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STATUTORY RULES OF NORTHERN IRELAND

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**2012 No. 179**

**HEALTH AND SAFETY**

**The Control of Asbestos Regulations (Northern Ireland) 2012**

*Made* - - - - *25th April 2012*  
*Coming into operation* *28th May 2012*

The Department of Enterprise, Trade and Investment <sup>M1</sup>, being the Department concerned <sup>M2</sup> makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 <sup>M3</sup> (“the 1972 Act”) and Articles 17(1) to (6) <sup>M4</sup>, 20(2), 54(1) and 55(2) of, and paragraphs 1(1) to (4), 2(2), 3, 5, 7 to 10, 12(1) and (3), 13, 14(1), 15 and 19 of Schedule 3 to the Health and Safety at Work (Northern Ireland) Order 1978 <sup>M5</sup> (“the 1978 Order”).

The Department was designated <sup>M6</sup> for the purposes of section 2(2) of the 1972 Act in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and persistent organic pollutants, dangerous substances, preparations and chemicals.

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A) <sup>M7</sup> of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3) <sup>M8</sup> of the 1978 Order.

**Marginal Citations**

- M1** Formerly the Department of Economic Development; see [S.I. 1999/283 \(N.I. 1\)](#), [Article 3\(5\)](#); that Department was formerly the Department of Manpower Services; see [S.I. 1982/846 \(N.I.11\)](#), [Article 3](#).
- M2** See [Article 2\(2\)](#) of [S.I. 1978/1039 \(N.I. 9\)](#)
- M3** 1972 c.68
- M4** [Article 17](#) shall be read with [S.I. 1992/1728 \(N.I.17\)](#), [Articles 3\(2\)](#) and 4(2)
- M5** [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 55\(2\)](#) was amended by [S.I. 1998/2795 \(N.I. 18\)](#), [Article 6\(1\)](#) and Schedule 1, paragraph 19
- M6** See [S.I. 1976/897](#) for the designation in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and [S.I. 2007/1349](#) in relation to persistent organic pollutants, dangerous substances, preparations and chemicals
- M7** [Article 13\(1A\)](#) was substituted by [S.I. 1998/2795 \(N.I. 18\)](#), [Article 4](#)
- M8** [Article 46\(3\)](#) was amended by [S.I. 1998/2795 \(N.I. 18\)](#), [Article 6\(1\)](#) and Schedule 1, paragraphs 8 and 18

## PART 1

### PRELIMINARY

#### Citation and Commencement

1. These Regulations may be cited as the Control of Asbestos Regulations (Northern Ireland) 2012 and shall come into operation on 28th May 2012.

#### Interpretation

2.—(1) In these Regulations—

“adequate” means adequate having regard only to the nature and degree of exposure to asbestos, and “adequately” shall be construed accordingly;

“appointed doctor” means a registered medical practitioner appointed for the time being in writing by the Executive for the purpose of these Regulations;

“approved” means approved for the time being in writing by the Executive;

“asbestos” means the following fibrous silicates—

- (a) asbestos actinolite, CAS No 77536-66-4;
- (b) asbestos grunerite (amosite) CAS No 12172-73-5;
- (c) asbestos anthophyllite, CAS No 77536-67-5;
- (d) chrysotile, CAS No 12001-29-5 or CAS No 132207-32-0;
- (e) crocidolite, CAS NO 12001-28-4; and
- (f) asbestos tremolite, CAS No 77536-68-6,

and references to “CAS” followed by a numerical sequence are references to CAS Registry Numbers assigned to chemicals by the Chemical Abstracts Service, a division of the American Chemical Society;

“asbestos cement” means a material which is predominantly a mixture of cement and chrysotile and which when in a dry state absorbs less than 30% water by weight;

“asbestos coating” means a surface coating which contains asbestos for fire protection, heat insulation or sound insulation but does not include textured decorative coatings;

“asbestos insulating board” (AIB) means any flat sheet, tile or building board consisting of a mixture of asbestos and other material except—

- (a) asbestos cement; or
- (b) any article of bitumen, plastic, resin or rubber which contains asbestos, and the thermal or acoustic properties of that article are incidental to its main purpose;

“asbestos insulation” means any material containing asbestos which is used for thermal, acoustic or other insulation purposes (including fire protection) except—

- (a) asbestos cement, asbestos coating or asbestos insulating board; or
- (b) any article of bitumen, plastic, resin or rubber which contains asbestos and the thermal and acoustic properties of that article are incidental to its main purpose;

“the control limit” means a concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method, or by a method giving equivalent results to that method approved by the Executive, of 0.1 fibres per cubic centimetre of air averaged over a continuous period of 4 hours;

“control measure” means a measure taken to prevent or reduce exposure to asbestos (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, and the provision and use of engineering controls and personal protective equipment);

“emergency services” include—

- (a) Police, Fire, Rescue and Ambulance services;
- (b) Her Majesty's Coastguard;

“employment medical adviser” means an employment medical adviser appointed under article 48(3) of the 1978 Order <sup>M9</sup>;

“enforcing authority” means the Executive or district council, determined in accordance with the provisions of the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 <sup>M10</sup>;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“ISO 17020” means European Standard EN ISO/IEC 17020, “General criteria for the operation of various types of bodies performing inspection” as revised or reissued from time to time and accepted by the Comit Europeen de Normalisation Electrotechnique (CEN/CENELEC) <sup>M11</sup>;

“ISO 17025” means European Standard EN ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories” as revised or reissued from time to time and accepted by the Comit Europeen de Normalisation Electrotechnique (CEN/CENELEC) <sup>M12</sup>;

“licensable work with asbestos” is work—

- (a) where the exposure to asbestos of employees is not sporadic and of low intensity; or
- (b) in relation to which the risk assessment cannot clearly demonstrate that the control limit will not be exceeded; or
- (c) on asbestos coating; or
- (d) on asbestos insulating board or asbestos insulation for which the risk assessment—
  - (i) demonstrates that the work is not sporadic and of low intensity; or
  - (ii) cannot clearly demonstrate that the control limit will not be exceeded; or
  - (iii) demonstrates that the work is not short duration work;

“medical examination” includes any laboratory tests and X-rays that a relevant doctor may require;

“personal protective equipment” means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to that person's health, and any addition or accessory designed to meet that objective;

“relevant doctor” means an appointed doctor or an employment medical adviser. In relation to work with asbestos which is not licensable work with asbestos and is not exempted by regulation 3(2) “relevant doctor” also includes an appropriate fully registered medical practitioner who holds a licence to practise;

“risk assessment” means the assessment of risk required by regulation 6(1)(a);

“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;

“textured decorative coatings” means decorative and textured finishes, such as paints and ceiling and wall plasters which are used to produce visual effects and which contain asbestos. These coatings are designed to be decorative and any thermal or acoustic properties are incidental to their purpose; and

“the 1997 WHO recommended method” means the publication “Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)”, WHO (World Health Organisation), Geneva 1997 <sup>M13</sup>.

(2) A reference to work with asbestos in these Regulations shall include—

- (a) work which consists of the removal, repair or disturbance of asbestos or materials containing asbestos;
- (b) work which is ancillary to such work; and
- (c) supervision of such work and such ancillary work.

(3) For the purposes of these Regulations, work with asbestos is not “short duration work” if, in any seven day period—

- (a) that work, including any ancillary work liable to disturb asbestos, takes more than two hours; or
- (b) any person carries out that work for more than one hour.

(4) For the purposes of these Regulations, no exposure to asbestos will be sporadic and of low intensity if the concentration of asbestos in the atmosphere, when measured in accordance with the 1997 WHO recommended method or by a method giving equivalent results to that method and approved by the Executive, exceeds or is liable to exceed the concentration approved in relation to a specified reference period approved for the purposes of this paragraph by the Executive.

(5) For the purposes of these Regulations, except in accordance with regulation 11(3) and (5), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.

(6) In these Regulations the provisions of Appendix 7 to Annex XVII of the REACH Regulations <sup>M14</sup>, which determine the labelling requirements of articles containing asbestos, are reproduced in Schedule 2 (with minor changes reflecting the practical implementation of the requirements).

