

**EXPLANATORY MEMORANDUM TO**  
**THE CONTROL OF ASBESTOS REGULATIONS 2012**

**2012 No. 632**

1. This explanatory memorandum has been prepared by the Health and Safety Executive (HSE) on behalf of the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The Control of Asbestos Regulations 2012 (“the Asbestos Regulations 2012 or the instrument”) revoke and re-enact the Control of Asbestos Regulations (the “2006 Regulations”)<sup>1</sup> with some modifications so that there is a consolidated set of Asbestos Regulations. The driver behind remaking the regulations is to comply with the European Commission’s (“the Commission”) reasoned opinion dated 16 February 2011, Infringement number 2006/5042<sup>2</sup>. The main change will be to the scope of the exemption set out in the Directive in relation to the requirements to notify work to the relevant enforcing authority, carry out medical examinations and to keep a register of work. Other modifications reflect amendments made to the 2006 Regulations by other legislation.

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

3.1 None.

**4. Legislative Context**

4.1. In 2006 a complaint was made the Commission alleging under implementation of Article 3 of Directive 2003/18/EC.<sup>3</sup> Directive 2003/18/EC, designed to strengthen protection for maintenance workers, amended Directive 83/477/EEC<sup>4</sup> whose purpose was the protection of workers from risks related to exposure to asbestos to and was implemented by the Control of Asbestos Regulations 2006<sup>5</sup>. As a result of its investigation on 16 February 2011 the Commission issued a reasoned opinion that the omission in the Control of Asbestos Regulations 2006 of certain terms from the Directive meant that, in its view, the UK had failed to fully implement the Directive. The reasoned opinion relates to the omission of the terms ‘*non-friable*’ and ‘*without deterioration of non-degraded material*’ from Regulation 3 of the 2006 Regulations, which exempts ‘low risk’ work with asbestos from certain duties in the regulations. In

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<sup>1</sup> <http://www.legislation.gov.uk/uksi/2006/2739/contents/made>

<sup>2</sup> EC Press release

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/164&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:097:0048:0052:EN:PDF>

<sup>4</sup>

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1983L0477:20070628:EN:PDF>

<sup>5</sup> Explanatory memorandum for the 2006 Regulations

[http://www.legislation.gov.uk/uksi/2006/2739/pdfs/uksiem\\_20062739\\_en.pdf](http://www.legislation.gov.uk/uksi/2006/2739/pdfs/uksiem_20062739_en.pdf)

the Commission's view the omission of these terms has the effect of widening the scope of the exemption.

4.2 The Government has accepted the reasoned opinion and the omitted terms of the Directive are included in the proposed instrument using the exact words of the Directive. The inclusion of these terms has the effect of narrowing the types of work to which the exemptions apply and consequently will in future require employers carrying out some types of low risk short duration work, to: -

- i) notify the work to the relevant enforcing authority;
- ii) carry out worker medical examinations; and
- iii) maintain a register for each worker of the type and duration of work done with asbestos.

Where these 3 requirements will newly apply to low risk work the relevant clauses of the Directive are used in the regulations.

4.3 The changes made in this instrument should ensure that the UK fully complies with the Commission's reasoned opinion and avoid the risk of the Commission referring the matter to the Court of Justice of the EU and a prospective judgement against the UK. The commitment given to the Commission to comply with the reasoned opinion within 12 months has precluded a more substantial review of the regulations. The Directives 83/477/EC and 2003/18/EC were codified and replaced by Directive 2009/148/EC<sup>6</sup> and full details of implementation by the Asbestos Regulations 2012 are set out in the attached Transposition Note (Annex 1) and the scrutiny history of the legislation is provided in (Annex 2). Certain long established and widely supported domestic requirements which maintain public confidence are also carried forward such as the requirement that higher risk work is restricted to those holding a licence issued by HSE. The instrument also takes into account requirements of REACH<sup>7</sup> and amendments made as a consequence of the REACH Enforcement Regulations 2008<sup>8</sup>, in relation to the prohibitions on supply and use of asbestos.

## **5. Territorial Extent and Application**

5.1. This instrument applies to Great Britain and extends to premises and activities **specified** in the Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001. Northern Ireland and Gibraltar will be introducing their own amending legislation.

