

United Nations – Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes.

Response from Ireland to questionnaire

QUESTION 1

The main regulations governing occupational health and safety for workers in relation to hazardous substances/chemicals are the [Safety, Health and Welfare at Work Act \(SHWWA\) 2005](#) and the Chemicals Acts 2008 and 2010 and regulations made therein.

Some of the Regulations and Orders made under the SHWW Act 2005 relevant to hazardous substances include:

- [Safety, Health And Welfare At Work \(Carcinogens\) Regulations 2015](#) (S.I. No. 622 of 2015)
- [Safety, Health And Welfare At Work \(Chemical Agents\) Regulations 2015](#) (S.I. No. 623 of 2015)
- [Safety Health and Welfare at Work \(Biological Agents\) Regulations 2013](#) (S.I. No. 572 Of 2013)
- [Safety, Health and Welfare at Work \(Exposure to Asbestos\)\(Amendment\) Regulations 2010](#) (S.I. No. 589 of 2010)
- [Safety, Health and Welfare at Work \(Exposure to Asbestos\) Regulations 2006](#) (S.I. No. 386 of 2006)
- [Safety, Health and Welfare at Work \(General Applications\) Regulations 2007](#) (S.I. No 299 of 2007)
- [Safety, Health and Welfare At Work \(Chemical Agents\) Regulations, 2001](#)
- [Safety, Health and Welfare at Work \(Carcinogens\) Regulations, 2001](#) (S.I. No. 078 of 2001)

The Chemicals Acts 2008 and 2010 establish the national administration and enforcement of EU Regulations such as REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals); CLP (Classification, Labelling and Packaging of substances and mixtures); Detergents and Export-Import (Prior Informed Consent) Regulations. In addition, the Seveso III Directive (2012/18/EU) has been transposed into national legislation as a regulation under the Chemicals Act - *Chemicals Act (Control of Major Accident Hazards involving Dangerous Substances) Regulations 2015* (S.I. No. 209 of 2015). These EU Regulations and Directives not only address workers, but also the general public and effects and hazards for man via the environment.

Furthermore, [the Safety, Health and Welfare at Work \(General Applications\) Regulations 2007](#) (S.I. No 299 of 2007) set down general requirements. Particularly relevant are:

- Part 2 – Workplace and Work Equipment
- Part 6 – Sensitive Risk Groups

Obligations in the General Applications Regulations are laid down to prevent [children or young persons](#) and [pregnant, post-natal and breastfeeding employees](#) being exposed to carcinogens.

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Q1.a) and b)

The Health and Safety Authority also regularly produces guidance documents and information sheets that provide specific standards or recommended approaches for sectors and particular hazards. All of these guidance documents and/or [information sheets](#) are available on the Authority's website.

- Chemical and Hazardous Substances: [link to information sheets and guidance](#). Some examples from 2017 and 2018 include information sheet for [nail bars](#); [guidance for handling hazardous household waste at civic amenity sites](#); [guidance for crystalline silica dust exposure](#) etc.
- Physical Agents – [link to guidance](#).
- Occupational health topics - [link](#)
- Agriculture – [link to guidance](#)
- Construction – [link to guidance](#)
- Healthcare – [link to guidance](#).

As the national statutory body for health and safety, we also provide a suite of tools for businesses and workers to use to address health and safety risks including exposure to hazardous substances or other hazards such as stress or bullying.

- We provide a free easy to use online risk assessment tool called BeSmart (<https://www.besmart.ie/>) which can be used by businesses to assess all the risks that might be found in their workplaces. This tool has almost 50,000 registered users and covers sectors such as services, manufacturing, retail, hospitality, agribusiness and construction.
- WorkPositive^{CI} (<https://www.workpositive.ie/>) is another online free tool we provide which is a state and stakeholder supported psychosocial risk management process that helps organisations identify ways to improve employee wellbeing.

Finally we provide an elaborate [elearning service](#) which provides online training courses for specific sectors and on specific topics. This is also free to use.

Q1.c)

In addition to the above regulations, there are approved Codes of Practice which provide specific information on permissible exposure levels of workers. These include the [2016 Code of Practice for the Chemical Agents Regulation](#) and the [2013 Code of Practice for the Biological Agents Regulation](#).

