

Regulation 11 – Health surveillance

11. - (1) Where it is appropriate for the protection of the health of his employees who are, or are liable to be, exposed to a substance hazardous to health, the employer shall ensure that such employees are under suitable health surveillance.

(2) Health surveillance shall be treated as being appropriate where -

(a) the employee is exposed to one of the substances specified in Column 1 of Schedule 6 and is engaged in a process specified in Column 2 of that Schedule, and there is a reasonable likelihood that an identifiable disease or adverse health effect will result from that exposure; or

(b) the exposure of the employee to a substance hazardous to health is such that -

(i) an identifiable disease or adverse health effect may be related to the exposure,

(ii) there is a reasonable likelihood that the disease or effect may occur under the particular conditions of his work, and

(iii) there are valid techniques for detecting indications of the disease or effect,

and the technique of investigation is of low risk to the employee.

(3) The employer shall ensure that a health record, containing particulars approved by the Executive, in respect of each of his employees to whom paragraph (1) applies, is made and maintained and that that record or a copy thereof is kept available in a suitable form for at least 40 years from the date of the last entry made in it.

(4) The employer shall -

(a) on reasonable notice being given, allow an employee access to his personal health record;

(b) provide the Executive with copies of such health records as the Executive may require; and

(c) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all health records kept by him.

(5) If an employee is exposed to a substance specified in Schedule 6 and is engaged in a process specified therein, the health surveillance required under

paragraph (1) shall include medical surveillance under the supervision of a relevant doctor at intervals of not more than 12 months or at such shorter intervals as the relevant doctor may require.

(6) Where an employee is subject to medical surveillance in accordance with paragraph (5) and a relevant doctor has certified by an entry in the health record of that employee that in his professional opinion that employee should not be engaged in work which exposes him to that substance or that he should only be so engaged under conditions specified in the record, the employer shall not permit the employee to be engaged in such work except in accordance with the conditions, if any, specified in the health record, unless that entry has been cancelled by a relevant doctor.

(7) Where an employee is subject to medical surveillance in accordance with paragraph (5) and a relevant doctor has certified by an entry in his health record that medical surveillance should be continued after his exposure to that substance has ceased, the employer shall ensure that the medical surveillance of that employee is continued in accordance with that entry while he is employed by the employer, unless that entry has been cancelled by a relevant doctor.

(8) An employee to whom this regulation applies shall, when required by his employer and at the cost of the employer, present himself during his working hours for such health surveillance procedures as may be required for the purposes of paragraph (1) and, in the case of an employee who is subject to medical surveillance in accordance with paragraph (5), shall furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require.

(9) Where, as a result of health surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor or other occupational health professional to be the result of exposure to a substance hazardous to health the employer of that employee shall -

(a) ensure that a suitably qualified person informs the employee accordingly and provides the employee with information and advice regarding further health surveillance;

(b) review the risk assessment;

(c) review any measure taken to comply with regulation 7, taking into account any advice given by a relevant doctor, occupational health professional or by the Executive;

(d) consider assigning the employee to alternative work where there is no risk of further exposure to that substance, taking into account any advice given by a relevant doctor or occupational health professional; and

(e) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination where such an examination is recommended by a relevant doctor, occupational health professional or by the Executive.

(10) Where, for the purpose of carrying out his functions under these Regulations, a relevant doctor requires to inspect any workplace or any record kept for the purposes of these Regulations, the employer shall permit him to do so.

(11) Where an employee or an employer is aggrieved by a decision recorded in the health record by a relevant doctor to suspend an employee from work which exposes him to a substance hazardous to health (or to impose conditions on such work), he may, by an application in writing to the Executive within 28 days of the date on which he was notified of the decision, apply for that decision to be reviewed in accordance with a procedure approved for the purposes of this paragraph by the Health and Safety Commission, and the result of that review shall be notified to the employee and employer and entered in the health record in accordance with the approved procedure.