(7) The Interpretation Act (Northern Ireland) 1954 <sup>M15</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

#### **Marginal Citations**

**M9** [Article 48\(3\)](#) was amended by [S.I. 1998/2795 \(N.I.18\)](#), [Article 5](#)

**M10** [S.R. 1999 No 90](#), as amended by [S.R. 2000 No. 375](#), [S.R. 2003 No. 33](#), [S.R. 2006 No. 205](#), [S.R. 2006 No. 425](#), [S.R. 2007 No. 31](#), [S.R. 2007 No. 291](#) and [S.R. 2009 No. 238](#)

**M11** The most recent version is Reference number EN ISO/IEC 17020: 2004, accepted by CEN/CENELEC on 15th July 2004

**M12** The most recent version is Reference number EN ISO/IEC 17025: 2005, accepted by CEN/CENELEC on 15th March 2005

**M13** ISBN 92 4 154496 1

**M14** OJ No L396 30.12.2006,p840

**M15** [1954 c. 33 \(N.I.\)](#)

#### **Application**

3.—(1) These Regulations shall apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee.

(2) Regulations 9 (notification of work with asbestos), 18(1)(a) (designated areas) and 22 (health records and medical surveillance) do not apply where—

- (a) the exposure to asbestos of employees is sporadic and of low intensity; and
  - (b) it is clear from the risk assessment that the exposure to asbestos of any employee will not exceed the control limit; and
  - (c) the work involves—
    - (i) short, non-continuous maintenance activities in which only non-friable materials are handled; or
    - (ii) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix; or
    - (iii) encapsulation or sealing of asbestos-containing materials which are in good condition; or
    - (iv) air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos.
- (3) Where a duty is placed by these Regulations on an employer in respect of employees of that employer, the employer is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work activity carried out by that employer except that the duties of the employer—
- (a) under regulation 10 (information, instruction and training) shall not extend to persons who are not employees of that employer unless those persons are on the premises where the work is being carried out; and
  - (b) under regulation 22 (health records and medical surveillance) shall not extend to persons who are not employees of that employer.
- (4) Regulation 17 (cleanliness of premises and plant), to the extent that it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to—
- (a) the Northern Ireland Fire and Rescue Service Board within the meaning of article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006 <sup>M16</sup>, in respect of premises attended by its employees for the purpose of fighting a fire or in an emergency; or
  - (b) the employer of persons who attend a ship in dock premises for the purpose of fighting a fire or in an emergency, in respect of any ship so attended,
- and for the purposes of this paragraph “ship” includes all vessels and hovercraft which operate on water or land and water, and “dock premises” means a dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities.
- (5) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master, and for the purposes of this paragraph “ship” includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy.

#### Marginal Citations

M16 S.I. 2006/1254 (N.I. 9) and S.R. 2006 No. 257 (C. 15)

## PART 2

### GENERAL REQUIREMENTS

#### **Duty to manage asbestos in non-domestic premises**

4.—(1) In this regulation “the dutyholder” means—

- (a) every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access or egress to or from those premises; or
- (b) in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access or egress to or from those premises,

and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

(2) Every person shall co-operate with the dutyholder so far as is necessary to enable the dutyholder to comply with the duties set out under this regulation.

(3) In order to manage the risk from asbestos in non-domestic premises, the dutyholder shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

(4) In making the assessment—

- (a) such steps as are reasonable in the circumstances shall be taken; and
- (b) the condition of any asbestos which is, or has been assumed to be, present in the premises shall be considered.

(5) Without prejudice to the generality of paragraph (4), the dutyholder shall ensure that—

- (a) account is taken of building plans or other relevant information and of the age of the premises; and
- (b) an inspection is made of those parts of the premises which are reasonably accessible.

(6) The dutyholder shall ensure that the assessment is reviewed without delay if—

- (a) there is reason to suspect that the assessment is no longer valid; or
- (b) there has been a significant change in the premises to which the assessment relates.

(7) The dutyholder shall ensure that the conclusions of the assessment and every review are recorded.

(8) Where the assessment shows that asbestos is or is liable to be present in any part of the premises, the dutyholder shall ensure that—

- (a) a determination of the risk from that asbestos is made;
- (b) a written plan identifying those parts of the premises concerned is prepared; and
- (c) the measures which are to be taken for managing the risk are specified in the written plan.

(9) The measures to be specified in the plan for managing the risk shall include adequate measures for—

- (a) monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;
- (b) ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and

- (c) ensuring that information about the location and condition of any asbestos or any such substance is—
  - (i) provided to every person liable to disturb it; and
  - (ii) made available to the emergency services.
- (10) The dutyholder shall ensure that—
  - (a) the plan is reviewed and revised at regular intervals, and without delay if—
    - (i) there is reason to suspect that the plan is no longer valid; or
    - (ii) there has been a significant change in the premises to which the plan relates;
  - (b) the measures specified in the plan are implemented; and
  - (c) the measures taken to implement the plan are recorded.
- (11) In this regulation—
  - (a) “the assessment” is a reference to the assessment required by paragraph (3);
  - (b) “the plan” is a reference to the plan required by paragraph (8); and
  - (c) “the premises” is a reference to the non-domestic premises referred to in paragraph (1).

### Identification of the presence of asbestos

**5.** An employer shall not undertake work in demolition, maintenance or any other work which exposes or is liable to expose employees of that employer to asbestos in respect of any premises unless either—

- (a) that employer has carried out a suitable and sufficient assessment as to whether asbestos, what type of asbestos, contained in what material and in what condition is present or is liable to be present in those premises; or
- (b) if there is doubt as to whether asbestos is present in those premises, that employer—
  - (i) assumes that asbestos is present, and that it is not chrysotile alone; and
  - (ii) observes the applicable provisions of these Regulations.

### Assessment of work which exposes employees to asbestos

**6.—(1)** An employer shall not carry out work which is liable to expose employees of that employer to asbestos unless that employer has—

- (a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations;
  - (b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and
  - (c) implemented the steps referred to in sub-paragraph (a).
- (2) Without prejudice to the generality of paragraph (1), the risk assessment shall—
- (a) subject to regulation 5, identify the type of asbestos to which employees are liable to be exposed;
  - (b) determine the nature and degree of exposure which may occur in the course of the work;
  - (c) consider the effects of control measures which have been or will be taken in accordance with regulation 11;
  - (d) consider the results of monitoring of exposure in accordance with regulation 19;

- (e) set out the steps to be taken to prevent that exposure or reduce it to the lowest level reasonably practicable;
  - (f) consider the results of any medical surveillance that is relevant; and
  - (g) include such additional information as the employer may need in order to complete the risk assessment.
- (3) The risk assessment shall be reviewed regularly and immediately if—
- (a) there is reason to suspect that the existing risk assessment is no longer valid;
  - (b) there is a significant change in the work to which the risk assessment relates; or
  - (c) the results of any monitoring carried out pursuant to regulation 19 show it to be necessary,
- and where, as a result of the review, changes to the risk assessment are required, those changes shall be made and, where they relate to the significant findings of the risk assessment or are themselves significant, recorded.
- (4) Where, in accordance with the requirement in paragraph (2)(b), the risk assessment has determined that the exposure to asbestos of employees of that employer may exceed the control limit, the employer shall keep a copy of the significant findings of the risk assessment at those premises at which, and for such time as, the work to which that risk assessment relates is being carried out.

### **Plans of work**

- 7.—(1) An employer shall not undertake any work with asbestos without having prepared a suitable written plan of work detailing how that work is to be carried out.
- (2) The employer shall keep a copy of the plan of work at those premises at which the work to which the plan relates is being carried out for such time as that work continues.
- (3) In cases of final demolition or major refurbishment of premises, the plan of work shall, so far as is reasonably practicable, specify that asbestos shall be removed before any other major works begin, unless removal would cause a greater risk to employees than if the asbestos had been left in place.
- (4) The plan of work shall include in particular details of—
- (a) the nature and probable duration of the work;
  - (b) the location of the place where the work is to be carried out;
  - (c) the methods to be applied where the work involves the handling of asbestos or materials containing asbestos;
  - (d) the characteristics of the equipment to be used for—
    - (i) protection and decontamination of those carrying out the work; and
    - (ii) protection of other persons on or near the worksite;
  - (e) the measures which the employer intends to take in order to comply with the requirements of regulation 11; and
  - (f) the measures which the employer intends to take in order to comply with the requirements of regulation 17.
- (5) The employer shall ensure, so far as is reasonably practicable, that the work to which the plan of work relates is carried out in accordance with that plan and any subsequent written changes to it.