Question 2

The main authority for implementation of occupational health norms in Ireland is the Health and Safety Authority (HSA) which was established in 1989 under the Safety, Health and Welfare at Work (SHWW) Act, 1989 and is the National Statutory Body with responsibility

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for workplace health and safety. The mandate of the Health and Safety Authority includes the following areas:

- To regulate and promote the safety, health and welfare of people at work and those affected by work activities.
- To regulate and promote the safe manufacture, use, placing on the market, trade and transport of chemicals.
- To act as the surveillance authority in relation to relevant single European market legislation.
- To act as the national accreditation body.

The Authority's programmes of work are informed by a three year strategy and the present one which runs from [2016-2018](#) has the following five strategic objectives:

1. **Health:** Increase the focus on work-related health risks.
2. **Safety:** Maintain and develop the advances achieved in the management of work-related safety risks.
3. **Chemicals:** Focus on the risks to human health and safety arising from chemicals used at work and by the general public.
4. **Accreditation:** Provide an impartial, internationally recognised accreditation service, responsive to market demands through the Irish National Accreditation Board.
5. **How we work:** Continue to change and transform the way we work.

The Authority is governed by a Board which reports to the Minister of State for Trade, Employment, Business, EU Digital Single Market and Data Protection and the Department of Business, Enterprise and Innovation. The specific functions of the Authority are provided under Section 34 of the SHWW Act 2005 and these include:

34.—(1) The general functions of the Authority are—

- (a) to promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions,
- (b) to promote, encourage, foster and provide education and training in the safety, health and welfare of persons at work,
- (c) to encourage and foster measures promoting the safety, health and welfare of persons at work,
- (d) subject to *subsection (2)* and [section 33](#), to make adequate arrangements for the enforcement of the relevant statutory

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provisions,

- (e) to monitor, evaluate and make recommendations to the Minister regarding implementation of and compliance with—
 - (i) the relevant statutory provisions, and
 - (ii) best practice relating to safety, health and welfare at work, and the review and maintenance of relevant records by employers,
 - (f) to promote, encourage and foster co-operation with and between persons or bodies of persons that represent employees and employers and any other persons or bodies of persons, as appropriate, as regards the prevention of risks to safety, health and welfare at work in accordance with the relevant statutory provisions,
 - (g) to make any arrangements that it considers appropriate for providing information and advice on matters relating to safety, health and welfare at work,
 - (h) to make any arrangements that it considers appropriate to conduct, commission, promote, support and evaluate research, surveys and studies on matters relating to the functions of the Authority and for this purpose—
 - (i) to foster and promote contacts and the exchange of information with other persons or bodies of persons involved in safety, health and welfare at work in and outside the State, and
 - (ii) as it considers appropriate, to publish in the form and manner that the Authority thinks fit, results arising out of such research, studies and surveys,
 - (i) in accordance with [section 43](#) , to prepare and adopt a strategy statement and to monitor its implementation,
 - (j) in accordance with [section 44](#) , to prepare and adopt a work programme,
 - (k) to comply with any directions in writing, whether general or particular, relating to its functions, that the Minister may from time to time give to the Authority,
 - (l) to give to the Minister any information relating to the performance of its functions that the Minister may from time to time require, and
 - (m) to perform any additional functions conferred on the Authority by order under [section 35](#) .
- (2) The Authority, subject to the approval of the Minister given with the consent of the Minister for Finance, may make agreements with—
- (a) any Minister of the Government, or other person, for that Minister or person to perform on behalf of the Authority (with or without payment) any of its functions, or
 - (b) make agreements with any Minister of the Government for the Authority to perform on behalf of that Minister (with or without payment) any functions that may appropriately be performed by the Authority in connection with its functions under this Act.
- (3) The Authority shall have all such powers as are necessary or expedient

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for the performance of its functions.

(4) The Authority may perform any of its functions through or by the Chief Executive or any other member of staff of the Authority duly authorised by the Authority to act in that behalf.

Question 3

Information rights and requirements for workers in relation to their occupational health and safety are provided for in the [Safety Health and Welfare at Work Act 2005](#). In particular, Section 9 which states:

9.—(1) Without prejudice to the generality of [section 8](#), every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information—

- (a) is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and
- (b) includes the following information—
 - (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment,
 - (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work, and
 - (iii) the names of persons designated under [section 11](#) and of safety representatives selected under [section 25](#), if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.

