

2000 No. 98

HEALTH AND SAFETY

**Control of Asbestos at Work (Amendment) Regulations
(Northern Ireland) 2000**

Made 20th March 2000

Coming into operation in accordance with regulation 1

The Department of Enterprise, Trade and Investment, being the Department concerned^(a), in exercise of the powers conferred on it by Article 17(1), (2), (4), (5) and (6)^(b) of, and paragraphs 1(1), (2) and (4), 5(2), 7, 8, 9, 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^(c) and of every other power enabling it in that behalf after consultation in accordance with Article 46(1)^(d) of that Order with the Health and Safety Executive for Northern Ireland and such other bodies as appeared to the Department to be appropriate, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Control of Asbestos at Work (Amendment) Regulations (Northern Ireland) 2000 and, subject to paragraph (2), shall come into operation on 2nd May 2000.

(2) Regulation 2(2)(e), (14), (18) and (20) and the Schedule shall come into operation on 1st October 2000.

Amendment of the Control of Asbestos at Work Regulations (Northern Ireland) 1988

2.—(1) The Control of Asbestos at Work Regulations (Northern Ireland) 1988^(e) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2—

(a) in the definition of “action level” for the number “96” there shall be substituted “72”;

(b) in the definition of “control limit” for the number “0.5” there shall be substituted “0.3” and for the number “1.5” there shall be substituted “0.9”;

(a) See Article 2(2) of S.I. 1978/1039 (N.I. 9)
(b) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(c) 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), Article 3(1). Article 47A was inserted by Article 3, and Article 2 was amended by Articles 4 and 8, of S.I. 1997/1774 (N.I. 16)
(d) Article 46(1) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18
(e) S.R. 1988 No. 74; relevant amending Regulations are S.R. 1993 No. 26 and S.R. 1999 No. 150

- (c) in the definition of “employment medical adviser”, the final word “and” shall be omitted;
 - (d) before the definition of “the Executive” there shall be inserted the following definition—
 - ““EN 45001” means European Standard EN 45001, “General criteria for the operation of testing laboratories” accepted by the Comité Européen de Normalisation and the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC) on 23rd June 1989(a), as revised or reissued from time to time;”;
 - (e) after the definition of “medical examination” there shall be added the following definition—
 - ““territorial waters” means United Kingdom territorial waters adjacent to Northern Ireland and “within territorial waters” includes on, over and under them.”.
- (3) For paragraph (2) of regulation 2, there shall be substituted the following paragraph—
- “(2) For the purposes of these Regulations, except as specified in regulation 8(2), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the action level or any control limit, no account shall be taken of any respiratory protective equipment which, for the time being, is being worn by that employee.”.
- (4) At the end of regulation 3, there shall be added the following paragraph—
- “(4) Regulation 13(1), insofar as it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to—
- (a) the Fire Authority for Northern Ireland in respect of premises attended, for the purpose of fighting a fire or in an emergency, by the fire brigade maintained by that Authority; 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 in this regulation, “ship” includes all vessels and hovercraft which operate on water or land and water, and “dock premises” means any 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) At the end of regulation 5, there shall be added the following paragraph—
- “(5) The employer shall keep a copy of any assessment required by paragraph (1) which is in writing at any place at which the work to which

(a) Reference number EN 45001: 1989 E

the assessment relates is being carried out and for any period during which the work to which the assessment relates is being carried out.”.

(6) In regulation 5A—

(a) after paragraph (1), there shall be inserted the following paragraph—

“(1A) The employer shall keep a copy of the plan of work made in pursuance of paragraph (1) at any place at which the work to which the plan relates is being carried out and for any period during which the work to which the plan relates is being carried out.”;

(b) at the end, there shall be added the following paragraph—

“(3) The employer shall ensure, so far as is reasonably practicable, that the work to which the plan of work made in pursuance of paragraph (1) relates is carried out in accordance with that plan.”.

(7) In paragraph (2) of regulation 6, for the number “28” there shall be substituted “14”.

(8) Regulation 7 shall be re-numbered as paragraph (1) of that regulation and after that paragraph there shall be added the following paragraph—

“(2) The information, instruction and training referred to in paragraph (1) shall be—

(a) given at suitable intervals; and

(b) adapted to take account of any significant changes in the type of work carried out or methods of work used by the employer.”.