### **Licensing of work with asbestos**

- 8.—(1) An employer shall hold a licence granted under paragraph (2) before undertaking any licensable work with asbestos.



(2) The Executive may grant a licence for licensable work with asbestos if it considers it appropriate to do so and—

- (a) the person who wishes to be granted the licence has made an application for it on a form approved for the purposes of this regulation by the Executive; and
- (b) the application was made at least 28 days before the date from which the licence is to run, or such shorter period as the Executive may allow.

(3) A licence under this regulation—

- (a) shall come into operation on the date specified in the licence, and shall be valid for any period up to a maximum of three years that the Executive may specify in it; and
- (b) may be granted subject to such conditions as the Executive may consider appropriate.

(4) The Executive may vary the terms of a licence under this regulation if it considers it appropriate to do so and in particular may—

- (a) add further conditions and vary or omit existing ones; and
- (b) reduce the period for which the licence is valid or extend that period up to a maximum of three years from the date on which the licence first came into operation.

(5) The Executive may revoke a licence if it considers it appropriate to do so.

(6) This paragraph applies to the following actions in relation to a licence under this regulation, that is to say—

- (a) the refusal to grant the licence;
- (b) the specification of any maximum period of validity for the licence where that period is less than 3 years;
- (c) making the grant of the licence subject to any conditions;
- (d) the variation or refusal to vary the terms of a licence under paragraph (4); or
- (e) the revocation of the licence.

(7) The Executive shall not take any action to which paragraph (6) applies unless it has followed the procedure set out in Chapter II of the model rules as if—

- (a) the Executive were an enforcement officer; and
- (b) the action were an enforcement action,

for the purposes of those rules.

(8) Any person aggrieved by an action of the Executive to which paragraph (6) applies may appeal against that action to a Tribunal and Chapter I of the model rules shall apply for the purposes of such an appeal as if—

- (a) the Executive were an Authority;
- (b) the Department were the responsible Department; and
- (c) the action in question were an enforcement action,

for the purposes of those rules.

(9) For the purposes of paragraphs (7) and (8), the model rules are set out in the Schedule to the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997<sup>M17</sup> and for the purposes of paragraph (8), the Tribunal is a Tribunal appointed in accordance with Chapter I of those model rules.

(10) The holder of a licence under this regulation shall return the licence to the Executive—

- (a) when required by the Executive for any amendment; or
- (b) following its revocation.

**Marginal Citations**

M17 S.R.1997 No.269

**Notification of work with asbestos**

**9.—**(1) For licensable work with asbestos, an employer shall notify the appropriate enforcing authority of —

- (a) the particulars specified in Schedule 1 in writing at least 14 days (or such shorter time before as the appropriate enforcing authority may agree) before undertaking any licensable work with asbestos; and
- (b) any material change, which might affect the particulars notified in accordance with (1)(a) (including the cessation of the work), in writing and without delay.

(2) For work with asbestos which is not licensable work with asbestos and is not exempted by regulation 3(2), an employer shall notify the appropriate enforcing authority of—

- (a) the particulars specified in Schedule 1, before work is commenced; and
- (b) any material change, which might affect the particulars notified in accordance with (2) (a), without delay.

**Information, instruction and training**

**10.—**(1) Every employer shall ensure that any employee employed by that employer is given adequate information, instruction and training where that employee—

- (a) is or is liable to be exposed to asbestos, or if that employee supervises such employees, so that those employees are aware of—
  - (i) the properties of asbestos and its effects on health, including its interaction with smoking;
  - (ii) the types of products or materials likely to contain asbestos;
  - (iii) the operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure;
  - (iv) safe work practices, control measures, and protective equipment;
  - (v) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment;
  - (vi) emergency procedures;
  - (vii) hygiene requirements;
  - (viii) decontamination procedures;
  - (ix) waste handling procedures;
  - (x) medical examination requirements; and
  - (xi) the control limit and the need for air monitoring,

in order to safeguard themselves and other employees; and

- (b) carries out work in connection with the employer's duties under these Regulations, so that the employee can carry out that work effectively.

(2) The information, instruction and training required by paragraph (1) shall be—

- (a) given at regular intervals;

- (b) adapted to take account of significant changes in the type of work carried out or methods of work used by the employer; and
- (c) provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment, and so that the employees are aware of—
  - (i) the significant findings of the risk assessment; and
  - (ii) the results of any air monitoring carried out with an explanation of the findings.

### **Prevention or reduction of exposure to asbestos**

#### **11.—(1) Every employer shall—**

- (a) prevent the exposure to asbestos of any employee employed by that employer so far as is reasonably practicable;
- (b) where it is not reasonably practicable to prevent such exposure—
  - (i) take the measures necessary to reduce exposure to asbestos of any such employee to the lowest level reasonably practicable by measures other than the use of respiratory protective equipment; and
  - (ii) ensure that the number of any such employees exposed to asbestos at any one time is as low as is reasonably practicable.

(2) Where it is not reasonably practicable for the employer to prevent the exposure to asbestos of any such employee employed by that employer in accordance with paragraph (1)(a), the measures referred to in paragraph (1)(b)(i) shall include, in order of priority—

- (a) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials in order to avoid or minimise the release of asbestos; and
- (b) the control of exposure at source, including adequate ventilation systems and appropriate organisational measures,

and the employer shall so far as is reasonably practicable provide any employee concerned with suitable respiratory protective equipment in addition to the measures required by sub-paragraphs (a) and (b).

(3) Where it is not reasonably practicable for the employer to reduce the exposure to asbestos of any such employee to below the control limit by the measures referred to in paragraph (1)(b)(i), then, in addition to taking those measures, the employer shall provide that employee with suitable respiratory protective equipment which will reduce the concentration of asbestos in the air inhaled by that employee (after taking account of the effect of that respiratory protective equipment) to a concentration which is—

- (a) below the control limit; and
- (b) as low as is reasonably practicable.

(4) Personal protective equipment provided by an employer in accordance with this regulation or with regulation 14(1) shall be suitable for its purpose and shall—

- (a) comply with any provision of the Personal Protective Equipment Regulations 2002 <sup>M18</sup> which is applicable to that item of personal protective equipment; or
- (b) in the case of respiratory protective equipment, where no provision referred to in sub-paragraph (a) applies, be of a type approved or shall conform to a standard approved, in either case, by the Executive.

#### **(5) The employer shall—**

- (a) ensure that no employee is exposed to asbestos in a concentration in the air inhaled by that worker which exceeds the control limit; or

(b) if the control limit is exceeded—

- (i) immediately inform any employees concerned and their representatives and ensure that work does not continue in the affected area until adequate measures have been taken to reduce employees' exposure to asbestos below the control limit;
- (ii) as soon as is reasonably practicable identify the reasons for the control limit being exceeded and take the appropriate measures to prevent it being exceeded again; and
- (iii) check the effectiveness of the measures taken pursuant to sub-paragraph (ii) by carrying out immediate air monitoring.

#### **Marginal Citations**

M18 [S.I. 2002/1144](#)

#### **Use of control measures etc.**

**12.—**(1) Every employer who provides any control measure, other thing or facility pursuant to these Regulations shall take all reasonable steps to ensure that it is properly used or applied as the case may be.

(2) Every employee shall make full and proper use of any control measure, other thing or facility provided pursuant to these Regulations and, where relevant, shall—

- (a) take all reasonable steps to ensure that it is returned after use to any accommodation provided for it; and
- (b) report any defect discovered without delay to that employee's employer.

#### **Maintenance of control measures etc.**

**13.—**(1) Every employer who provides any control measure to meet the requirements of these Regulations shall ensure that—

- (a) in the case of plant and equipment, including engineering controls and personal protective equipment, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and
- (b) in the case of provision of systems of work and supervision and of any other measure, any such measures are reviewed at suitable intervals and revised if necessary.