(3) Every employer shall ensure that employees appointed under [section 18](#) and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to—

- (a) the risk assessment carried out under [section](#)

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- (b) information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under section 33 under the relevant statutory provisions, and
 - (c) any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under section 33, or a person referred to in section 34 (2).
- (4) (a) Where an employer proposes to use the services of a fixed-term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to—
- (i) any potential risks to the safety, health and welfare of the employee at work,
 - (ii) health surveillance,
 - (iii) any special occupational qualifications or skills required in the place of work, and
 - (iv) any increased specific risks which the work may involve.
- (b) Where an employer proposes to use the services of a temporary employee, the employer shall—
- (i) specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required, and
 - (ii) ensure that the temporary employment business gives the information referred to in *paragraph (a)* to the employee.
- (5) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)*

In addition, Section 10 provides for the instruction, training and supervision of employees while Section 11 further elaborates on the duties of employees.

Under the REACH Regulation, which is implemented in Ireland under the Chemicals Act 2008, Article 35 requires employers to provide to workers and their representatives the

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Safety Data Sheet which contains relevant information on substances and mixtures they may use or be exposed to in the course of their work.

Article 35 Access to information for workers

Workers and their representatives shall be granted access by their employer to the information provided in accordance with Articles 31 and 32 in relation to substances or mixtures that they use or may be exposed to in the course of their work.

Question 4

[Part 4, Sections 27-31](#) of the Safety Health and Welfare at Work Act 2005 cover rights of workers in relation to raising concerns about health and safety and affords them protection from penalisation and a system for realising those rights in the [Workplace Relations Commission](#) (WRC). For example, Section 27 covers protection against dismissal and penalisation as follows:

27.—(1) In this section “penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.

(2) Without prejudice to the generality of *subsection (1)*, penalisation includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.

(3) An employer shall not penalise or threaten penalisation against an employee for—

- (a) acting in compliance with the relevant statutory provisions,
- (b) performing any duty or exercising any right under the relevant statutory provisions,
- (c) making a complaint or representation to his or her safety representative or employer or the

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Authority, as regards any matter relating to safety, health or welfare at work,

- (d) giving evidence in proceedings in respect of the enforcement of the relevant statutory provisions,
- (e) being a safety representative or an employee designated under [section 11](#) or appointed under [section 18](#) to perform functions under this Act, or
- (f) subject to *subsection (6)*, in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, leaving (or proposing to leave) or, while the danger persisted, refusing to return to his or her place of work or any dangerous part of his or her place of work, or taking (or proposing to take) appropriate steps to protect himself or herself or other persons from the danger.

(4) The dismissal of an employee shall be deemed, for the purposes of the Unfair Dismissals Acts 1977 to 2001, to be an unfair dismissal if it results wholly or mainly from penalisation as referred to in *subsection (2)(a)*.

(5) If penalisation of an employee, in contravention of *subsection (3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the employee in respect of that penalisation both under this Part and under those Acts.

(6) For the purposes of *subsection (3)(f)*, in determining whether the steps which an employee took (or proposed to take) were appropriate, account shall be taken of all the circumstances and the means and advice available to him or her at the relevant time.

(7) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in *subsection (3)(f)*, the employee shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he or she took (or proposed to take) that a reasonable employer might have dismissed him or her for taking (or proposing to take) them.

In addition, the [Protected Disclosures Act 2014](#) also protects people who raise concerns about possible wrongdoing in the workplace, including in relation to safety, health and

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chemicals, from penalisation. It provides for redress for employees who are dismissed or otherwise penalised for having reported possible wrongdoing in the workplace.

Question 5

[Part 4](#) of the Safety, Health and Welfare at Work Act 2005 also provides for further rights and remedies for workers including Safety Representation and Safety Consultation. For example, Section 25 covers safety representation as follows:

25.—(1) Without prejudice to [section 26](#), employees may, from time to time, select and appoint from amongst their number at their place of work a representative (in this Act referred to as a “safety representative”) or, by agreement with their employer, more than one safety representative, to represent them at the place of work in consultation with their employer on matters related to safety, health and welfare at the place of work.

