

EXPLANATORY MEMORANDUM TO
THE CONTROL OF ASBESTOS (AMENDMENT) REGULATIONS
(NORTHERN IRELAND) 2010

S.R. 2010 No. 187

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Enterprise, Trade and Investment to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2 The Statutory Rule is made under section 2(2) of the European Communities Act 1972 and Articles 17(1) to (6), 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 (“the 1978 Order”) and is subject to the negative resolution procedure.
- 1.3 The Rule is due to come into operation on 14 June 2010.

2. Purpose

- 2.1 The Statutory Rule will amend the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007 No. 31) (“the 2007 Regulations”).
- 2.2 The Rule is made for the clarification of the appeals procedure in relation to the licensing of work with asbestos.
- 2.3 The Rule does not introduce any new duties.

3. Background

- 3.1 The 2007 Regulations: -
 - revoked and replaced the Control of Asbestos at Work Regulations (Northern Ireland) 2003, the Asbestos Licensing Regulations (Northern Ireland) 1984 and the Asbestos (Prohibition) Regulations (Northern Ireland) 1993 with a single set of Regulations;
 - implemented for Northern Ireland the EU Asbestos Workers Protection Directive 2003/18/EC which amend Council Directive 83/477/EEC on the protection of workers from the risks related to the exposure to Asbestos at work;
 - provided a single tighter control for work with all types of asbestos;
 - adopted a risk based approach to licensing, reflecting risk criteria in the directive;

- introduced the requirement that those issuing clearance certificates for reoccupation after asbestos removal work is completed meet particular accreditation requirements.
- 3.2 Regulation 8 of the 2007 Regulations sets out the provisions in relation to the licensing of work with asbestos. In summary, an employer shall not undertake any work with asbestos unless he holds a valid licence granted by the Health and Safety Executive for Northern Ireland (“the Executive”). The Executive may vary the terms of a licence or revoke a licence if it considers it appropriate to do so.
 - 3.3 Any person who is aggrieved by the decision of the Executive in relation to an asbestos licence has a right of appeal as set out in Article 41 of the 1978 Order.
 - 3.4 In December 2009 an amendment to the 2007 Regulations, the Control of Asbestos (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009 No. 414) (“the 2009 Regulations”), was made to make provision for representations to HSENI before variations or revocations would be made to asbestos licences and for an independent appeal mechanism to be set up to deal with any variation or revocation decisions taken by HSENI as the licensing authority.
 - 3.5 It has however become apparent that a further amendment is needed to allow the Department to have in place independent appeal provisions when dealing with asbestos licence refusal decisions and when imposing licensing conditions. Accordingly to provide clarification for licence holders and to extend the independent appeal provisions, the 2007 Regulations will be further amended.

4. Content

- 4.1 The proposed Regulations amend regulation 8 of the 2007 Regulations. They extend the provision for making representations or for appealing by persons aggrieved by decisions in relation to such licences so that they apply to refusals of the licence, the period of validity of the licences, the imposition of conditions on licences and the refusal to vary licences as well as to the variation and revocation of the licences.
- 4.2 The Rule applies the relevant provisions of the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997. It provides for modifications to the model rules which are simply intended to make it clear that references to the enforcement officer in Chapter II and to the Authority in Chapter I are references to the Executive, the Department is the responsible Department and that licensing decisions under regulation 8 of the 2007 Regulations are “enforcement actions” for the purposes of the model rules.

4.3 The revocation of the 2009 Regulations is also included in the proposed legislation.

5. Consultation

5.1 A consultation exercise has not been conducted for this Statutory Rule as it is made for the clarification of the appeals procedure for asbestos licence holders.

6. Equality Impact

6.1 The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or differential aspects were identified.

7. Regulatory Impact

7.1 A regulatory impact assessment was not prepared on these changes as there will be no new impact on Northern Ireland business beyond that contained in the 2007 Regulations. There is no impact on charities, social enterprise or voluntary bodies.

8. Financial Implications

8.1 None. The Statutory Rule will have no effect on business as it is simply intended to clarify the appeals procedure in relation to asbestos licensing. There are no cost implications for the Executive.

9. Section 24 of the Northern Ireland Act 1998

9.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

10. EU Implications

10.1 None. This Statutory Rule does not implement any European Directives.

11. Parity of Replicatory Measure

11.1 This Statutory Rule is specific to Northern Ireland.

12. Additional Information

12.1 Not applicable.