STATUTORY RULES OF NORTHERN IRELAND

2005 No. 45

HEALTH AND SAFETY

The Diving at Work Regulations (Northern Ireland) 2005

Made - - - - 22nd February 2005

Coming into operation 4th April 2005

The Department of Enterprise, Trade and Investment(**1**), being the Department concerned(**2**), in exercise of the powers conferred on it by Articles 17(1), (2), (4) and (5)(**3**) and 55(2) of, and paragraphs 1(1), 3, 4, 5, 13, 14(1), 15 and 20(a) of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**4**) and of every other power enabling it in that behalf and for the purpose of giving effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A)(**5**) of that Order after the carrying out by the said Executive of consultations in accordance with Article 46(3)(**6**) of that Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Diving at Work Regulations (Northern Ireland) 2005 and shall come into operation on 4th April 2005.

Interpretation

2.—(1) In these Regulations –

"approved qualification" means such qualification as is approved by the Executive under regulation 14;

"certificate of medical fitness to dive" means a certificate issued in accordance with regulation 15;

"diver" means a person at work who dives;

"diving contractor" shall be construed in accordance with regulation 5;

(**1**) Formerly the Department of Economic Development; *see*S.I. 1982/846 (N.I. 11), Article 3 and S.I. 1999/283 (N.I. 1), Article 3(5)
(**2**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**3**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(**4**) S.I. 1978/1039 (N.I. 9); the general purposes of Part II referred to in Article 17(1) were extended by S.I. 1992/1728 (N.I. 17), Articles 3(1) and 4(1). Article 47A was inserted by Article 3, and Article 2 was amended by Articles 4 and 8, of S.I. 1997/1774 (N.I. 16)
(**5**) Article 13(1) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
(**6**) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18(c)

"diving operation" means a diving operation identified in the diving project plan pursuant to regulation 8(3);

"diving operation record" means the record required to be kept in accordance with regulation 6(3)(e);

"diving project" means any activity, made up of one or more diving operations, in which at least one person takes part or will take part as a diver and extends from the time when that person, or the first such person, commences to prepare to dive until that person, or the last such person, has left the water, chamber or other environment in which the dive, or any part of the dive, took place and has completed any requisite decompression procedures, including, where it may be reasonably anticipated that this will be needed, any therapeutic recompression;

"diving project plan" means a document prepared under regulation 6(2)(a) in accordance with regulation 8;

"registered medical practitioner" means a fully registered person within the meaning of the Medical Act 1983(**7**);

"supervise" means the exercise of direct personal control;

"supervisor" means a person appointed to supervise under regulation 6(2)(b);

"territorial sea" means the territorial sea of the United Kingdom adjacent to Northern Ireland and "within the territorial sea" includes on, over and under it;

"visiting force" has the same meaning as it does for the purposes of any provision of Part I of the Visiting Forces Act 1952(**8**).

(2) For the purposes of these Regulations a person "dives" if –

(a) he enters –

(i) water or any other liquid; or

(ii) a chamber in which he is subject to pressure greater than 100 millibars above atmospheric pressure; and

(b) in order to survive in such an environment he breathes in air or other gas at a pressure greater than atmospheric pressure.

Application and extent

3.—(1) These Regulations shall apply to and in relation to any diving project apart from the following –

(a) the care or treatment of patients in a hospital or other place, not under the control of the diving contractor, where emergency medical treatment is provided or in transit to such hospital or place where the means of transit is provided by or in respect of the hospital or other place;

(b) operations in which members of the armed forces of the Crown or of a visiting force are engaged in warfare or training for warfare;

(c) work carried out in any air which is compressed in order to prevent the ingress of ground water to the works or to stabilise the area around the works.

(2) These Regulations shall apply within the territorial sea only to and in relation to the premises and activities to which any of paragraphs 2 to 6 of Schedule 1 applies.

(**7**) 1983 c. 54; as amended by 1995 c. 51, 1997 c. 46, 2002 c. 17 and S.I. 1986/23, S.I. 1996/1591, S.I. 2000/1803, S.I. 2000/3041 and S.I. 2002/3135

(**8**) 1952 c. 67

Duty to ensure compliance with these Regulations

4. Every person who to any extent is responsible for, has control over or is engaged in a diving project or whose acts or omissions could adversely affect the health and safety of persons engaged in such a project, shall take such measures as it is reasonable for a person in his position to take to ensure that these Regulations are complied with.

The diving contractor

5.—(1) A person at work shall not dive in a diving project and an employer shall not employ any person in such a project unless there is one person and one person only who is the diving contractor for that project.

(2) The diving contractor shall, subject to paragraph (3), be the person who –

(a) is the employer of the diver or divers engaged in the diving project; or

(b) dives in the diving project as a self-employed diver.

(3) Where there is more than one person falling within paragraph (2) those persons shall jointly appoint in writing before the commencement of the diving project one of themselves to act as diving contractor.

Duties of diving contractor

6.—(1) The diving contractor shall ensure, so far as is reasonably practicable, that the diving project is planned, managed and conducted in a manner which protects the health and safety of all persons taking part in that project.

(2) The diving contractor shall –

(a) ensure that, before the commencement of the diving project, a diving project plan is prepared in respect of that project in accordance with regulation 8 and that the plan is thereafter updated as necessary during the continuance of the project;

(b) before the commencement of any diving operation –

(i) appoint a person to supervise that operation in accordance with regulation 9;

(ii) make a written record of that appointment; and

(iii) ensure that the person appointed is supplied with a copy of any part of the diving project plan which relates to that operation;

(c) as soon as possible after the appointment of a supervisor, provide that supervisor with a written record of his appointment.