## **6. European Convention on Human Rights**

6.1. As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy Background**

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<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:330:0028:0036:EN:PDF>

<sup>7</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=oj:l:2006:396:0001:0849:en:pdf>

<sup>8</sup> S.I.2008/2852. <http://www.legislation.gov.uk/ukSI/2008/2852/contents/made>

### ***What is being done and why***

7.1 Asbestos related disease is the single greatest cause of occupational deaths in Great Britain, resulting in approximately 4,500 deaths each year. There continues to be a high level of public and media interest in issues related to the management of asbestos risks and asbestos materials are still widespread in buildings and plant constructed before 2000 when the final prohibitions on supply and use came into force. Respirable fibres liberated to air by uncontrolled disturbance potentially present a serious long term risk to health.

7.2 In order to comply with the Commission's reasoned opinion, it was necessary to make the specific amendments to the legislation, rather than by any other means. As noted at paragraph 2.1, in the interests of simplification of the regulations a revoke and re-enact approach has been taken rather than making separate amending regulations. The Asbestos Regulations 2012 essentially replicate the existing 2006 Regulations with modifications highlighted above. For example the core requirements to minimise exposure to fibres, to use trained workers, to identify if asbestos is likely to be present and plan and use suitable work methods remain unchanged.

7.3. As noted in 4.2 the changes to regulation 3 narrow the scope of the derogation which exempts lower risk asbestos work from requirements such as medical examinations, record keeping and notification. Because of the current wording of regulation 3, revising the wording to simply include the omitted terms without making additional amendments could have had the unintended consequence of extending the requirement to hold a licence to include some types of lower risk work. Therefore, in order to avoid extending the licensing requirements it is necessary to de-couple the application of licensing from the exemptions in Regulation 3 and to separately define the work for which a licence is required. This has the effect of creating a new category of asbestos work which is exempt from licensing, but for which notification, medical examinations and, record keeping is required. Modification of other regulations have been necessary as a result these are changes to the notification requirements to distinguish between licensed and non-licensed works and amendments to allow a wider pool of medical professionals to carry out medical examinations.

7.4 A transitional period of 3 years is provided to assist business before the requirement for relevant low risk workers to have medical examinations comes into force. In practice the regulatory focus will remain on the higher risk work with asbestos, subject to the licensing requirements, which is unaffected by these changes. As before, all work with any asbestos-containing materials must be done by trained workers, in a way that reduces exposures to asbestos fibres as low as reasonably practicable below the control limit and with all other necessary controls such as the use of suitable respiratory protective equipment as detailed in the Asbestos Regulations 2012.

### ***Consolidation***

7.5 The 2006 Regulations had already simplified the pre-existing legal framework by carrying forward provisions contained in three previous sets of Asbestos Regulations into one set of Regulations and replacing the three previous Approved Codes of Practice with two. The approach HSE is taking to completely

remake the regulations avoids the need for an amending instrument and means there will continue to be a single set of regulations which is easier for duty-holders and regulators to use.

## **8. Consultation outcome**

8.1 To meet the commitment to the Commission to make the necessary legislative changes within 12 months a nine week public consultation was conducted. A total of 131 responses were received. The consultation was in three parts i) the legal changes required and necessary consequential amendments, ii) the guidance to explain the changes, and iii) the impact on business.

8.2 In response to part i) 84% of respondents agreed with the proposed definition for licensed work. Some linked definitions for types of asbestos materials have been amended to improve clarity based on the comments received. 76% of respondents supported the proposal to extend the types of doctors able to carry out medical examinations from HSE appointed doctors to include non-appointed general practitioners. 51% agreed with the proposal for a three year transition period before the requirement for medical examinations comes into force. Those that did not thought it should be sooner. The expert medical bodies consulted confirmed a three year period was appropriate to ensure suitable arrangements and training would be in place. It was therefore decided to set the transition period at three years as proposed.

8.3 More detail can be found on the Health and Safety Executive's (HSE) website at <http://www.hse.gov.uk/consult/condocs/cd237/responses.pdf>

## **9. Guidance**

9.1 The Asbestos Regulations 2006 were supplemented by two Approved Codes of Practice (ACoPs) for two different audiences and these will be revised or the contents republished in modified form:

- i) one covering the duty in regulation 4 which requires those who have control of non-domestic premises to identify whether asbestos is present and, if so, put into action a plan to ensure that any person liable to be at risk is given information and is protected by a dutyholder system for managing asbestos.
- ii) another covering all other requirements - these are in the main placed on those carrying out maintenance work liable to disturb asbestos.