- (2) A safety representative may—
- (a) inspect the whole or any part of the place of work—
 - (i) subject to [subsection \(3\)](#), after giving reasonable notice to the employer, or
 - (ii) immediately, in the event of an accident, dangerous occurrence or imminent danger or risk to the safety, health and welfare of any person,
 - (b) investigate accidents and dangerous occurrences provided that he or she does not interfere with or obstruct the performance of any statutory obligation required to be performed by any person under any of the relevant statutory provisions,
 - (c) after the giving of reasonable notice to the employer, investigate complaints relating to safety, health and welfare at work made by any employee whom he or she represents,
 - (d) accompany an inspector who is carrying out an inspection of the place of work under [section 64](#) other than an inspection for the purpose of investigating an accident or dangerous

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occurrence,

- (e) at the discretion of the inspector concerned, accompany an inspector who is carrying out an inspection under [section 64](#) for the purpose of investigating an accident or dangerous occurrence,
- (f) at the discretion of the inspector concerned, where an employee is interviewed by an inspector with respect to an accident or dangerous occurrence at a place of work, attend the interview where the employee so requests,
- (g) make representations to the employer on any matter relating to safety, health and welfare at the place of work,
- (h) make oral or written representations to inspectors on matters relating to safety, health and welfare at the place of work, including the investigation of accidents or dangerous occurrences,
- (i) receive advice and information from inspectors on matters relating to safety, health and welfare at the place of work, or
- (j) consult and liaise on matters relating to safety, health and welfare at work with any other safety representatives who may be appointed in the undertaking concerned, whether or not those safety representatives work in the same place of work, in different places of work under the control of the employer or at different times at the place of work.

(3) The employer and the safety representative shall, having regard to the nature and extent of the hazards in the place of work, agree the frequency or schedule of inspections which may be carried out under *subsection (2)(a)(i)*, which agreement shall not be unreasonably withheld by the employer.

(4) Every employer shall consider any representations made to him or her by the safety representative in relation to the matters specified in this section or any other matter relating to the safety, health and welfare at work of his or her employees and, so far as is reasonably practicable, take any action that he or she considers necessary or appropriate with regard to those representations.

(5) An employer shall give to a safety

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representative such time off from his or her work as is reasonable having regard to all the circumstances, without loss of remuneration, to enable the safety representative—

(a) to acquire, on an ongoing basis, the knowledge and training necessary to discharge his or her functions as a safety representative, and

(b) to discharge those functions.

(6) Where an inspector attends at a place of work for the purpose of carrying out an inspection under [section 64](#), the employer shall inform the safety representative that the inspection is taking place.

Section 26 covers consultation and participation of employees and safety committees while Sections 27-31 cover the protections and rights for the employee (see Question 4 above).

Question 6:

The Health and Safety Authority is required under Section 43 of the SHWW Act 2005 to prepare a three year strategy (current [strategy 2016-2018](#)) and also is required under Section 44 to provide an annual programmes of work (the programme for 2018 is available at [POW2018](#)). In addition, an annual report (Section 51) is prepared which assesses the delivery and objectives of our POW and strategy. This annual report is submitted to the Minister and laid before both Houses of the Oireachtas.

51.—(1) As soon as practicable, but in any case not later than 3 months after the end of each year, the Authority shall prepare and submit a report (in this section referred to as the “annual report”) to the Minister and the Minister shall cause copies of the annual report to be laid before each House of the Oireachtas.

(2) The annual report shall be in the form that the Minister may direct and shall include—

(a) information on the performance of the Authority’s functions during the year to which the report relates having regard to the strategy statement and work programme of the Authority,

(b) information on the performance of any agreement under [section 34 \(2\)](#),

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(c) information in relation to any annual report furnished to the Authority under [section 33](#) (3), and

(d) any other information that the Authority considers appropriate or that the Minister may require.

(3) The Authority—

(a) may, as it considers appropriate, make any other reports to the Minister relating to its functions, and

(b) shall publish its annual report.

In addition, the Authority has an agreed Service Level Agreement with our parent Department of Business, Enterprise and Innovation which provides for quarterly reports on agreed Key Performance Indicators.

Question 7

The legislation is reviewed and monitored regularly with a view to identifying any necessary revisions.