(9) In paragraph (2) of regulation 8, for the words “to a concentration which is below those control limits” there shall be substituted “(after taking into account the effect of that respiratory protective equipment) to a concentration which is as low as is reasonably practicable and in any event below those control limits”.

(10) In paragraph (1) of regulation 10, after the words “in the case of exhaust ventilation equipment” there shall be inserted “and respiratory protective equipment (except disposable respiratory protective equipment)”.

(11) In regulation 11—

(a) in paragraph (1), after the word “exposed” there shall be inserted “or liable to be exposed”; and

(b) in paragraph (3), for the words “where the work with asbestos is being done” there shall be substituted “where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning.”.

(12) In regulation 12, for the words “with asbestos” there shall be substituted “under his control”.

(13) In paragraph (1) of regulation 13, after the word “exposes” there shall be inserted the words “or is liable to expose” and for the words “work with asbestos” there shall be substituted “such work”.

(14) After regulation 15, there shall be inserted the following regulation—

“Compliance with EN 45001

15A.—(1) Every employer who carries out any measurement of the concentration of asbestos fibres present in the air, whether or not in pursuance of regulation 15(1), shall ensure that he meets criteria equivalent to those set out in paragraphs 5.1, 5.2, 5.3, 5.4.1 and 5.4.2 of EN 45001.

(2) Every employer who requests a laboratory to carry out any measurement of the concentration of asbestos fibres present in the air, whether or not in pursuance of regulation 15(1), shall ensure that that laboratory is accredited by an appropriate body as complying with EN 45001.”.

(15) For paragraph (3) of regulation 16, there shall be substituted the following paragraph—

“(3) Where an employee has been examined in accordance with paragraph (2), the employment medical adviser or appointed doctor shall issue to the employer and that employee a certificate stating that he has been so examined and the date of the examination and the employer shall keep that certificate or a copy thereof for at least four years from the date on which it was issued.”.

(16) For paragraph (1) of regulation 17, there shall be substituted the following paragraph—

“(1) Every employer shall ensure that, for any of his employees who is exposed or liable to be exposed to asbestos, adequate and suitable—

- (a) washing and changing facilities;
- (b) where he is required to provide protective clothing, facilities for the storage of—
 - (i) that protective clothing, and
 - (ii) personal clothing not worn during work hours;
- (c) where he is required to provide respiratory protective equipment, facilities for the storage of that equipment,

are provided.”.

(17) In paragraph (3)(b) of regulations 18, for the words “Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations (Northern Ireland) 1988” there shall be substituted “Carriage of Dangerous Goods by Road Regulations (Northern Ireland) 1997(a)”.

(18) After regulation 20, there shall be inserted the following regulation—

“Application within territorial waters

20A. Within territorial waters these Regulations shall apply only to or in relation to the premises and activities to which any of paragraphs (2) to (6) of Schedule 3 applies.”.

(a) S.R. 1997 No. 248

(19) After regulation 20A, there shall be inserted the following regulation—

“Defence in proceedings for contravention of these Regulations

20B. In any proceedings for an offence consisting of a contravention of these Regulations it shall be a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence.”

(20) After Schedule 2, there shall be added Schedule 3 as set out in the Schedule.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 20th March 2000.

(L.S.)

Adrianne L. Brown

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

**Schedule to be added after Schedule 2 to the Control of Asbestos at Work
Regulations (Northern Ireland) 1988**

Premises and activities within territorial waters

Interpretation

1.—(1) In this Schedule—

“designated area” means any area designated by order under section 1(7) of the Continental Shelf Act 1964(a) and “within a designated area” includes over and under it;

“offshore installation” shall be construed in accordance with paragraph 2(4) and (5);

“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) For the purposes of this Schedule, a person shall be deemed to be engaged in diving operations throughout any period from the time when he commences to prepare for diving until the time when—

- (a) he is no longer subjected to raised pressure;
- (b) he has normal inert gas partial pressure in his tissues; and
- (c) if he entered the water, he has left it,

and diving operations include the activity of any person in connection with the health and safety of a person who is, or is deemed to be, engaged in diving operations.

(4) Any reference in this Schedule to premises and activities (howsoever described) 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.

