



HEALTH AND SAFETY
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Guide to the Safety, Health and Welfare at Work (General Application) Regulations 2007



Chapter 2 of Part 6:
Protection of Pregnant,
Post Natal and
Breastfeeding Employees

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Safety, Health and Welfare at Work
(General Application)
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**Chapter 2 of Part 6:
Protection of Pregnant, Post Natal
and Breastfeeding Employees**

Contents

Introduction	5
Regulation 147: Interpretation for Chapter 2	5
Regulation 148: Application for Chapter 2	6
Regulation 149: Risk Assessment	6
Regulation 150: Protective or Preventive Measures	8
Regulation 151: Night Work	8
Regulation 152: Information	9
Outline of Schedule 8 to the General Application Regulations 2007	10
Appendices	
1. Summary of Hazards	11
2. Schedule 8: List of Agents, Processes and Working Conditions Relating to Pregnant, Post Natal and Breastfeeding Employees	12
3. Aspects of Pregnancy that May Affect Work	15
4. Reference to Other Relevant Legislation	16

Guide to Chapter 2 of Part 6 of the General Application Regulations 2007

Chapter 2 of Part 6: PROTECTION OF PREGNANT, POST NATAL AND BREASTFEEDING EMPLOYEES

Introduction

This Guide is aimed at safety and health practitioners, employers, managers, employees, safety representatives and others to give guidance on Chapter 2 of Part 6 and the related Schedule 8 to the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) relating to pregnant, post natal and breastfeeding employees. The objective of the Guide is to give general guidance aimed at the prevention of occupational accidents or ill health. *It is not intended as a legal interpretation of the legislation.*

From 1 November 2007, Chapter 2 of Part 6 of the General Application Regulations 2007 replaces the Safety, Health and Welfare at Work (Pregnant Employees etc.) Regulations 2000 (S.I. No. 218 of 2000), which are revoked from that date.

In this Guide the text of the Regulations is shown in italics.

The General Application Regulations 2007 are made under the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) referred to elsewhere in this Guide as the “2005 Act” or “the Act”.

Pregnancy is a part of normal everyday life; it is not an illness. Many women work during pregnancy and many return to work while they are breastfeeding. Because there are some hazards in the workplace which may affect either the health of the woman or her developing child, an employer has specific responsibilities as set out in Chapter 2 of Part 6 of the Safety, Health and Welfare at Work (General Application Regulations) 2007.

In addition, Regulation 24 (Chapter 1 of Part 2 relating to the workplace) of the Regulations requires an employer to ensure that pregnant, post natal and breastfeeding employees are able to lie down to rest in appropriate conditions.

Regulation 147: Interpretation for Chapter 2

147. *In this Chapter:*

“agent, process or working condition” includes an agent, process or working condition, lists of which are shown in Part A of Schedule 8;

“employee” means a pregnant employee, an employee who is breastfeeding or a post natal employee;

“employee who is breastfeeding” means an employee who, having given birth not more than 26 weeks previously, is breastfeeding;

“post natal employee” means an employee who gave birth not more than 14 weeks preceding a material date;

“pregnant employee” means an employee who is pregnant.

The definitions of the various categories of employee above are self-explanatory.

Schedule 8 to the Regulations is made up of three parts: Part A for pregnant, post natal and breastfeeding employees, Part B for pregnant employees only and Part C for breastfeeding employees only (see Appendix 2).

Regulation 148: Application of Chapter 2

148. (1) *This Chapter applies to an employee subject to her—*

(a) notifying her employer of her condition as soon as is practicable after it occurs, and

(b) at the time of the notification, giving to her employer or producing for her employer’s inspection a medical or other appropriate certificate confirming her condition.

(2) Section 6(2) of the Act does not apply to the application of this Chapter.

The Regulations apply when an employee informs her employer that she is pregnant and provides an appropriate medical certificate of her condition. She may choose to inform her employer through her supervisor or by having her doctor directly contact the employer. As the earliest stages of pregnancy are the most critical ones for the developing child, it is in the employee’s interest to let her employer know she is pregnant as soon as possible.

