.5 | 10.4 | 7.8 | 9.5 | 4.6 | 6.4 |
| All sectors | 3.5 | 3.8 | 2.7 | 3.8 | 2.5 | 3.2 |

These Regulations set out requirements with respect to safety, health and welfare in quarries, as defined in Regulation 3, and replace a range of provisions formerly applied in the Mines and Quarries Act 1965 and in various Regulations made under that Act.

The Regulations also re-transpose, in relation to quarries, the relevant provisions of Council Directive 92/104/EEC of 3 December 1992 on the

minimum requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries (OJ L404, 31.12.1992, p. 10).

The Regulations apply to all quarries where persons work and set out duties on the owner, operator, manager and employees at a quarry with respect to persons at or in the area immediately surrounding a quarry.

1.2 Objectives

The overall objective of the proposals is to put in place updated, streamlined, simplified and consolidated occupational safety, health and welfare provisions for the quarrying industry which will replace the existing provisions in the Mines and Quarries Act 1965, various Regulations relating to quarries made under that Act and the provisions of the Safety, Health and Welfare at Work (Extractive Industries) Regulations 1997 relating to quarries.

The immediate objectives of the Regulations are to:

- take account of policies regarding simplification, that Regulations be made comprehensible to those who must comply with them,
- introduce a clear framework of responsibilities in every workplace to ensure that the health, safety and welfare of employees are protected,
- provide for the recognition of qualifications in the quarrying sector
- set out obligations on the provision of welfare facilities for employees,
- make specific requirements for high-risk elements, e.g. vehicles, explosives etc.,
- re-transpose relevant provisions of Council Directive 92/104/EEC into Irish Law.

1.3 Options

Option 1: Do nothing – This option would involve continuing with the existing 40 year old legislation which is obsolescent by the standards of modern health and safety legislation and which lacks clarity. Such a course of action would be inconsistent with the current policy of consolidating health and safety requirements under the provisions of the Safety, Health and Welfare at Work Act 2005 and would run contrary to the codification, modernisation and simplification process reflected in the new Safety, Health and Welfare at Work (Construction) Regulations 2006 (S.I. No. 504 of 2006) and the new Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007 and S.I. No. 732 of 2007), underpinned by good quality guidance material, which process has the full support of the social partners.

Research has identified the key issues which need to be addressed to improve the safety record of the industry. Therefore, to do nothing to regulate the issue would be to allow the situation to prevail where lives are lost, people are injured or become ill and accidents occur which could all be prevented. Workplace accidents, illness and fatalities have significant impacts on the costs to the employees, to the industry, to insurers, to the economy as well as the social cost borne by families and friends.

Option 2: Advocacy - In general, where lives are at risk, it is recognised that alternatives to regulation as a stand-alone option are less appropriate. This was the rationale for the introduction of the Safety, Health and Welfare at Work Act 2005, which creates a framework of responsibilities. Under the current regulatory situation, the Health and Safety Authority act as advocates of preventative health and safety actions as well as enforcers for non-compliance with legislation.

A significant amount of the budget of the Health and Safety Authority is already assigned to advocacy activities. Therefore, 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. The threat of or existence of sanction is essential in such serious matters, as is the follow up enforcement activities such as inspections by the Health and Safety Authority.

Option 3: Self-regulation may be described as the “Control of activities by the private parties concerned without the direct involvement of public authorities”¹. Self-regulation as a stand-alone alternative is considered unlikely to be effective and therefore not appropriate. The consequences of non-compliance (i.e. illness, injury, death to persons) are too severe to exclude the involvement of the Courts in enforcement actions. As stated above the threat of or existence of sanction is essential in such serious matters, as is the follow up enforcement activities such as inspections by the Health and Safety Authority.

Option 4: Co-regulation describes “the control of activities by a combination of private parties and public authorities”². In practice, there are many stakeholders to whom these Regulations will apply; as such co-regulation would prove unwieldy and ineffective. Each of the stakeholders operates to a different agenda, which could prove difficult to harmonise in the interests of health and safety. These considerations suggest that co-regulation would also be an unsuitable option. However, the Authority engages with the various representative bodies to promote safety, health and welfare initiatives within the industry.

Option 5: Regulation Regulations are mandated by EU obligations and the fact that the consequences of non compliance with good health and safety practice are too severe to exclude the involvement of the courts. The implementation of the proposed Regulations will allow Ireland to meet its

¹ RIA Guidelines: How to conduct a Regulatory Impact Analysis.