(2) Where exhaust ventilation equipment or respiratory protective equipment (except disposable respiratory protective equipment) is provided to meet the requirements of these Regulations, the employer shall ensure that thorough examinations and tests of that equipment are carried out at suitable intervals by a competent person.

(3) Every employer shall keep a suitable record of the examinations and tests carried out in accordance with paragraph (2) and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary of it shall be kept available for at least 5 years from the date on which it was made.

#### **Provision and cleaning of protective clothing**

**14.—**(1) Every employer shall provide adequate and suitable protective clothing for any employee employed by that employer who is exposed or is liable to be exposed to asbestos, unless no significant quantity of asbestos is liable to be deposited on the clothes of an employee while at work.

(2) The employer shall ensure that protective clothing provided in pursuance of paragraph (1) is either disposed of as asbestos waste or adequately cleaned at suitable intervals.

(3) The cleaning required by paragraph (2) shall be carried out either on the premises where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning, or in a suitably equipped laundry.

(4) The employer shall ensure that protective clothing which has been used and is to be removed from the premises referred to in paragraph (3) (whether for cleaning, further use or disposal) is packed, before being removed, in a suitable receptacle which shall be labelled in accordance with the provisions of Schedule 2, as if it were a product containing asbestos or, in the case of protective clothing intended for disposal as waste, in accordance with regulation 24(3).

(5) Where, as a result of the failure or improper use of the protective clothing provided in pursuance of paragraph (1), a significant quantity of asbestos is deposited on the personal clothing of an employee, then for the purposes of paragraphs (2), (3) and (4) that personal clothing shall be treated as if it were protective clothing provided in pursuance of paragraph (1).

### Arrangements to deal with accidents, incidents and emergencies

**15.—**(1) In the event of an accident, incident or emergency related to the unplanned release of asbestos at the workplace, the employer shall ensure that—

- (a) immediate steps are taken to—
  - (i) mitigate the effects of the event;
  - (ii) restore the situation to normal; and
  - (iii) inform any person who may be affected; and
- (b) only those persons who are responsible for the carrying out of repairs and other necessary work are permitted in the affected area and that such persons are provided with—
  - (i) appropriate respiratory protective equipment and protective clothing; and
  - (ii) any necessary specialised safety equipment and plant;

which shall be used until the situation is restored to normal.

(2) The remainder of this regulation applies only to licensable work with asbestos, and is without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000<sup>M19</sup>.

(3) Subject to paragraph (5), in order to protect the health of an employer's employees from an accident, incident or emergency related to the use of asbestos in a work process or to the removal or repair of asbestos-containing materials at the workplace, the employer shall ensure that—

- (a) procedures, including the provision of relevant safety drills (which shall be tested at regular intervals), have been prepared which can be put into effect when such an event occurs;
- (b) information on emergency arrangements is available, including—
  - (i) details of relevant work hazards and hazard identification arrangements; and
  - (ii) specific hazards likely to arise at the time of an accident, incident or emergency; and
- (c) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs.

(4) The employer shall ensure that information on the procedures, emergency arrangements and systems required by paragraph (3)(a) and (c) and the information required by paragraph (3) (b) is—

- (a) made available to the relevant accident and emergency services to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures; and
- (b) displayed at the workplace, if this is appropriate.

(5) Paragraph (3) does not apply where—

- (a) the results of the risk assessment show that, because of the quantity of asbestos present at the workplace, there is only a slight risk to the health of employees; and
- (b) the measures taken by the employer to comply with the duty under regulation 11(1) are sufficient to control that risk.

#### **Marginal Citations**

**M19** S.R. 2000 No. 388, as amended by S.R. 2001 No. 348, S.R. 2003 No. 454, S.R. 2006 No. 255, S.R. 2011 No. 350 and revoked in part by S.R. 2007 No. 291

### **Duty to prevent or reduce the spread of asbestos**

**16.** Every employer shall prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable the spread of asbestos from any place where work under the employer's control is carried out.

### **Cleanliness of premises and plant**

**17.** Every employer who undertakes work which exposes or is liable to expose any employees of that employer to asbestos shall ensure that—

- (a) the premises, or those parts of the premises where that work is carried out, and the plant used in connection with that work are kept in a clean state; and
- (b) where such work has been completed, the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned.

### **Designated areas**

**18.—(1)** Every employer shall ensure that any area in which work under the control of that employer is carried out is designated as—

- (a) an asbestos area, subject to regulation 3(2), where any employee would be liable to be exposed to asbestos in that area; and
- (b) a respirator zone where the risk assessment cannot clearly demonstrate that the control limit will not be exceeded.

(2) Asbestos areas and respirator zones shall be clearly and separately demarcated and identified by notices indicating—

- (a) that the area is an asbestos area or a respirator zone or both, as the case may be; and
- (b) in the case of a respirator zone, that the exposure of an employee who enters it is liable to exceed the control limit and that respiratory protective equipment shall be worn.

(3) The employer shall not permit any employee, other than an employee who is required for work purposes to be in an area designated as an asbestos area or a respirator zone, to enter or remain in any such area and only employees who are so permitted shall enter or remain in any such area.

(4) Every employer shall ensure that only competent employees shall—

- (a) enter a respirator zone; and
- (b) supervise any employees who enter a respirator zone;

and for the purposes of this paragraph, a competent employee means an employee who has received adequate information, instruction and training.

- (5) Every employer shall ensure that—
- (a) the employer's employees do not eat, drink or smoke in an area designated as an asbestos area or a respirator zone; and
  - (b) arrangements are made for such employees to eat or drink in some other place.

### **Air monitoring**

**19.**—(1) Subject to paragraph (2), every employer shall monitor the exposure to asbestos of any employees employed by that employer by measurement of asbestos fibres present in the air—

- (a) at regular intervals; and
  - (b) when a change occurs which may affect that exposure.
- (2) Paragraph (1) shall not apply where—
- (a) the exposure of an employee is not liable to exceed the control limit; or
  - (b) the employer is able to demonstrate by another method of evaluation that the requirements of regulation 11(1) and (5) have been complied with.
- (3) The employer shall keep a suitable record of—
- (a) monitoring carried out in accordance with paragraph (1); or
  - (b) where it is decided that monitoring is not required because paragraph 2(b) applies, the reason for that decision.
- (4) The record required by paragraph (3), or a suitable summary of it, shall be kept—
- (a) in a case where exposure is such that a health record is required to be kept under regulation 22, for at least 40 years; or
  - (b) in any other case, for at least 5 years,
- from the date of the last entry made in it.
- (5) In relation to the record required by paragraph (3), the employer shall—
- (a) on reasonable notice being given, allow an employee access to the personal monitoring record for that employee;
  - (b) provide the Executive with copies of such monitoring records as the Executive may require; and
  - (c) if that employer ceases to trade, notify the Executive without delay in writing and make available to the Executive all monitoring records kept by that employer.

### **Standards for air testing and site clearance certification**

**20.**—(1) In paragraph (4), “site clearance certificate for reoccupation” means a certificate issued to confirm that premises or parts of premises where work with asbestos has been carried out have been thoroughly cleaned upon completion of that work in accordance with regulation 17(b).

(2) Every employer who carries out any measurement of the concentration of asbestos fibres present in the air shall ensure that criteria are met which are equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results.

(3) Every employer who requests a person to carry out any measurement of the concentration of asbestos fibres present in the air shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025.

(4) Every employer who requests a person to assess whether premises or parts of premises where work with asbestos has been carried out have been thoroughly cleaned upon completion of that work and are suitable for reoccupation such that a site clearance certificate for reoccupation can be issued shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with the paragraphs of ISO 17020 and ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results.

(5) Paragraphs (2) and (3) shall not apply to work carried out in a laboratory for the purposes only of research.

### **Standards for analysis**

**21.**—(1) Every employer who analyses a sample of any material to determine whether it contains asbestos shall ensure that criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results are met.

(2) Every employer who requests a person to analyse a sample of any material taken to determine whether it contains asbestos shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025.

(3) Paragraphs (1) and (2) shall not apply to work carried out in a laboratory for the purposes only of research.