For the avoidance of doubt, Regulation 148(2) clarifies that Chapter 2 of Part 6 applies to members of the Defence Forces.

Regulation 149: Risk assessment

149. *Without prejudice to section 19 of the Act, an employer shall—*

(a) assess any risk to the safety or health of employees and any possible effect on the pregnancy of, or breastfeeding by, employees, resulting from any activity at that employer’s place of work likely to involve a risk of exposure to any agent, process or working condition as referred to in Part A of Schedule 8 and, for that purpose, determine the—

- (i) *nature,*
- (ii) *degree and*
- (iii) *duration*

of any employee's exposure to any agent, process or working condition;

- (b) *take the preventive and protective measures necessary to ensure the safety and health of such employees and avoid any possible effect on such pregnancy or breastfeeding; and*

On receiving notification that an employee is pregnant, an employer must assess the specific risks to that employee and take action to ensure that she is not exposed to anything in the workplace referred to in Part A of Schedule 8 that will damage either her safety or health or that of her developing child. To do this assessment, the employer must identify the type, quantity and duration of exposure to any agent, process or working condition.

In taking the necessary protective and preventive measures, the employer needs to comply with Section 18 of the 2005 Act, in relation to the appointment of a competent person, preferably in the employer's employment, to carry out these measures. The employer must also comply with the provisions of Regulation 150.

- (c) *without prejudice to paragraph (a) and the relevant statutory provisions relating to chemical agents and to the occupational exposure limits laid down in any relevant approved code of practice—*
 - (i) *assess any risk to safety or health likely to arise from exposure of a pregnant employee to an agent or working condition listed in Part B of Schedule 8 resulting from any activity at that employer's place of work,*
 - (ii) *assess any risk to safety or health likely to arise from exposure of an employee who is breastfeeding to an agent or working condition listed in Part C of Schedule 8 resulting from any activity at that employer's place of work, and*
 - (iii) *ensure that any such employee is not required to perform duties for which the assessment reveals such risk.*

The employer is required to assess exposure to particular specified agents and working conditions listed in Part B of Schedule 8 for pregnant employees and in Part C of Schedule 8 for breastfeeding employees. If the risk assessment identifies possible exposure to these specified risks, the employer must ensure that these employees do not carry out duties which would result in such exposure.

Regulation 150: Protective or preventive measures

150. An employer shall—

(a) where—

- (i) the risk assessment carried out under Regulation 149 reveals a risk to an employee’s safety or health, or any possible adverse effect on the pregnancy or breastfeeding of an employee, and
- (ii) it is not practicable to ensure the safety or health of such employee through protective or preventive measures,

adjust temporarily the working conditions or the working hours, or both, of the employee concerned so that exposure to such risk is avoided, and

(b) in cases in which the adjustment of working conditions or working hours, or both, referred to in paragraph (a)—

- (i) is not technically or objectively feasible, or both, or
- (ii) cannot reasonably be required on duly substantiated grounds,

take the measures necessary to provide the employee concerned with other work which does not present a risk to the safety or health of, or any possible adverse effect on the pregnancy or breastfeeding by, the employee.

Where the risk assessment identifies a risk to the safety or health of the pregnant employee, the pregnancy or the breastfeeding employee, the employer must assess if there are any practical ways the risk can be avoided by following the three steps set out below.

Step 1: Adjust the working conditions and/or hours of work

If this does not remove the risk



Step 2: Provide suitable alternative work

If that is not possible



Step 3: The employer should assist the employee in receiving health and safety leave under Section 18 of the Maternity Protection Act 1994. It should be noted that this step applies where the employer, having undertaken the risk assessment, identifies occupational risks which arise for normal pregnancies and which he or she cannot reasonably control using steps 1 or 2.