² Economic Impact of HSW at Work Legislation, Indecon

obligations in this regard with the assistance of clear, up to date Regulations. A survey of industry indicates that most employers believe that health and safety legislation has reduced accident related costs and that its benefits outweigh its costs³.

Option 6: Regulation plus Advocacy A package of law, incentive and advocacy is seen as a balanced approach to dealing with safety in this sector. Each element of the package has its advantages; in this case law, when it is enforced, has a powerful incentive effect. The Regulations will be supported by the advocacy, awareness campaigns and commitments to training made by the Authority and industry-specific bodies. Research suggests that a mixture of education, incentives, regulation and enforcement mutually reinforce health and safety standards⁴.

The proposals are the legislative element in the overall strategy for dealing with the sector. The other main element will be guidance and advocacy and the Health and Safety Authority will issue guidance in due course. Where advocacy and guidance are ignored, the Health and Safety Authority will have the legal option available to achieve the necessary safety standards in the sector.

2.0 COSTS, BENEFITS AND IMPACTS

Cost indicators for poor Health and Safety can be relatively straightforward to identify since there are tangible results to occupational illness, accidents and enforcement actions. International research in this area suggests that education and awareness contribute to reduced costs of accidents but that the benefits of regulating health and safety are usually difficult to measure and, consequentially, are underestimated. The success of any health and safety initiative is rarely associated only with regulation, but is complementary to principles driving the legislation and to how these principles are perceived by employers.

³ Economic Impact of HSW at Work Legislation, Indecon

⁴ Ibid

2.1 General Costs

Indicators on the costs of poor health and safety implementation in the industry can be determined as the following:

- Lost time costs
- Fines
- Liabilities
- Legal costs
- Costs of shutdowns/site closures
- Inquiries, etc.

Legal costs in relation to health and safety performance relate to two issues - (i) employee claims and (ii) enforcement actions. Employees injured in quarries due to the negligence of employers/clients/etc could make insurance claims or take civil cases against those responsible. In the case of fatalities, legal representation may be required at inquests. Liability insurance premiums are also likely to be affected by legal actions.

2.2 Compliance Costs

A report commissioned by the Department of Enterprise, Trade and Employment⁵ on an Economic Impact Assessment of health and safety legislation was published in August 2006. The report concludes that on the whole employers believe that the benefits of Regulations outweigh the costs of compliance. The report estimates the median cost of compliance generally to be 1% of wage costs with the median cost for the Construction sector (it seems reasonable to assume that compliance costs in quarrying are broadly similar to Construction) estimated at 2%. An economy-wide assessment of the costs of accidents and illness in Ireland estimated an annual figure of €3.6billion, Or 2.5% of GDP at the time, including lost output, insurance claims and other costs.

⁵ Economic Impact of HSW at Work Legislation, Indecon

2.3 Costs of Enforcement

The Health and Safety Authority employs 164 staff as inspectors, professional specialists, administrators or clerical support. The Authority has 100 inspectors carrying out a range of roles including the development of legislative proposals at EU and national level, development of guidance, liaison with representative bodies, inspection, promotion, information and advisory activities, management and development of staff, investigation of complaints and accidents and the prosecution of offenders. In recent years the annual inspection target for the mines and quarries sector has been 500 inspections and it is envisaged that inspections would continue at this level under the proposed regulations thus involving no extra cost.

2.4 Identify Costs of Each Option

Option 1 involves no extra costs over and above those currently prevailing.

Option 2, Option 3 and Option 4 are difficult to deal with even qualitatively. However research⁶ indicates that any reduction in enforcement and compliance costs is likely to be at least offset by an increase in the cost of accidents.

Costs associated with Option 5 and Option 6 are discussed below:

The Regulations are designed to simplify the occupational safety and health provisions applying to the quarrying sector. The legislation is codified and made more accessible to users. No major new requirements are introduced. For those who were in compliance with the previous legislation, and who were operating to recognised best practice in this area, no significant additional compliance costs should arise.

One element which will incur some costs is the new requirement to undergo training under the Quarries Skills Certification Scheme for a limited number of

⁶ Economic Impact of HSW at Work Legislation, Indecon

tasks. This measure is being introduced to address the rising number of work place accidents involving the use of plant and equipment, a feature not unique to the Quarries sector. The training scheme will be comparable to the Construction Skills Certification Scheme which is at Level 5 on the National Framework of Qualifications.

