

**EXPLANATORY MEMORANDUM TO THE
CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH (AMENDMENT)
REGULATIONS 2004**

2004 No. 3386

1. This explanatory memorandum has been prepared by the Health and Safety Executive and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the House of Lords Select Committee on the Merits of Statutory Instruments.

2. **Description**

The Regulations firstly amend the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677) (“COSHH”) by restricting supply and use of cement and cement preparations containing hexavalent chromium (“Cr VI”), and the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689) (“CHIP”) by introducing associated labelling requirements, as required by Directive 2003/53/EC. They also revise the existing duty under COSHH to adequately control exposure to substances hazardous to health by introducing a new duty to observe principles of good practice and a new system of workplace exposure limits. They in addition extend the circumstances in which COSHH and the Control of Lead at Work Regulations 2002 (S.I. 2002/2676) (“CLAW”) are disapplied to ships, and clarify the extent of the duty to maintain exposure control measures in both sets of Regulations.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative background**

These Regulations are made under the Health and Safety at Work etc. Act 1974 (1974 c.37). They implement that part of Directive 2003/53/EC (26th Amendment to Council Directive 76/769/EEC relating to restrictions on the marketing and use of certain dangerous substances and preparations) relating to Cr VI. A transposition note is attached. The remaining provisions originate from national policy in the determination of responsibility between various agencies, and from the need for clarification of duties for existing dutyholders under COSHH.

5. **Extent**

These Regulations apply to Great Britain.

6. **European Convention on Human Rights**

No Convention issues arise.

7. **Policy background**

7.1 Directive 2003/53/EC aims to reduce allergic contact dermatitis (estimated at 200 to 400 cases per year in Great Britain) among persons exposed to cement and cement preparations containing Cr VI. It prohibits marketing and use of these products if Cr VI concentration exceeds a specified level, and thereby forces the manufacturers to lower the concentration by adding a reducing agent. Because reducing agents lose effectiveness over time, the Directive requires that packaging be marked with information on safe shelf life. The Directive provides a derogation from its requirements where material is supplied for use in circumstances where there is mechanical handling with no possibility of skin contact. The Regulations transpose the Directive's marketing and use restriction by amending the COSHH, and its package marking requirement by amending CHIP, and in each case reproduces the derogation. Public consultation occurred between March and May 2004. Eighteen respondents agreed with the proposals, 4 disagreed and 6 made no comment. Subsequently, HSE has continued to work with stakeholders to explain the proposals and its enforcement approach.

7.2 Research showed that dutyholders with limited technical expertise, especially smaller companies, had difficulty with the duty in COSHH to adequately control exposure to a substance hazardous to health because they were unable under the existing scheme to identify appropriate exposure control measures or apply the occupational exposure limits for the substance (where they existed). As a result, HSE developed a new framework for adequate control of exposure which requires dutyholders to apply straightforward principles of good practice (set out in a Schedule to the Regulations). It also introduced a new, single "workplace exposure limit" to replace the former "occupational exposure standards" and "maximum exposure limits". Application of the principles is explained by general advice in a Code of Practice and substance/process-specific advice that will be put on the Internet. Public consultation between September 2003 and January 2004 disclosed good support except on some matters of detail. An HSE/Social partner working group was formed to consider these and suggested changes which were adopted. The Regulations implement the new framework (with effect from 6 April 2005).

7.3 Responsibility for regulating health and safety on sea-going merchant ships is split between HSE and the Maritime and Coastguard Agency. The agreed dividing line is set out in a Memorandum of Understanding but is imperfectly reflected in HSE legislation. Additionally, health and safety on non-sea-going merchant ships has been regulated by HSE in all circumstances, but the Thames Safety Inquiry recommended that non-sea-going vessels should be subject to the same regime as sea-going vessels. Consequently, and as part of a continuing program of addressing

these issues in HSE legislation, these Regulations revise and extend the disapplications to ships contained in COSHH and CLAW (with effect from 17 January 2004). During public consultation 10 respondents indicated agreement and none indicated disagreement (20 made no comment).

7.4 The Regulations amend (with effect from 6 April) the duty to maintain exposure control measures in both COSHH and CLAW in order to make clear that the duty extends to systems of work and supervision and is not limited to plant and equipment. During public consultation on this issue 17 respondents indicated agreement and none indicated disagreement (13 made no comment).

8. **Impact**

8.1 Regulatory Impact Assessments (relating respectively to the matters described in paragraphs 7.1 and 7.2) are attached to this memorandum. None have been prepared on the matters described in paragraphs 7.3 and 7.4 as these are considered to have no impact on businesses, charities or voluntary bodies.

8.2 The impact on the public sector is minimal and can be met within existing budget allocations.

9. **Contact**

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