### **Health records and medical surveillance**

**22.**—(1) For licensable work with asbestos every employer shall ensure that—

- (a) a health record is maintained and contains particulars approved by the Executive for all of that employer's employees who are exposed to asbestos; and
- (b) that record, or a copy of that record is kept available in a suitable form for at least 40 years from the date of the last entry made in it; and
- (c) each employee who is exposed to asbestos is under adequate medical surveillance by a relevant doctor.

(2) The medical surveillance required by paragraph (1)(c) shall include—

- (a) a medical examination not more than 2 years before the beginning of such exposure; and
- (b) periodic medical examinations at intervals of at least once every 2 years or such shorter time as the relevant doctor may require while such exposure continues,

and each such medical examination shall include a specific examination of the chest.

(3) For work with asbestos, which is not licensable work with asbestos, and is not exempted by regulation 3(2), the requirements in paragraphs (1)(a) to (c) shall apply and—

- (a) a medical examination in accordance with paragraph (1)(c) and (2)(a) shall take place on or before 30 April 2015;
- (b) on or after 1 May 2015, a medical examination in accordance with paragraph (1)(c) and (2)(a) shall take place not more than 3 years before the beginning of such exposure; and
- (c) a periodic medical examination in accordance with paragraph (1)(c) and (2)(b) shall take place at intervals of at least once every 3 years, or such shorter time as the relevant doctor may require while such exposure continues.



(4) Where an employee has been examined in accordance with paragraph (1)(c), the relevant doctor shall issue a certificate to the employer and employee stating—

- (a) that the employee has been so examined; and
- (b) the date of the examination,

and the employer shall keep that certificate, or a copy of that certificate for at least 4 years from the date on which it was issued.

(5) An employee to whom this regulation applies shall, when required by that employee's employer and at the cost of that employer, attend during the employee's working hours such examination and undertake such tests as may be required for the purposes of paragraph (1)(c) and shall furnish the relevant doctor with such information concerning that employee's health as the relevant doctor may reasonably require.

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

(7) Where medical surveillance is carried out on the premises of the employer, the employer shall ensure that suitable facilities are made available for the purpose.

(8) The employer shall—

- (a) on reasonable notice being given, allow an employee access to that employee's personal health record;
- (b) provide the Executive with copies of such personal health records as the Executive may require; and
- (c) if the employer ceases to trade notify the Executive without delay in writing and make available to the Executive all personal health records kept by that employer.

(9) Where, as a result of medical surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor to be the result of exposure to asbestos at work the employer of that employee shall—

- (a) ensure that a suitable person informs the employee accordingly and provides the employee with information and advice regarding further medical surveillance;
- (b) review the risk assessment;
- (c) review any measure taken to comply with regulation 11 taking into account any advice given by a relevant doctor or by the Executive;
- (d) consider assigning the employee to alternative work where there is no risk of further exposure to asbestos, taking into account any advice given by a relevant doctor; and
- (e) provide for a review of the health of every other employee who has been similarly exposed, including a medical examination (which shall include a specific examination of the chest) where such an examination is recommended by a relevant doctor or by the Executive.

### **Washing and changing facilities**

**23.—**(1) Every employer shall ensure that the following are provided to any of that employer's employees who is exposed to asbestos—

- (a) adequate washing and changing facilities;
- (b) where an employer is required to provide protective clothing, adequate facilities for the storage of—
  - (i) that protective clothing; and
  - (ii) personal clothing not worn during working hours; and

- (c) where an employer is required to provide respiratory protective equipment, adequate facilities for the storage of that equipment.
- (2) The facilities provided under paragraph (1) for the storage of—
  - (a) personal protective clothing;
  - (b) personal clothing not worn during working hours; and
  - (c) respiratory protective equipment,
 shall be separate from each other.

### **Storage, distribution and labelling of raw asbestos and asbestos waste**

**24.**—(1) Every employer who undertakes work with asbestos shall ensure that raw asbestos or waste which contains asbestos is not—

- (a) stored;
- (b) received into or despatched from any place of work; or
- (c) distributed within any place of work, except in a totally enclosed distribution system,

unless it is in a sealed receptacle or where more appropriate, sealed wrapping, clearly marked in accordance with paragraphs (2) and (3) showing that it contains asbestos.

(2) Raw asbestos shall be labelled in accordance with the provisions of Schedule 2.

(3) Waste containing asbestos shall be labelled—

- (a) where the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 <sup>M20</sup> apply, in accordance with those Regulations; and
- (b) in any other case in accordance with the provisions of Schedule 2.

#### **Marginal Citations**

**M20** S.R. 2010 No. 160, as amended by S.R. 2011 No. 365

## **PART 3**

### **PROHIBITIONS AND RELATED PROVISIONS**

#### **Interpretation of prohibitions**

**25.**—(1) In this Part—

“asbestos spraying” means the application by spraying of any material containing asbestos to form a continuous surface coating;

“extraction of asbestos” means the extraction by mining or otherwise of asbestos as the primary product of such extraction, but shall not include extraction which produces asbestos as a by-product of the primary activity of extraction; and

“supply” means supply by way of sale, lease, hire, hire-purchase, loan, gift or exchange for a consideration other than money, whether (in all cases) as principal or as agent for another.

(2) Any prohibition imposed on any person by this Part shall apply only to acts done in the course of a trade, business or other undertaking (whether for profit or not) carried on by that person.

(3) Where in this Part it is stated that asbestos has intentionally been added to a product or is intentionally added, it will be presumed where—

- (a) asbestos is present in any product; and
- (b) asbestos is not a naturally occurring impurity of that product, or of any component or constituent of that product,

that the asbestos has intentionally been added or is intentionally added, as the case may be, subject to evidence to the contrary being adduced in any proceedings.

### Prohibitions of exposure to asbestos

**26.—**(1) A person shall not undertake asbestos spraying or working procedures that involve using low-density (less than 1g/cm) insulating or soundproofing materials which contain asbestos.

(2) Every employer shall ensure that no employees are exposed to asbestos during the extraction of asbestos.

(3) Every employer shall ensure that no employees are exposed to asbestos during the manufacture of asbestos products or of products containing intentionally added asbestos.

### Labelling of products containing asbestos

**27.—**(1) Subject to paragraph (2), a person shall not supply under an exemption granted pursuant to regulation 29 or regulation 30 a product which contains asbestos unless that product is labelled in accordance with the provisions of Schedule 2.

(2) Where a component of a product contains asbestos, in order to comply with this regulation that component shall be labelled in accordance with the provisions of Schedule 2 except that where the size of that component makes it impossible for a label to be fixed to it, neither that component nor the product need be labelled.

### Additional provisions in the case of exceptions and exemptions

**28.—**(1) Where under an exemption granted pursuant to regulation 29 or regulation 30 asbestos is used in a work process or is produced by a work process, the employer shall ensure that the quantity of asbestos and materials containing asbestos at the premises where the work is carried out is reduced to as low a level as is reasonably practicable.

(2) Subject to paragraph (3), where under an exemption granted pursuant to regulation 29 or regulation 30 a manufacturing process which gives rise to asbestos dust is carried out in a building, the employer shall ensure that any part of the building in which the process is carried out is—

- (a) so designed and constructed as to facilitate cleaning; and
- (b) equipped with an adequate and suitable vacuum cleaning system which shall, where reasonably practicable, be a fixed system.

(3) Paragraph 2(a) shall not apply to a building in which, prior to 25th April 1988, there was carried out a process to which either—

- (a) as then in operation, regulation 13 of the Asbestos Regulations (Northern Ireland) 1969<sup>M21</sup> applied and the process was carried out in compliance with that regulation; or
- (b) that regulation did not apply.

#### Marginal Citations

**M21** S.R. 1969 No. 337—revoked by S.R. 1988 No. 74

## PART 4

### MISCELLANEOUS

#### Exemption certificates

**29.**—(1) Subject to paragraph (3), the Executive may, by a certificate in writing, exempt any person or class of persons or any product containing asbestos or class of such products from all or any of the requirements or prohibitions imposed by regulations 4, 8, 12, 13, 21 and 22(5) and (7) and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

(2) Subject to paragraph (3), the Executive may exempt emergency services from all or any of the requirements or prohibitions imposed by regulations 7 and 9; and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

(3) The Executive shall not grant any exemption under paragraph (1) or (2) unless having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

#### Exemptions relating to the Ministry of Defence

**30.** The Secretary of State for Defence may, in the interests of national security, exempt any person or class of persons from the prohibitions imposed by Part 3 of these Regulations by a certificate in writing, and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

#### Application within the territorial sea

**31.** Within the territorial sea these Regulations shall apply only to and in relation to the premises and activities to which any of paragraphs 2 to 8 of Schedule 3 applies.