Offshore installations

2.—(1) This paragraph applies to—

- (a) any offshore installation and any activity on it;
- (b) any activity, including diving operations, 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; or
 - (ii) any activity on or from a vessel being used as a stand-by vessel; or

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

(c) diving operations involving the survey and preparation of the sea bed for an offshore installation.

(2) Subject to sub-paragraph (3), in this Schedule “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,

and which is not an excepted structure.

(3) For the purposes of sub-paragraph (2), the excepted structures are—

(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 for the time being intended to be used for any of the purposes specified in sub-paragraph (2); and

(e) any part of a pipeline.

Wells

3.—(1) This paragraph applies to—

(a) a well and any activity in connection with it; or

(b) an activity which is immediately preparatory to any activity falling within 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—

(a) a pipeline;

(b) any pipeline works; or

(c) any of the following activities in connection with pipeline works, namely—

(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 a 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 or within territorial waters, United Kingdom territorial waters adjacent to Great Britain or a designated area;

“pipeline works” means—

- (a) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline;
- (c) changing the position of or dismantling or removing a pipeline or length of pipeline;
- (d) 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;
- (e) any activities incidental to the activities described in heads (a) to (d);
- (f) diving operations 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 the working of a mine and work for the purpose of, or in connection with, the working of any part of a mine.

(2) In this paragraph “mine” and “working of a mine” have the same meaning as in the Mines Act (Northern Ireland) 1969(a).

Other activities

6.—(1) Subject to sub-paragraph (2), this paragraph applies to—

- (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, demolition and dismantling of any building or other structure not being a vessel, or any preparation for any such activity;
- (b) the loading, unloading, fuelling or provisioning of a vessel;
- (c) diving operations;

(a) 1969 c. 6 (N.I.)

- (d) 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; or
 - (e) 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) relates.
- (2) This paragraph does not apply to vessels which are registered outside the United Kingdom and are on passage through territorial waters.”

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations amend the Control of Asbestos at Work Regulations (Northern Ireland) 1988 (S.R. 1988 No. 74) (“the 1988 Regulations”).

2. Regulation 2 amends the 1988 Regulations in that it—

- (a) amends the definitions of action level and control limit (*regulation 2(2)*);
- (b) extends their application to all employees exposed to asbestos (whether or not they are working with asbestos or any product containing asbestos) (*regulation 2(3), (11)(a), (12) and (13)*);
- (c) modifies the application to the Fire Authority for Northern Ireland of regulation 13(1) (cleanliness of premises and plant) (*regulation 2(4)*);
- (d) requires an employer to keep a copy of a risk assessment and plan of work at the place to which the assessment and plan relate and while the work to which they relate is being carried out, and to ensure that, so far as is reasonably practicable, the work is carried out in accordance with the plan (*regulation 2(5) and (6)*);
- (e) reduces from 28 to 14 days the period for advance notification to the enforcing authority of work with asbestos (*regulation 2(7)*);
- (f) requires an employer to examine and test respiratory protective equipment (*regulation 2(10)*);
- (g) requires an employer carrying out air monitoring to comply with, or to use a laboratory that complies with, European Standard EN 45001 (*regulation 2(14)*);
- (h) adds provisions to the 1988 Regulations so as to specify the premises and activities within United Kingdom territorial waters adjacent to Northern Ireland to which the 1988 Regulations apply (*regulation 2(18) and (20) and the Schedule*);
- (i) introduces a defence in proceedings for contravention of the Regulations (*regulation 2(19)*); and
- (j) makes textual and other minor amendments to the 1988 Regulations.

3. European Standard EN 45001, “General criteria for the operation of testing laboratories” accepted by CEN/CENELEC on 23rd June 1989 (reference number EN 45001: 1989 E) can be obtained from the joint European Standards Institution, Central Secretariat, rue Bréderode 2, B-1000 Brussels, Belgium.

4. In Great Britain the corresponding Regulations are the Control of Asbestos at Work (Amendment) Regulations 1998 (S.I. 1998/3235). The Health and Safety Executive has prepared a cost benefit assessment in relation to those Regulations and a copy of that assessment, together with a Northern

Ireland Supplement prepared by the Department of Enterprise, Trade and Investment, is held at the offices of the Health and Safety Executive for Northern Ireland at 83 Ladas Drive, Belfast BT6 9FR, from where copies may be obtained.

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