(3) The diving contractor shall –

(a) ensure that there are sufficient people with suitable competence to carry out safely and without risk to health both the diving project and any action (including the giving of first-aid) which may be necessary in the event of a reasonably foreseeable emergency connected with the diving project;

(b) ensure that suitable and sufficient plant is available whenever needed to carry out safely and without risk to health both the diving project and any action (including the giving of first-aid) which may be necessary in the event of a reasonably foreseeable emergency connected with the diving project;

(c) ensure that the plant made available under sub-paragraph (b) is maintained in a safe working condition;

(d) ensure, so far as reasonably practicable, that any person taking part in the diving project complies with the requirements and prohibitions imposed on him by or under the relevant statutory provisions and observes the provisions of the diving project plan;

(e) ensure that a record containing the required particulars is kept for each diving operation; and

(f) retain the diving operation record in his possession for at least two years after the date of the last entry in it.

(4) In this regulation, the "required particulars" means such particulars as are approved for the time being in writing by the Executive for the purposes of sub-paragraph 3(e); and any such approval may be given generally or in respect of any diving project or class of diving projects.

Information to be supplied to Executive by diving contractor

7.—(1) A person shall not act as a diving contractor unless the particulars listed in Schedule 2 have been supplied in writing to the Executive by or in respect of that person.

(2) Where there is a change in any of the particulars supplied under paragraph (1) the diving contractor shall ensure that details of the change are forthwith supplied in writing to the Executive.

(3) Paragraphs (1) and (2) shall not apply where each person (apart from any person at work) diving in the diving project does so for recreational purposes.

Diving project plan

8.—(1) The diving project plan shall be based on an assessment of the risks to the health and safety of any person taking part in the diving project and shall consist of a record of the outcome of the planning carried out in accordance with regulation 6(1) including all such information and instructions as are necessary to give advice to and to regulate the behaviour of those so taking part to ensure, so far as is reasonably practicable, their health and safety.

(2) Without prejudice to the generality of paragraph (1), the diving project plan shall identify any approved code of practice giving guidance on these Regulations which will apply to the diving project.

(3) The diving project plan shall identify each diving operation which makes up the diving project and the nature and size of any diving operation so identified shall be such that it can be safely supervised by one person.

Appointment of supervisor

9.—(1) Only one supervisor shall be appointed to supervise a diving operation at any one time.

(2) A person shall not be appointed, or act, as a supervisor unless he is competent and, where appropriate, suitably qualified to perform the functions of supervisor in respect of the diving operation which he is appointed to supervise.

Duties of supervisor

10.—(1) The supervisor shall, in respect of the diving operation for which he has been appointed as supervisor –

(a) ensure that it is carried out, so far as is reasonably practicable –

(i) without risk to the health and safety of all those taking part in that operation and of other persons who may be affected thereby;

(ii) in accordance with the requirements and prohibitions imposed on him by or under any relevant statutory provisions; and

(iii) in accordance, where this would not conflict with either head (i) or (ii), with the diving project plan; and

(b) before the commencement of the operation, ensure that each person taking part is aware of the contents of the diving project plan which relate to that operation; and

(c) enter in the diving operation record the particulars required by regulation 6(4) during the course of the operation.

(2) The supervisor shall not dive during the diving operation which he is supervising unless –

(a) either –

(i) he is guiding persons engaged in, or training persons to carry out or teach, recreational diving (and for this purpose recreational diving means diving which is carried out by a person for recreational purposes whilst he is not at work) and the persons taking part in the dive use only self-contained underwater breathing apparatus; or

(ii) the dive is for archaeological, educational or scientific purposes, takes place in a tank or pool artificially constructed for the purpose of swimming or diving and the persons taking part in the dive use only self-contained underwater breathing apparatus; and

(b) the supervisor can so dive without risk to the health and safety of those taking part in that operation and of other persons who may be affected thereby; and

(c) the diving project plan which relates to that operation specifically provides for the supervisor to so dive.

Power of supervisor to give directions

11. A supervisor may, whilst supervising the diving operation in respect of which he is appointed, give such reasonable directions to any person taking part in that operation or who may affect the safety of that operation as are necessary to enable him to comply with regulation 10.

Duties of and restrictions on divers

12.—(1) A diver shall not dive in a diving project unless he –

(a) has, subject to paragraph (2), an approved qualification which is valid for any activity he may reasonably expect to carry out while taking part in the diving project; and

(b) has a valid certificate of medical fitness to dive.

(2) Paragraph (1)(a) shall not apply to a diver who dives –

(a) as a part of training which, if successfully completed, would lead to the issue of an approved qualification;

(b) only by virtue of entering a chamber in order to provide emergency medical treatment; or

(c) as an actor or performer taking part in a live performance or the recording of a performance other than a person whose work normally involves work as a diver.

(3) Every diver engaged in a diving project shall –

(a) maintain a daily record of his diving; and

(b) keep that record in his possession for at least two years after the date of the last entry in it.

(4) Paragraphs (1)(a) and (3) shall not apply to a diver, other than a person whose work normally involves work as a diver, who dives for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who uses self-contained underwater breathing apparatus.