There are an estimated 10,000 employees in the quarrying sector; however no breakdown is available for those in particular tasks to which the Quarries Skills Certification Scheme will apply. The equivalent Construction Skills Certification Scheme plant operator courses are currently run at a cost of €350 per applicant. Table 2.1 illustrates the estimated costs associated with the training.

Table 2.1 Estimated Quarries Skills Certification Costs

| | |
|-----------------------------------------|----------|
| Cost of training course | €350 |
| Number of employees in sector | 10,000 |
| Estimated No. to undergo training | 5,000 |
| Estimated direct training cost | €1.75m |
| Average sector weekly wage ⁷ | €732.73 |
| Sector lost time cost | €732,730 |
| Total cost to sector of training | €2. 482m |
| Cost per employee trained | €496 |

Under the current model of the Construction Skills Certification Scheme, training is renewed on a 5-year basis. The costs identified in Table 2.1 would thus recur on a 5-year basis. However, at present an implementation group including the Social Partners, the Authority and FÁS is working on measures to improve the delivery and renewal requirements of the training structure.

Another element which may incur costs on operators is the new requirement to carry out geotechnical assessments. This is required where the face height of an excavation is or is planned to be 20m or more or where the operator

⁷ CSO, June 2006

during routine inspection identifies a significant hazard at an excavation, tip or lagoon.

Existing Regulations require that, where face heights might exceed 65 feet, application is made to the Authority for a High Face Permit. For several years now it has been the practice that the Authority will only consider such an application when accompanied by a geotechnical assessment. Thus the new 20m requirement simply regularises current practice. The potential costs of having to carry out a geotechnical assessment where a significant hazard is identified are greatly outweighed by the potential risks and outcomes associated with such hazards.

2.5 Benefits

In terms of the ratio of deaths to numbers employed quarrying is one of the most dangerous sectors of Irish industry. The Regulations set out measures to improve the national safety record in the quarries. Research⁸ has shown that intervention has a positive effect on health and safety and all of the options discussed offer some benefit. The relative merits of each are discussed below.

2.6 Identify the Benefits of Each Option

Option 1: Do nothing

This involves the retention of the present arrangements for ensuring health and safety in the quarrying sector which, although giving a significant level of protection, involve retaining a fragmented legislative framework in the sector with obsolescent legislation which does not adequately reflect modern working systems or technology

Option 2: Advocacy

⁸ Economic Impact of HSW at Work Legislation, Indecon

This offers some degree of protection however the lack of sanction would inevitably make some employers less receptive to advocacy and benefits would be less than option 1.

Option 3: Self Regulation

Benefits are expected to be limited in the absence of both sanction and advocacy. This is seen as the least attractive option.

Option 4: Co-Regulation

Co-Regulation is likely to be less beneficial than Option 1 due to difficulties in harmonising the agendas of stakeholders.

Option 5: Regulation

Benefits would accrue due to improved legislation but it is not clear if this would be better than Option 1 in the absence of advocacy.

Option 6: Regulation plus Advocacy

This option offers the clear benefits over Option 1 of combining improved legislation with advocacy. It is also in line with the current policy of consolidating health and safety requirements under the provisions of the Safety, Health and Welfare at Work Act 2005. The combination of advocacy, incentive and regulation with the prospect of enforcement by the HSA should ensure significantly improved compliance.

2.7 Other Impacts

(a) Impacts on National Competitiveness

As already stated, quarrying and related ancillary factories currently employ about 10,000 people in Ireland, producing approximately 35 million tonnes of product annually. This is the highest production per capita in Europe and contributes significantly to the growing Irish economy. The Annual

Competitiveness Reports from National Competitiveness Council⁹ suggest that the competitiveness of the Irish economy depends strongly on factors relating to productivity of individual sectors, labour costs, etc. In a safer, healthier labour force employees can work effectively and productively up until retirement age, and in some cases beyond. In this context, Safety, Health and Welfare at Work legislation can be seen as a measure to protect national competitiveness. The fact that employers generally believe that the benefits of Regulations equal or outweigh the cost of compliance¹⁰ supports the conclusion that there will be no negative impact on competitiveness.

(b) Impacts on Socially Excluded or Vulnerable Social Groups

The Regulations require the relevant employer to have regard to the legislative requirements concerning pregnant or breastfeeding mothers, children and young persons at work.