9.2 A major review of HSE's Approved Codes of Practice (ACoPs) has begun following an independent review and the outcome is as yet undetermined. Appropriate actions will be taken once the future format and approach is settled.

9.3 In addition, the existing suite of associated guidance is being reviewed and revised as a result of a further intensification of reliance on the web rather than phone advisory services for business and the public. A revised "Asbestos Essentials" (key practical task manual for non-licensed work) is planned, but as an interim measure an updating supplement will be freely available on HSE's website.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is estimated at £188 million over 10 years. The largest impact on business is attributed to the cost of medical examinations every 3 years for all workers liable to carry out relevant lower risk work. After consultation a large degree of uncertainty remains about cost. Cost is dependent on compliance levels (which consultees agreed would be very low amongst micro-businesses who make up the largest proportion of those potentially affected) and numbers of asbestos jobs which were in scope. The latter was extremely difficult to gauge and a range of estimates with a very wide spread was the result. Essentially, consultees believed that the larger employers of whom there are a smaller number would comply and shoulder the administrative burden, whereas small businesses of which there is a larger number were unlikely to comply. If that is the case, small businesses would be unlikely to suffer significant costs, unless they were subject to instructions and oversight from larger contractors to comply.

10.2 The impact on the public sector is likely to be significant as they are more likely to stipulate adherence to Regulations and any extra costs from the contractor having staff undergo medical examinations will be passed on to the public sector.

10.3 It was not possible to quantify significant benefits to health from the changes to regulation 3 required by the Commission though there may indirectly be some from contact with doctors at medical examinations. The Regulatory Impact Assessment for the 2006 Regulations estimated that the introduction of the new control limit alone was expected to prevent around 40 deaths among asbestos workers as a result of exposures over the next 50 years. The continued requirement for detailed mandatory training provides a firmer basis for ensuring that employers equip their employees with a better understanding of the risks to health of working with asbestos containing materials and the work practices and equipment necessary to protect themselves and others. Overall, the 2006 Regulations, including those provisions brought forward from the previous Regulations, were expected to prevent around 6500 occupational deaths from exposures over the next 50 years.

10.4 An Impact Assessment for the present changes will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The Asbestos Regulations 2012 apply equally to small businesses. Exposure to asbestos is potentially fatal and there is a cumulative effect. All persons at work who are likely to disturb building fabric or plant containing asbestos are at substantial risk and may also endanger the public. If small businesses were exempt, it would defeat the aims of the legislation by exempting this group from duties to minimise all exposure to asbestos. Other EU member states take a similar approach.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to:

- i. make the notification process as easy and user friendly as possible and available online;
- ii. adopt the longest possible transitional and period between medical examinations since there is no real evidence of medical benefit on prognosis, according to the leading medical consultees. The regulator's focus will be concentrated on the core pre-existing duties to work so as not to endanger oneself or others.

## **12. Monitoring & review**

12.1 A review clause is included in the statutory instrument. HSE proposes to monitor the changes related to the infraction to assess impact on businesses and to review the regulations in 2017 in accordance with the Government's review policy.

## **13. Contact**

13.1 **Sarah Mallagh** at the Health and Safety Executive, Tel: 0151 951 4560 or email: [sarah.mallagh@hse.gsi.gov.uk](mailto:sarah.mallagh@hse.gsi.gov.uk)

**Annex 1**  
**Transposition Note**

1. This note sets out the way in which the Control of Asbestos Regulations 2012 (“CAR12”) revoke and re-enact the Control of Asbestos Regulations 2006 (CAR06) with some minor changes. CAR06 and an associated Approved Code of Practice (ACoP) transposed the main elements of Directive 2009/148/EC (which consolidates Council Directive 83/477/EEC, as amended on the protection of workers from the risks related to exposure to asbestos at work (“the Directive”). The most important change in relation to transposition is that regulation 3 has been amended to copy out the wording of Article 3 of the Directive. CAR12 continues to transpose the Directive in the same way that CAR06 did.

