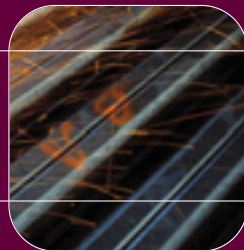




HEALTH AND SAFETY
AUTHORITY

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



Chapter 3 of Part 6:
Night Work and Shift Work

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

**Chapter 3 of Part 6:
Night Work and Shift Work**

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Guide to Chapter 3 of Part 6 of the General Application Regulations 2007

Chapter 3 of Part 6: NIGHT WORK AND SHIFT WORK

Introduction

This Guide is aimed at safety and health practitioners, employers, managers, employees, safety representatives and others to give guidance on Chapter 3 of Part 6 of the Safety, Health and Welfare at Work (General Application) Regulations 2007 (S.I. No. 299 of 2007) relating to night work and shift work. 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.*

Chapter 3 of Part 6 of the General Application Regulations 2007 transposes the safety and health provisions of Directive 93/104/EC concerning certain aspects of the organisation of working time in respect of night workers and shift workers. (Other aspects of that Directive are transposed through the Organisation of Working Time Act 1997¹ (No. 20 of 1997).)

From 1 November 2007, Chapter 3 of Part 6 of the General Application Regulations 2007 replaces the Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations 2000 (S.I. No. 11 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”.

Regulation 153: Interpretation for Chapter 3

153. In this Chapter:

“1997 Act” means the Organisation of Working Time Act 1997 (No. 20 of 1997);

“night work” and “night worker” have the same meaning as they have in the 1997 Act²;

¹ For information on the Organisation of Working Time Act 1997, contact the Employment Rights Section of the Department of Enterprise, Trade and Employment, Davitt House, Adelaide Road, Dublin 2, telephone (01) 631 2121, www.entemp.ie

² “night time” means the period between midnight and 7 a.m. on the following day;
“night work” means work carried out during night time;
“night worker” means an employee—

- (a) who normally works at least 3 hours of his or her daily working time during night time,
- (b) who normally works at least 3 hours of his or her daily working time during night time, and
- (c) the number of hours worked by whom during night time, in each year, equals or exceeds 50 per cent of the total number of hours worked by him or her during that year.

“shift work” and “shift worker” have the same meaning as they have in the 1997 Act³³

Night time is the period between midnight and 7.00 a.m. the following day.

Night workers are employees who normally work at least three hours of their daily working time during night time and whose annual number of hours worked at night equals or exceeds 50 per cent of their annual working time.

Regulation 154: Application of Chapter 3

154. This Chapter applies in respect of—

- (a) an employee and employer to whom the 1997 Act applies, and*
- (b) a self-employed person.*

Chapter 3 of Part 6 of the General Application Regulations does not apply to -

- Those not covered by the rest and maximum working time rules of the 1997 Act,
- A member of the Defence Forces or An Garda Síochána,
- Some transport employees (see Appendix),
- Those who control their own working hours,
- A family employee working on a farm or in a private house.

See Appendix for details of categories of workers covered by alternative working time legislation.

Regulation 155: Night work risk assessment

155. For the purposes of section 16(2)(a) of the 1997 Act, an employer shall carry out, in compliance with section 19 of the Act, a risk assessment, taking account of—

- (a) the specific effects and hazards of night work, and*
- (b) the risks to the safety and health of the employee concerned that attach to the work that a night worker is employed to do,*

so as to determine whether that work involves special hazards or a heavy physical or mental strain.

The employer must carry out a risk assessment, in accordance with section 19 of the 2005 Act, to determine whether night work involves special hazards or imposes a heavy physical or mental strain on the employee concerned.

³³ “Shift work” and “shift worker” are defined in Article 2(5) and Article 2(6) of Council Directive 93/104/EC (as set out in the Sixth Schedule to the Organisation of Working Time Act 1997) as follows:

5. shift work shall mean any method of organising work in shifts whereby workers succeed each other at the same work stations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks;
6. shift worker shall mean any worker whose work schedule is part of shift work.

The aim of the risk assessment is to determine if the night work has any specific effects or poses any particular hazards which could affect the safety and health of night workers.

Regulation 156: Protective or preventive measures with respect to night workers and shift workers

156. *An employer, taking account of the risk assessment under Regulation 155, shall—*

- (a) take such steps as, having regard to the nature of the work concerned, are appropriate for the protection of the safety and health of a night worker or an employee who is a shift worker, and*
- (b) in taking steps to comply with section 18 of the Act, have regard to the employer's duty under paragraph (a).*

The employer must appoint a competent person in accordance with section 18 of the 2005 Act, preferably in the employer's employment, to ensure the protection from and the prevention of risks to the safety and health of a night worker or shift worker.