Non-Irish Nationals in the work place will benefit indirectly from better compliance resulting from improved Regulations.

(c) Human Health and Environmental Issues

These Regulations do not have a significant impact on the environment. However, in some cases, practical working measures that seek to prevent accidents occurring can also have positive impacts on the environmental performance of an industry.

(d) Impacts on Consumers and Competition

Section 1 of this Regulatory Impact Analysis outlines the background to these Regulations and their legislative context. The Regulations represent a consolidation of existing measures and contain limited new provisions. Thus, the new legislation is not a significant policy change. Consumers who purchase products of quarrying activities such as road authorities, local authorities and private developers would not be affected.

⁹ Report of National Competitiveness Council 2007

¹⁰ Economic Impact of HSW at Work Legislation, Indecon

(e) Impacts on Rights of Citizens

There is no impact upon the rights of citizens in general. The rights of those citizens who are gainfully employed would be improved by the proposed Regulations, which set out measures to protect their safety, health and welfare at work.

(f) Compliance Burdens

Surveys¹¹ illustrate that employers feel the benefits of the regulatory measures outweigh the costs. Employers have been involved, through social partnership, in the developments that have led to the regulation of occupational well-being in the industry.

2.8 Conclusion and Preferred Option

Option 1, despite the retention of obsolescent legislation, does have the merit of providing a regime of legislation combined with advocacy. Options 2, 3, 4 and 5 all fall short in this regard for the various reasons given in Section 2. However, Option 1 implies the retention of outdated legislation which lacks clarity and is at odds with the current policy of consolidating occupational safety and health legislation under the Safety, Health and Welfare at Work Act 2005. Option 6, which involves the implementation of modern, user-friendly legislation plus advocacy, is therefore to be preferred.

3.0 CONSULTATION

In the drafting of Regulations and codes of practice, the Health and Safety Authority is obliged to consult “any other person or body that appears to the Authority to be appropriate having regard to the proposals to be submitted or as directed by the Minister” under Section 57 (2) of the Safety, Health and Welfare at Work Act, 2005.

¹¹ Economic Impact of HSW at Work Legislation, Indecon

The draft Regulations and Repeals and Revocation Order were developed in consultation with a Working Group representative of:

- Mineral Engineering Department Athlone Institute of Technology,
- Irish Mining and Quarrying Society (IMQS),
- Construction Industry Federation (CIF),
- IBEC,
- SIPTU,
- Irish Concrete Federation (ICF),
- Institution of Engineers of Ireland (IEI)
- Health and Safety Authority

The Health and Safety Authority published the proposals for formal public consultation, together with detailed, comprehensive draft guidelines in accordance with the 2005 Act, and updated its proposals for new Quarries Regulations in the light of the 2005 Act and other related developments, including the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007). The proposals were welcomed by the sector.

Following on from the public consultation process, the Authority redrafted the proposed Regulations, addressed outstanding issues and transmitted the proposals to the Minister for Labour Affairs for consideration with a view to legal scrutiny and settlement by the Office of the Parliamentary Counsel to the Government.

4.0 ENFORCEMENT AND COMPLIANCE

The Health and Safety Authority is the primary enforcer of occupational safety, health and welfare legislation through its inspectors. In 2006 the Authority carried out 15,365 inspections (of which 478 were in the mines and quarries

sector) with over 80%.of these being planned inspections for compliance, 6% of inspections were to follow up on complaints and 14% were to investigate accidents. By focussing on compliance the Authority can actively enforce relevant legislation. Quarries are a priority sector for inspection and non-compliance will be identified by proactive checks by inspectors and by responding to queries raised.

5.0 REVIEW

The Health and Safety Authority will continue to try and identify gaps in legislation, monitor enforcement statistics and identify trends. The annual report of the Authority will provide an ongoing public review of progress.

6.0 REFERENCES

RIA GUIDELINES – How to conduct a Regulatory Impact Analysis, Department of the Taoiseach 2005

Central Statistics Office, Labour Market and Earnings Statistics (www.cso.ie)

Economic Impact of the Safety, Health and Welfare at Work Legislation, Prepared for the Department of Enterprise, Trade and Employment by Indecon, August 2005 (www.entemp.ie)

Annual Competitiveness Report 2007, National Competitiveness Council, Forfas (www.competitiveness.ie)

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