2. CAR12 also continues to transpose Directives 90/394/EEC, as codified in Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens at work and Directive 98/24/EC on the protection of the health and safety of workers from the risks related to exposure to chemical agents at work.

3. CAR12 is made under the Health and Safety at Work etc Act 1974 and therefore applies only in Great Britain. Northern Ireland and Gibraltar have separate legislation which implements the Directive in those territories. The Maritime and Coastguard Agency is responsible for the extension of the Directive to sea transport (see Article 1(2)).

**Consolidated Asbestos Worker Protection Directive 2009/148/EC**

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
Article 1	Sets out the aim of the protection of workers from the risks arising from exposure to asbestos.	Many provisions place duties on employers to protect their employees, e.g. regulation 6. Regulation 3(1) also applies Regulations to self-employed persons.	Secretary of State
Article 2	Sets out what “asbestos” means for the purpose of the Directive.	Regulation 2(1) reflects the definition of “asbestos”.	Secretary of State
Article 3(1)	Application of Directive to activities in which workers may be exposed to asbestos dust.	Implicit in regulations as a whole.  The Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Asbestos)	Secretary of State and MCA

Article	Objective	Implementation	Responsibility
		Regulations 2010 implement the Directive with regard to the application to sea transport. There is a dis-application in relation to activities on board a ship.	
Article 3(2)	Requires the assessment of risk of exposure to asbestos	Regulation 6(1)	Secretary of State
Article 3(3)	Provides a derogation from compliance with provisions in Articles 4, 18 and 19.	Regulation 3(2) – see also Explanatory Memorandum.	Secretary of State
Article 3(4)	Requirement for Member States (MS) to lay down practical guidelines for the determination of sporadic and low intensity exposure (Article 3(3)).	Regulation 3(3) provides power for the Health and Safety Executive (HSE) to establish practical guidelines which are specified in the associated Approved Code of Practice (see also Explanatory Memorandum).	Secretary of State. For ACoP, (HSE) with the consent of the Secretary of State
Article 3(5)	Risk assessment to be the subject of consultation with workers and/or their representatives.	Implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State
Article 4(1) - (3)	Requires notification before undertaking work in which workers are or	Regulation 9(1)(a), regulation 9(2)(a) and Schedule 1.	

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
	may be exposed to asbestos.		
Article 4(4)	Provides for access for workers and/or their representatives to notification documents.	Implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State
Article 4(5)	Requirement for a new notification each time changes in working conditions may result in an increase of exposure to asbestos.	Regulation 9(1)(b) and regulation 9(2)(b).	Secretary of State
Article 5	Prohibits the application of asbestos by spraying. Amended by Directive 2003/18/EC by adding prohibition on activities which expose workers to asbestos during extraction, manufacture or processing of asbestos products or products with asbestos intentionally added.	Regulations 25, 26, 28 and 29	Secretary of State
Article 6	Requires exposure of workers to asbestos to be reduced to a minimum and in any case below the limit value (control limit) laid down in Article 8. This to be achieved in particular through a number of specific measures such as use of appropriate work	Regulation 11, 14, 17 24 and 27	Secretary of State

Article	Objective	Implementation	Responsibility
	processes.		
Article 7	Requires sampling of asbestos in the air to ensure compliance with control limit laid down in Article 8. Sampling to be done by suitably qualified personnel and by the World Health Organisation recommended method.	Regulations 2(1) (definition of control limit), 19 and 20. Provision on consultation implemented through the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State
Article 8	Requires employers to ensure that workers are not exposed to airborne concentrations of asbestos in excess of 0.1 fibres per cm <sup>3</sup> as an 8-hour time-weighted average. This single limit for all forms of asbestos replaces separate limits for amphiboles and chrysotile.	Regulations 2(1) (definition of control limit) and 11	Secretary of State
Article 9	Provisions relating to the adaptation of the Directive to technical progress.	Not applicable	Not applicable
Article 10(1)	Requires that in circumstances where the control limit (in Article 8) is exceeded reasons are identified and appropriate measures are	Regulation 11(5)	Secretary of State