Regulation 151: Night work

151. (1) In this Regulation “night work” means work in the period between the hours of 11 p.m. on any day and 6 a.m. on the next following day where—

- (a) *the employee works at least 3 hours in that period as a normal course, or*
- (b) *at least 25 per cent of the employee's monthly working time is performed in that period.*

Night work means working between 11.00 p.m. and 6.00 a.m. the next day, where an employee works at least three hours (not necessarily consecutive) in that period, or, where a minimum of 25 per cent of the employee's working hours in a month are worked between those times.

(2) *An employer shall—*

- (a) *if a registered medical practitioner certifies that it is necessary for the safety or health of an employee that she should not be required to perform night work during pregnancy or for 14 weeks following childbirth not oblige her to perform night work during that period, and*
- (b) *in a case to which subparagraph (a) relates—*
 - (i) *transfer the employee to daytime work, or*
 - (ii) *where such a transfer is not technically or objectively feasible on duly substantiated grounds, or both, grant the employee leave or extend the period of maternity leave.*

If an employee has a medical certificate stating that for health and safety reasons she is not required to perform night work during the pregnancy or for fourteen weeks afterwards, the employer must remove her from night work by either transferring her to daytime duties, or, if this is not feasible, granting the employee leave. The employee concerned may have an entitlement to health and safety leave under the maternity protection legislation in these circumstances.

Regulation 152: Information

- 152.** *An employer shall, without prejudice to the provisions of section 9 of the Act, take appropriate steps to ensure that employees or their representative, or both, are provided with information on—*
- (a) *the results of the assessment referred to in Regulation 149, and*
 - (b) *the measures to be taken concerning employees' safety and health pursuant to this Chapter.*

The employer is required to give the employee and/or the safety representative information about the outcome of the risk assessment and any measures to be taken.

Outline of Schedule 8 to the General Application Regulations 2007

Schedule 8 to the General Application Regulations 2007 lists physical, biological and chemical agents, processes and working conditions known to endanger the safety or health of pregnant or breastfeeding employees and the developing child. The Schedule is made up of three parts:

- (i) Part A for pregnant, post natal and breastfeeding employees
- (ii) Part B for pregnant employees only
- (iii) Part C for breastfeeding employees only.

See Appendix 1 for a summary of the contents of Schedule 8 and Appendix 2 for the full contents of the Schedule.

The list contained in Schedule 8 is not exhaustive.

APPENDIX 1

Summary of Hazards

List 1: General Hazards

- Physical shocks – including direct blows to the abdomen
- Vibration – of whole body
- Handling a load
- Noise
- Excessive heat and cold
- Movement and postures which are abrupt or severe or give rise to excessive fatigue
- Ionising radiation
- Non-ionising radiation
- Biological agents – including viruses, bacteria etc.
- Chemicals – including substances which cause cancer, mercury, anti-cancer drugs and carbon monoxide
- Underground mine work.

List 2: Hazards Specific to Pregnancy

Unless the risk assessment indicates that there will be no risk to the safety or health of the employee or the developing child, pregnant employees must not work with:

- Pressurisation chambers
- Rubella
- Toxoplasma
- Lead and lead substances
- Underground mine work.

List 3: Hazards Specific to Breastfeeding

Unless the risk assessment indicates that there will be no risk to the safety or health of the employee or the developing child, employees who are breastfeeding must not work with:

- Lead and lead substances
- Underground mine work.

APPENDIX 2

SCHEDULE 8 Regulations 147, 149

LISTS OF AGENTS, PROCESSES AND WORKING CONDITIONS RELATING TO PREGNANT, POST NATAL AND BREASTFEEDING EMPLOYEES

Part A — Pregnant, post natal and breastfeeding employees

1. Agents

(a) Physical agents

Physical agents where these are regarded as agents causing foetal lesions or likely to disturb placental attachment (or both), and in particular—

- (i) shocks, vibration or movement,*
- (ii) handling of loads entailing risks, particularly of a dorsolumbar nature,*
- (iii) noise,*
- (iv) ionising radiation,*
- (v) non-ionising radiation,*
- (vi) extremes of cold or heat,*
- (vii) movements and postures, travelling, either inside or outside the place of work, mental or physical fatigue and other physical burdens connected with the activity of the employee.*

(b) Biological Agents

Biological agents of risk groups 2, 3 and 4 within the meaning of relevant statutory provisions relating to biological agents, in so far as it is known that these agents or the therapeutic measures necessitated by such agents endanger the health of pregnant employees and the unborn child but excluding those referred to in Part B of this Schedule.