#### Existing Licences and Exemption Certificates.

**32.**—(1) An existing licence granted by the Executive under regulation 8(2) of the Control of Asbestos Regulations (Northern Ireland) 2007 <sup>M22</sup> shall—

- (a) continue to have effect as if it had been granted under regulation 8(2) of these Regulations;
- (b) be of the duration and subject to the conditions specified in it as if that duration and those conditions had been specified under regulation 8(3); and
- (c) be liable to variation and revocation under regulation 8(4) and (5),

and any requirement in such a licence concerning notification or any exception to such a requirement shall have effect as a requirement for notification under regulation 9, or as an exception to such a requirement under regulation 3(2) of these Regulations.

(2) An existing exemption granted by the Executive under regulation 7(1) of the Asbestos (Licensing) Regulations (Northern Ireland) 1984 <sup>M23</sup>, regulation 7(1) of the Asbestos (Prohibitions) Regulations (Northern Ireland) 1993 <sup>M24</sup>, regulation 25(1) of the Control of Asbestos at Work Regulations (Northern Ireland) 2003 <sup>M25</sup>, or regulation 32 of the Control of Asbestos Regulations

(Northern Ireland) 2007 <sup>M26</sup> shall continue to have effect and be subject to any limitation of time or any conditions specified in it and liable to revocation as if it had been granted under regulation 29(1) or (2) of these Regulations.

(3) An existing exemption granted by the Secretary of State for Defence under regulation 7(3) of the Asbestos (Prohibitions) Regulations (Northern Ireland) 1993 or regulation 32 of the Control of Asbestos Regulations (Northern Ireland) 2007 shall continue to have effect and be subject to any limitation of time or any conditions specified in it and liable to revocation as if it had been granted under regulation 30 of these Regulations.

#### Marginal Citations

**M22** S.R. 2007 No. 31, as amended by S.R. 2010 No.187

**M23** S.R. 1984 No. 205, as amended by S.R. 2000 No. 100 - revoked and re-enacted with modifications by S.R. 2007 No.31

**M24** S.R. 1993 No.25, as amended by S.R. 2000 No.99 – revoked and re-enacted with modifications by S.R. 2007 No.31

**M25** S.R. 2003 No.33 – revoked and replaced by S.R. 2007 No.31

**M26** S.R. 2007 No.31, as amended by S.R. 2010 No.187

#### Revocations, amendments and savings

**33.—**(1) The Control of Asbestos Regulations (Northern Ireland) 2007 and The Control of Asbestos (Amendment) Regulations (Northern Ireland) 2010 are revoked.

(2) The amendments listed in Schedule 4 shall have effect.

(3) Any record or register required to be kept under the Regulations revoked either by paragraph (1) or by any of the Regulations revoked by regulation 35(1) of the Control of Asbestos Regulations (Northern Ireland) 2007 or by regulation 27(1) of the Control of Asbestos at Work Regulations (Northern Ireland) 2003 shall, notwithstanding that revocation, be kept in the same manner and for the same period as specified in those Regulations as if these Regulations had not been made, except that the Executive may approve the keeping of records at a place or in a form other than at the place where, or in the form in which, records were required to be kept under the Regulations so revoked.

#### Defence

**34.** Subject to regulation 21 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000 <sup>M27</sup>, in any proceedings for an offence consisting of a contravention of Part 2 of these Regulations it shall be a defence for any person to prove that all reasonable precautions were taken and all due diligence was exercised by that person to avoid the commission of that offence.

#### Marginal Citations

**M27** S.R. 2000 No.388, as amended by S.R. 2001 No. 348, S.R. 2003 No. 454, S.R. 2006 No. 255, S.R. 2011 No. 350 and revoked in part by S.R. 2007 No. 291

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**Status:** Point in time view as at 28/05/2012.

**Changes to legislation:** There are currently no known outstanding effects for the The  
Control of Asbestos Regulations (Northern Ireland) 2012. (See end of Document for details)

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Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 25th April 2012.

L.S.

*J Kerr*

A senior officer of the  
Department of Enterprise, Trade and Investment

## SCHEDULE 1

Regulation 9

### PARTICULARS TO BE INCLUDED IN A NOTIFICATION

The following particulars are to be included in a notification made in accordance with regulation 9, namely—

- (a) the name of the notifier and the address and telephone number of that notifier's usual place of business;
- (b) a brief description of—
  - (i) the location of the work site;
  - (ii) the type and quantities of asbestos to be used or handled;
  - (iii) the activities and processes involved;
  - (iv) the number of workers involved; and
  - (v) the measures taken to limit the exposure of employees to asbestos; and
- (c) the date of the commencement of the work and its expected duration.

## SCHEDULE 2

Regulations 14(4), 24(2) and (3) and 27

### APPENDIX 7 TO ANNEX XVII OF THE REACH REGULATIONS – SPECIAL PROVISIONS ON THE LABELLING OF ARTICLES CONTAINING ASBESTOS

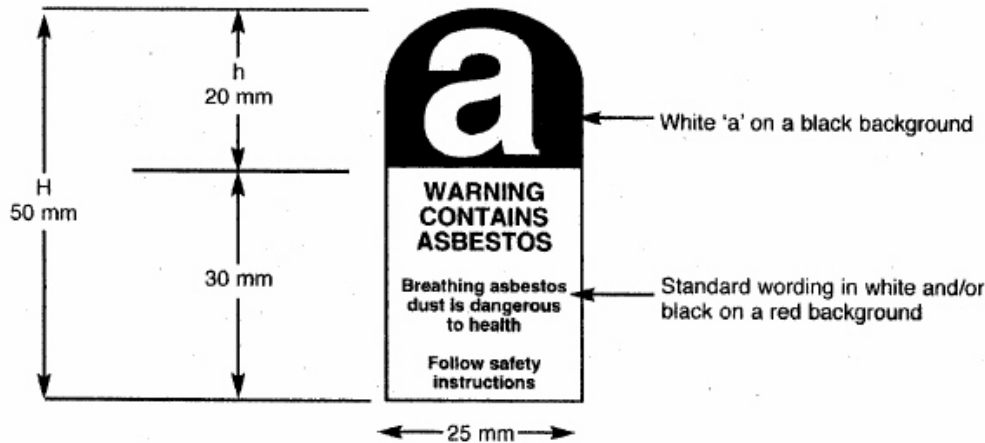
1.—(1) Subject to sub-paragraphs (2) and (3), the label to be used on—

- (a) raw asbestos (together with the labelling required under the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2009 <sup>M28</sup> and the Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations (Northern Ireland) 2010 <sup>M29</sup>;
- (b) asbestos waste, when required to be so labelled by regulation 24(3); and
- (c) products containing asbestos, including used protective clothing to which regulation 14(4) applies,

shall be in the form and in the colours of the following diagram and shall comply with the specifications set out in paragraphs 2 and 3.

*Status: Point in time view as at 28/05/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Control of Asbestos Regulations (Northern Ireland) 2012. (See end of Document for details)*



(2) In the case of a product containing crocidolite, the words “contains asbestos” shown in the diagram shall be replaced by the words “contains crocidolite/blue asbestos”.

(3) Where the label is printed directly onto a product, a single colour contrasting with the background colour may be used.

#### Marginal Citations

**M28** S.R. 2009 No. 238 as amended by S.R. 2009 No. 273, S.R. 2010 No. 160 and S.R. 2011 No. 295

**M29** S.R. 2010 No. 160, as amended by S.R. 2011 No. 365

2. The dimensions in millimetres of the label referred to in paragraph 1 shall be those shown on the diagram in that paragraph, except that larger measurements may be used, but in that case the dimension indicated as h on the diagram shall be 40% of the dimension indicated as H.