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
	taken to remedy the situation as soon as possible.		
Article 10(2)	Requires determination of asbestos in air concentrations to ensure measures taken are effective.	Regulation 11(5)	Secretary of State
Article 10(3)	Provides that where exposure cannot be reduced by other means, then Respiratory Protective Equipment (RPE) should be used, but that this should be kept to a minimum. Requires the provision of appropriate breaks from working with RPE where necessary in consultation with workers and/or their representatives.	Regulation 11. This is supported by an ACoP which draws attention to the need to comply with the Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State. For ACoP, the HSE with the consent of the Secretary of State.
Article 11	Requires employers to take necessary steps to identify materials containing asbestos before carrying out demolition or maintenance work.	Regulation 5	Secretary of State
Article 12	Requires employers to put in place measures to protect workers from the spread of asbestos dust outside the premises or worksite.	Regulation 16	Secretary of State
Article 13(1)	Requires a plan of work to be drawn up before demolition work or work	Regulation 7	Secretary of State

Article	Objective	Implementation	Responsibility
	removing asbestos and/or asbestos-containing products from buildings, structures, plant or installations or from ships is started.		
Article 13(2)	Sets out the measures which must be prescribed in the plan of work referred to in Article 13(1) and also the information which the competent authorities may request to be in the plan.	Regulation 7	
Article 13(3)	Requires the plan of work to be notified to enforcement authorities when requested.	Covered by s.20(2)(k) of the Health and Safety at Work etc. Act 1974	Secretary of State
Article 14	Requires employers to provide appropriate training for all workers who are likely to be exposed to asbestos. Training to be provided at regular intervals, be sufficient to provide the necessary knowledge and skills and must cover certain elements.	Regulation 10	Secretary of State
Article 15	Requires firms carrying out demolition or removal work to provide evidence of their ability to do so.	Regulation 8 for licensable work with asbestos. For non-licensable work with asbestos regulations 10(1)(b)	Secretary of State. For ACoP, the HSE with the consent of the Secretary of

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
		and 7 supported by ACoP.	State
Article 16	Prescribes the demarcation of asbestos work areas, the facilities and equipment to be provided with these areas and the activities limited within them.	Regulations 14, 18 and 23	Secretary of State
Article 17(1)	Prescribes the information to be given to workers and/or their representatives.	Regulation 10 and Safety Representatives and Safety Committee Regulations 1977 and the Health and Safety (Consultation with Employees) Regulations 1996.	Secretary of State
Article 17(2)	Requires the provision of information to workers should the control limit be exceeded.	Regulations 2(1) (definition of control limit), 10(2)(c) and 11(5)(b)).	Secretary of State
Article 18(1) and (2)	Subject to Article 3(3) requires an assessment of workers health prior to work with asbestos.	Regulation 22(1), (2) and (3).	Secretary of State
Article 18(3) and (4)	Requires continuing medical surveillance if the doctor or authority responsible considers it necessary.	Regulation 22(9)	Secretary of State
Article 19(1) and (2)	Subject to Article 3(3), requires records of exposure to asbestos to be made.	Regulations 19(3) and 22	Secretary of State
Article	Amended by Directive	Regulation 19(4) and	Secretary of

<b>Article</b>	<b>Objective</b>	<b>Implementation</b>	<b>Responsibility</b>
19(3)	2003/18/EC by increasing the length of time an employer must keep the record from 30 to 40 years.	22(1)(b)	State
Article 19(4)	Requires that the medical records be made available to the responsible authority in cases where an undertaking ceases trading.	Regulation 22(8)(c)	Secretary of State
Article 20	Requires MS to provide for adequate sanctions in the event of breach of the requirements of the Directive.	Sanctions for breaches of health and safety law are dealt with under the Health and Safety at Work etc. Act 1974.	Secretary of State
Article 21	Requires MS to keep a register of recognised cases of asbestosis and mesothelioma.	Mesothelioma and asbestosis death records are supplied to HSE electronically by the Office for National Statistics (ONS) - for deaths in England and Wales - and the National Records of Scotland (NRS) - for Scottish deaths.  HSE maintains registers of this information and has records of reports made under disease reporting requirements.	HSE
Annex I	Sets out practical recommendations for the clinical assessment of workers (Article 18(2)).	These are practical recommendations so there is no need for implementation as	HSE

Article	Objective	Implementation	Responsibility
		such. However, the provisions carried forward in regulation 22 covers health examination in overall terms and this is supplemented by guidance for doctors issued by HSE.	