Regulation 157: Health assessment and transfer to day work

157. *(1) An employer,*

- (a) before employing a person as a night worker, and*
 - (b) at regular intervals during the period that that person is employed as a night worker,*
- shall make available to that person, free of charge, an assessment by a registered medical practitioner, or a person under the practitioner's supervision, in relation to any adverse effects of that night work on the night worker's health.*

Before an employee starts night work and at regular intervals whilst working as a night worker, the employer must offer the employee an assessment by a registered medical practitioner, or a person under the medical practitioner's supervision, to determine any adverse effects of night working on the employee's health.

This assessment must be provided free of charge to the employee.

(2) *In discharging the duty under paragraph (1) the employer—*

- (a) may take into account any entitlement to an assessment referred to in that paragraph that is provided by the State, and*

(b) shall facilitate the night worker's attendance at the assessment if so required.

Where an employee qualifies for a health assessment provided by the State, as referred to in Regulation 157(1), an employer fulfils his or her obligation under paragraph (1) by, if required, facilitating that employee's attendance at such an assessment.

(3) The person who performs an assessment referred to in paragraph (1) shall—

(a) endeavour to detect if the health of the employee concerned is being or will be adversely affected by the fact that the employee performs or will perform night work, and

(b) on the completion of the assessment, inform the employer and employee concerned—

(i) of the opinion of the person who performs the assessment as to whether the employee is fit or unfit to perform the night work concerned, and

(ii) if that opinion is that the employee is unfit to perform that night work by reason only of the particular conditions under which that work is performed, suggesting changes in those conditions that could be made so that the employee could be considered fit to perform that night work.

The registered medical practitioner, or his or her nominee, will assess whether night work is having, or may have, a negative impact on the health of the employee.

Following assessment, the person who carried out the assessment will inform the employer and employee whether the employee is fit or unfit to perform night work. Where the employee is deemed to be unfit because of the particular work conditions, the person who carried out the assessment may suggest changes in those conditions so that they would not affect the employee's health and would result in him or her being fit for night work.

(4) Neither a registered medical practitioner nor a person acting under his or her supervision shall disclose—

(a) the clinical details of the assessment referred to in paragraph (1) to any person other than the employee concerned or a person designated under section 63 of the Act, or

(b) the opinion of the registered medical practitioner of such an assessment to any person other than the employee and employer concerned.

Clinical details of the assessment may only be disclosed to the employee (or persons designated in accordance with Section 63 of the 2005 Act relating to "Medical Examinations").

The result of the assessment (i.e. whether the employee is fit or unfit for night work) may only be disclosed to the employee and employer concerned.

(5) If a night worker—

(a) becomes ill or otherwise exhibits symptoms of ill-health, and

- (b) *that illness is or those symptoms are recognised as being connected with the fact that the night worker performs night work,*

the employer, whenever possible, shall assign duties to the employee that do not involve performing any night work and to which the employee is suited.

If a night worker becomes unwell for reasons connected with night work, the employer must reassign the employee to other duties to which he or she is suited and which do not involve any night work, whenever this is possible.

APPENDIX

Other Relevant Legislation

Transport employees other than:

- (a) persons performing mobile road transport activities as defined in Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002, and
- (b) mobile staff in civil aviation as defined in the Annex to Council Directive 2000/79/EC of 27 November 2000,

are now covered by the Organisation of Working Time Act 1997 by virtue of the Organisation of Working Time (Inclusion of Transport Activities) Regulations 2004 (S.I. No. 817 of 2004) which revoked the Organisation of Working Time (Exemption of Transport Activities) Regulations 1998 (S.I. No. 20 of 1998).

The rest periods and maximum working time of **seafarers** are now regulated by the European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 (S.I. No. 532 of 2003).

The rest periods and maximum working time of **sea fishermen** are regulated by the European Communities (Workers on Board Sea-going Fishing Vessels) (Organisation of Working Time) Regulations 2003 (S.I. No. 709 of 2003).

The rest periods and maximum working time of **offshore workers** are now regulated by the Organisation of Working Time Act 1997 by virtue of the Organisation of Working Time (Inclusion of Offshore Work) Regulations 2004 (S.I. No. 819 of 2004).

The rest periods and maximum working time of **junior hospital doctors** are now regulated by the European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004 (S.I. No. 494 of 2004).

Notes

Notes

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