3. The label shall be clearly and indelibly printed so that the words in the lower half of the label can be easily read, and those words shall be printed in black or white.

4.—(1) Where a product containing asbestos may undergo processing or finishing it shall bear a label containing safety instructions appropriate to the particular product and in particular the following instructions—

“operate if possible out of doors in a well-ventilated place”;

“preferably use hand tools or low speed tools equipped, if necessary, with an appropriate dust extraction facility. If high speed tools are used, they should always be so equipped”;

“if possible, dampen before cutting or drilling”; and

“dampen dust, place it in a properly closed receptacle and dispose of it safely”.

(2) Additional safety information given on a label shall not detract from or contradict the safety information given in accordance with sub-paragraph (1).

5.—(1) Labelling of packaged and unpackaged products containing asbestos in accordance with the foregoing paragraphs shall be effected by means of—

(a) an adhesive label firmly affixed to the product or its packaging;

(b) a tie-on label firmly attached to the product or its packaging; or

(c) direct printing onto the product or its packaging.



(2) Where, in the case of an unpackaged product containing asbestos, it is not reasonably practicable to comply with the provisions of sub-paragraph (1), the label shall be printed on a suitable sheet accompanying the product.

(3) Labelling of raw asbestos and asbestos waste shall be effected in accordance with sub-paragraph (1)(a) or (c).

(4) For the purposes of this Schedule but subject to sub-paragraph (5), a product supplied in loose plastic or other similar wrapping (including plastic and paper bags) but no other packaging shall be treated as being supplied in a package whether the product is placed in such wrapping at the time of its supply or was already so wrapped previously.

(5) No wrapping in which a product is placed at the time of its supply shall be regarded as packaging if any product contained in it is labelled in accordance with the requirements of this Schedule or any other packaging in which that product is contained is so labelled.

## SCHEDULE 3

Regulation 31

### PREMISES AND ACTIVITIES WITHIN THE TERRITORIAL SEA

#### Interpretation

1.—(1) In this Schedule—

“activity” includes a diving project;

“designated area” means any area designated by Order under section 1(7) of the Continental Shelf Act 1964 <sup>M30</sup> and “within a designated area” includes over and under it;

“diving project” has the meaning assigned to it by regulation 2(1) of the Diving at Work Regulations (Northern Ireland) 2005 <sup>M31</sup> save that it includes an activity in which a person takes part as a diver wearing an atmospheric pressure suit and without breathing in air or other gas at a pressure greater than atmospheric pressure;

“energy structure” means a fixed or floating structure, other than a vessel, for producing energy from wind or water;

“offshore installation” shall be construed in accordance with paragraph 2(2) and (3);

“supplementary unit” means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation;

“stand-by vessel” means a vessel which is ready to give assistance in the event of an emergency on or near an offshore installation;

“vessel” includes a hovercraft and any floating structure which is capable of being staffed.

(2) For the purposes of this Schedule, any structures and devices on top of a well shall be treated as forming part of the well.

(3) Any reference in this Schedule to premises and activities includes a reference to any person, article or substance on those premises or engaged in, or, as the case may be, used or for use in connection with any such activity, but does not include a reference to an aircraft which is airborne.

#### Marginal Citations

**M30** 1964 c. 29; section 1 was amended by the Oil and Gas (Enterprise) Act 1982 (1982 c. 23), Schedule 3, paragraph 1

**M31** S.R. 2005 No. 45, as amended by S.R. 2007 No.247

*Status: Point in time view as at 28/05/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Control of Asbestos Regulations (Northern Ireland) 2012. (See end of Document for details)*

## Offshore installations

2.—(1) This paragraph shall apply to and in relation to—

- (a) any offshore installation and any activity on it;
- (b) any activity in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, on or from a vessel or in any other manner, other than—
  - (i) transporting, towing or navigating the installation; and
  - (ii) any activity in or from a vessel being used as a stand-by vessel;
- (c) a diving project involving—
  - (i) the survey and preparation of the sea bed for an offshore installation;
  - (ii) the survey and restoration of the sea bed consequent on the removal of an offshore installation.

(2) Subject to sub-paragraph (3), in this paragraph, “offshore installation” means a structure which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered with water—

- (a) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;
- (b) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored;
- (c) for the conveyance of things by means of a pipe; or
- (d) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this sub-paragraph,

together with any supplementary unit which is ordinarily connected to it, and all the connections.

(3) Any reference in sub-paragraph (2) to a structure or unit does not include—

- (a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;
- (b) a well;
- (c) a structure which has ceased to be used for any of the purposes specified in sub-paragraph (2) and has since been used for a purpose not so specified;
- (d) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in sub-paragraph (2); and
- (e) any part of a pipeline.

## Wells

3.—(1) Subject to sub-paragraph (2), this paragraph applies to and in relation to—

- (a) a well and any activity in connection with it; and
- (b) an activity which is immediately preparatory to any activity in head (a).

(2) Sub-paragraph (1) includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation.

## Pipelines

4.—(1) This paragraph applies to and in relation to—

- (a) any pipeline;

- (b) any pipeline works;
  - (c) the following activities in connection with pipeline works—
    - (i) the loading, unloading, fuelling or provisioning of a vessel;
    - (ii) the loading, unloading, fuelling, repair and maintenance of an aircraft on a vessel, being in either case a vessel which is engaged in pipeline works.
- (2) In this paragraph—
- “pipeline” means a pipe or system of pipes for the conveyance of any thing, together with—
- (a) any apparatus for inducing or facilitating the flow of any thing through, or through part of, the pipe or system;
  - (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;
  - (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
  - (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a) to (c);
  - (e) apparatus for the transmission of information for the operation of the pipe or system;
  - (f) apparatus for the cathodic protection of the pipe or system; and
  - (g) a structure used or to be used solely for the support of a part of the pipe or system;
- but not including a pipeline of which no initial or terminal point is situated in the United Kingdom, within the territorial sea adjacent to the United Kingdom, or within a designated area;
- “pipeline works” means—
- (h) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it;
  - (i) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline;
  - (j) changing the position of or dismantling or removing a pipeline or length of pipeline;
  - (k) opening the bed of the sea for the purposes of the works mentioned in heads (a) to (c), and tunnelling or boring for those purposes;
  - (l) any activities incidental to the activities described in heads (a) to (d);
  - (m) a diving project in connection with any of the works mentioned in heads (a) to (e) or for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for settling the route of a proposed pipeline.

## Mines

5.—(1) This paragraph applies to and in relation to a mine within the territorial sea or extending beyond it, and any activity in connection with it, while it is being worked.

(2) In this paragraph “mine” has the same meaning as in the Mines Act (Northern Ireland) 1969

M32

### Marginal Citations

M32 1969 c. 6 (N.I.)

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## **Other activities**

- 6.—(1) Subject to sub-paragraph (2), this paragraph applies to and in relation to—
- (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any building, energy structure or other structure, not being in any case a vessel, or any preparation for any such activity;
  - (b) the transfer of people or goods between a vessel or aircraft and a structure (including a building) mentioned in head (a);
  - (c) the loading, unloading, fuelling or provisioning of a vessel;
  - (d) a diving project;
  - (e) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of a vessel except when carried out by the master or any officer or member of the crew of that vessel;
  - (f) the maintaining on a station of a vessel which would be an offshore installation were it not a structure to which paragraph 2(3)(d) applies;
  - (g) the operation of a cable for transmitting electricity from an energy structure to shore;
  - (h) the transfer of people or goods between a vessel or aircraft and a structure mentioned in head (f).
- (2) This paragraph shall not apply—
- (a) to a case where paragraph 2, 3, 4 or 5 applies; or
  - (b) to vessels which are registered outside the United Kingdom and are on passage through the territorial sea.

## **Other activities within a designated area**

7. This paragraph applies within a designated area to and in relation to the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any structure which would be an offshore installation were it not a structure to which paragraph 2(3)(c) applies, or any preparation for any such activity.