(c) Chemical Agents

The following chemical agents insofar as it is known that they endanger the health of pregnant employees and the unborn child but excluding those referred to in Part B of this Schedule—

- (i) Substances and preparations classified under the*
 - (I) European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations 2003 (S.I. No. 116 of 2003) as amended by the European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) (Amendment) Regulations 2006 (S.I. No. 25 of 2006), and*
 - (II) European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations 2004 (S.I. No. 62 of 2004) as amended by the European Communities (Classification, Packaging and Labelling of Dangerous Preparations) (Amendment) Regulations 2007 (S.I. No. 76 of 2007)*

with one or more of the following risk phrases—

Limited evidence of a carcinogenic effect (R40)

May cause cancer (R45)

May cause heritable genetic damage (R46)

May cause cancer by inhalation (R49)

May cause harm to the unborn child (R61)

Possible risk of harm to the unborn child (R63)

May cause harm to breastfed babies (R64)

Possible risk of irreversible effects (R68),

- (ii) *Substances and preparations referred to in Schedule 1 to the Safety, Health and Welfare at Work (Carcinogens) Regulations 2001 (S.I. No. 78 of 2001),*
- (iii) *Substances and preparations released by a process referred to in Schedule 1 to the Safety, Health and Welfare at Work (Carcinogens) Regulations 2001 (S.I. No. 78 of 2001),*
- (iv) *mercury and mercury derivatives,*
- (v) *antimitotic (cytotoxic) drugs,*
- (vi) *carbon monoxide,*
- (vii) *chemical agents of known and dangerous percutaneous absorption.*

2. Processes

Industrial processes listed in Schedule 1 to the Safety, Health and Welfare at Work (Carcinogens) Regulations 2001 (S.I. No. 78 of 2001).

3. Working Conditions

Underground mining work.

Part B — Pregnant employees

1. Agents

(a) Physical Agents

Work in hyperbaric atmosphere, such as in pressurised enclosures and underwater diving.

(b) Biological Agents

The following biological agents—

Toxoplasma

Rubella virus,

unless the pregnant employees are proved to be adequately protected

against such agents by immunisation.

(c) Chemical Agents

Lead and lead derivatives insofar as these agents are capable of being absorbed by the human organism.

2. Working conditions

Underground mining work.

Part C – Employees who are breastfeeding

1. Agents

Chemical Agents

Lead and lead derivatives insofar as these agents are capable of being absorbed by the human organism.

2. Working Conditions

Underground mining work.

APPENDIX 3

Aspects of Pregnancy that May Affect Work

Apart from the matters listed in Appendices 1 and 2, there are other work factors that may affect aspects of pregnancy. The impact will vary during the course of the pregnancy and you will want to keep the situation under review. For example, the posture of expectant mothers changes to cope with increasing size.

Aspects of pregnancy	Factors in work
Morning sickness	Early shift work Exposure to nauseating smells
Backache	Standing/manual handling/posture
Varicose veins	Standing/sitting
Frequent visits to the toilet	Difficulty in leaving job/site of work
Increasing size	Use of protective clothing Work in confined areas Manual handling
Tiredness	Overtime Evening and night work, shift work
Balance	Problems of working on slippery, wet surfaces
Comfort	Problems of working in tightly fitting workspaces
Dexterity, agility, co-ordination, speed of movement and reach may be impaired because of increasing size	Problems of working in tightly fitting workspaces

APPENDIX 4

Reference to Other Relevant Legislation

The Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004 and associated Regulations set out provisions relating to:

- Entitlements to maternity leave
- Entitlements to clinic visits
- Maintenance of job security
- Entitlements to health and safety leave
- Health and safety benefits.

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