## **Activities within a renewable energy zone**

- 8.—(1) Subject to sub-paragraph (2), this paragraph applies within a renewable energy zone to and in relation to—
- (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any energy structure or related structure, or any preparation for any such activity;
  - (b) the transfer of people or goods between a vessel or aircraft and an energy structure or related structure;
  - (c) the loading, unloading, fuelling or provisioning of a vessel;
  - (d) the operation of a cable for transmitting electricity from an energy structure or related structure to shore;
  - (e) a diving project associated with any of the works mentioned in heads (a) to (d) of this sub-paragraph.
- (2) This paragraph shall not apply—
- (a) to a case where paragraph 2, 3, 4 or 5 applies; or

(b) to vessels which are registered outside the United Kingdom and are on passage through the renewable energy zone.

(3) In this paragraph—

“related structure” means a structure, not being in any case a vessel, related to an energy structure, including—

(a) a structure for converting energy produced by an energy structure into a form suitable for transmission to shore; and

(b) a structure mainly for the provision of accommodation for persons carrying out work activities in relation to an energy structure or related structure;

“renewable energy zone” means any area designated by order under section 84(4) of the Energy Act 2004 <sup>M33</sup> and “within a renewable energy zone” includes over and under it.

#### Marginal Citations

**M33** 2004 c.20.

## SCHEDULE 4

Regulation 33(2)

### AMENDMENTS

<i>Instruments amended</i>	<i>References</i>	<i>Amendments to have effect</i>
The Personal Protective Equipment at Work Regulations (Northern Ireland) 1993	S.R. 1993 No. 20	In regulation 3(3)(c) for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”
The Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999	S.R. 1999 No. 90	In Schedule 2 paragraph 4A for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”
The Provision and Use of Work Equipment Regulations (Northern Ireland) 1999	S.R. 1999 No. 305	In regulation 12(5)(b) for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”
The Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003	S.R. 2003 No. 34	In regulation 5(1)(a)(ii) for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”
The Construction (Design and Management) Regulations (Northern Ireland) 2007	S.R. 2007 No. 291	In regulation 17 for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”
The Health and Safety (Fees) Regulations (Northern Ireland) 2010	S.R. 2010 No. 60	In regulation 4(4) for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the

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Control of Asbestos Regulations (Northern Ireland) 2012 ”

In the heading to regulation 6 for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”

In regulation 6(1) for the words “the Control of Asbestos Regulations (Northern Ireland) 2007 (“the 2007 Regulations”)” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 (“the 2012 Regulations”) ”

In regulation 6(3), (5) and (7) for the words “the 2007 Regulations” substitute “ the 2012 Regulations ”

In Schedule 2 row (b) column 1 for the words “Regulation 22 of the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ Regulation 22 of the Control of Asbestos Regulations (Northern Ireland) 2012 ”

In Schedule 2 row (b) column 2 for the words “S.R. 2007 No. 31” substitute “ S.R. 2012 No. XX ”

In the heading to Schedule 4 for the words “the Control of Asbestos Regulations (Northern Ireland) 2007” substitute “ the Control of Asbestos Regulations (Northern Ireland) 2012 ”

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations revoke and replace the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007 No. 31) and the Control of Asbestos (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 187). They implement as respects Northern Ireland—

- (a) Council Directive [2009/148/EC](#) (OJ No L330, 16.12.2009, p28) which repealed and replaced Council Directive [83/477/EEC](#) (OJ No L 263, 24.9.83, p25) as amended by Council Directive [91/382/EEC](#) (OJ No L 206, 29.7.91 p16) and Directive [2003/18/EC](#) of the European Parliament and of the Council (OJ No L 97, 15.4.03, p48) on the protection of workers from the risks related to exposure to asbestos at work.
- (b) Council Directive [90/394/EEC](#) (OJ No L 196, 26.7.90, p38) on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Article 16(1) of Directive [89/391/EEC](#)) as codified in Directive [2004/37/EC](#) (OJ No 229, 29.6.2004, p23), insofar as it relates to asbestos; and
- (c) Council Directive [98/24/EC](#) (OJ No L131, 5.5.93, p11) on the protection of the health and safety of workers from the risks related to exposure to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive [89/391/EEC](#)) insofar as it relates to risks to health from exposure to asbestos.

2. Part 1 of the Regulations re-enacts Part 1 of the Control of Asbestos Regulations (Northern Ireland) 2007 with some amendments. Regulation 2 includes new definitions of “asbestos cement”, “asbestos coating”, “asbestos insulation”, “asbestos insulating board”, “short duration work” and “textured decorative coatings”. The definition of “relevant doctor” has been amended and there is also a new definition of “licensable work with asbestos”.

3. The wording of regulation 3(2) has been amended to include the terms “in which only non-friable materials are handled” and “without deterioration of non-degraded materials” in regulation 3(2)(c)(i) and (ii) respectively. The licensing requirement has been de-coupled from the derogation and the reference to licensing has been removed from regulation 3.

4. Part 2 of the Regulations re-enacts Part 2 of the Control of Asbestos Regulations (Northern Ireland) 2007 and the whole of the Control of Asbestos (Amendment) Regulations (Northern Ireland) 2010. In addition to minor and drafting amendments, Part 2 makes changes of substance including the following —

- (a) regulation 8 refers to licensable work with asbestos which is defined in regulation 2(1);
- (b) regulation 9 makes different provision for notification for work with asbestos (which is not disappplied by regulation 3(2)), depending on whether the work is licensable work with asbestos or not;
- (c) regulation 15 provides for certain arrangements to be in place regarding accidents, incidents and emergencies and makes it clear that different requirements apply if the work is licensable work with asbestos;
- (d) regulation 22 provides for different requirements for medicals and health surveillance depending on whether the work is licensable work with asbestos or not.

5. Part 3 of the Regulations re-enacts the prohibitions in regulation 26 of the Control of Asbestos Regulations (Northern Ireland) 2007 and reflects amendments made by the REACH Enforcement Regulations 2008 (SI 2008/2852) and the prohibitions provided for by the REACH Regulations (Regulation (EC) No 1907/2006). Provision for exemptions is carried forward in regulations 29 and 30.

6. It has been clarified in regulation 2 that the labelling requirements in regulations 14, 24(2) and (3) and 27 are the same as those provided for by Appendix 7 to Annex XVII of the REACH Regulations (OJ No L396 30.12.2006 p840). The requirements are still referenced in Schedule 2 for ease of reference and the relevant diagram has been included.

7. Regulation 26(4) and Schedule 3 to the Control of Asbestos Regulations (Northern Ireland) 2007 have not been re-enacted since the exception for chrysotile is provided for in Annex XVII to the REACH Regulations (OJ No L136, 29.5.2007, p131).

8. Part 4 of the Regulations re-enacts the provisions of the Control of Asbestos Regulations (Northern Ireland) 2007. Provision for exemptions is re-enacted in regulation 29(1) and for the validity of existing licences and exemptions in regulation 32(1) and (2).

9. Schedule 1 has been amended slightly in that the requirements in paragraphs (b)(ii) and (iii) have been merged to better reflect the requirements of article 4 of the Directive.

10. European Standards EN ISO/IEC 17020 “General criteria for the operation of various types of bodies performing inspection” accepted by CEN/CENELEC on 15th July 2004 and 17025 “General requirements for the competence of testing and calibration laboratories” accepted by CEN/CENELEC on 15th March 2005 can be obtained from the British Standards Institution, BSI Library and Bookshop, 389 Chiswick High Road, London W4 4AL, or through British Standards Online at [www.bsonline.bsi-global.com](http://www.bsonline.bsi-global.com).

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**11.** The publication “Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)”, WHO Geneva 1997 (ISBN 92 4 154496 1) can be obtained online at [www.who.int/publications/](http://www.who.int/publications/).

**12.** In Great Britain the corresponding legislation is the Control of Asbestos Regulations 2012 (S.I. 2012/632). The Great Britain Health and Safety Executive has prepared a full impact assessment of the effect that the Regulations will have on business. A copy of that assessment together with a Northern Ireland supplement is available from the Health and Safety Executive for Northern Ireland, 83 Ladas Drive, Belfast, BT6 9FR. A copy of the transposition note in relation to implementation of the Directives set out in paragraph 1 can also be obtained from the Health and Safety Executive for Northern Ireland at the above address. Copies of both documents are annexed to the Explanatory Memorandum which is available alongside these Regulations at [www.legislation.gov.uk](http://www.legislation.gov.uk).



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