## Annex 2

### Scrutiny History

1. Council Directive 83/477/EEC (on the protection of workers from the risks related to exposure to asbestos at work). Explanatory Memoranda (EM) under scrutiny reference 9953/80 were submitted by the Department of Employment in November 1980, on 15 October 1981 and 14 May 1981. A further EM was submitted under scrutiny reference 10664/82 on 29 November 1982. The proposal was considered by the House of Lords Select Committee on the European Communities in its Seventeenth Report of Session 1980-81 and by the House of Commons Select Committee on European Legislation in its First and Eighth Reports of Session 1980-81. The proposal was subsequently debated, together with a proposal for a Council Directive on the marketing and use of asbestos (5682/80), by the House of Lords on 14 May 1981 and by the House of Commons on 22 October 1981.
2. A further EM, under the original scrutiny reference 9953/80, was submitted by the Department of Employment on 14 April 1983. It was considered by the House of Commons Select Committee on 20 April 1983 (Sixteenth Report of Session 1982-83) when they recommended further consideration in Standing Committee, and again on 27 July 1983 (Final Report of Session 1983-84) when they confirmed their recommendation for further consideration, but agreed that this should not hold up adoption by the Council.
3. Updating EM's under references 10664/82 and 9369/82 were submitted by the Department of Employment on 3 November 1983. The House of Lords Select Committee cleared both Memoranda on 14 November 1983. They were debated in the House of Commons on 8 November 1983.
4. Council Directive 91/382/EEC (amending 83/477/EEC). An EM under scrutiny reference 6895/90 was submitted by the Department of Employment on 16 July 1990. The House of Lords Select Committee referred the proposal to Subcommittee C on 23 July 1990 and it was subsequently cleared without report (Progress of Scrutiny, 30 October 1990). The House of Commons Select Committee reported on 19 July 1990 (Thirtieth Report of Session 1989-90) that the proposal raised questions of political importance but made no recommendations for further consideration.
5. An updating EM under reference 9935/90 was submitted by the Department of Employment on 15 January 1991. On 21 January 1991, the Chairman of the House of Lords Select Committee on the European Communities' sift (700th) cleared the EM (Progress of Scrutiny, 5 February 1991). It was cleared by the House of Commons Select Committee on 23 January 1991 (Seventh Report of Session 1990-91).
6. Commission communication concerning the results of the assessment provided for in the Council Directive on the protection of workers from the risks related to exposure to asbestos at work. An EM under scrutiny reference 9793/96 was submitted by the Department of the Environment on 4 October 1996. On 24 October 1996, the Chairman of the House of Lords Select Committee on the European Communities' sift

(899th) cleared the EM. It was cleared by the House of Commons Select Committee on 30 October 1996 (First Report of Session 96/97).

7. Council Directive 90/394/EEC (on the protection of workers from the risks related to exposure to carcinogens at work). An EM under scrutiny reference 8397/89 was submitted by the Department of Employment on 10 October 1989. The House of Lords Select Committee decided that the proposal did not require further consideration by the House (16 October 1989). The House of Commons Select Committee considered that the proposal was legally and politically important, but not for debate (Thirty-fourth Report, published 18 October 1989). An updating EM under reference 6594/90 was submitted on 14 June 1990. On 18 June 1990, the Chairman of the House of Lords Select Committee on the European Communities' sift (683rd) cleared the EM (Progress of Scrutiny, 10 July 1990). It was cleared by the House of Commons Select Committee as not for debate on 20 June 1990 (Twenty-sixth Report of Session 1989-90).

8. The next development was the initiation of the 2003 amendment whose transposition led to a reasoned opinion against the UK in 2011. On 27 July 2001, the EC formally published for discussion its proposal to amend the Asbestos Worker Protection Directive. An Explanatory Memorandum (EM) (COM (2000) 417 final) covering the UK negotiating line on the adopted proposal was submitted to the Lords and Commons European Scrutiny Committees on 11 October. The EM was cleared by the Lords Sub-Committee on 17 October 2001 (sift 1077<sup>th</sup>) and by the Commons European Scrutiny Committee on 5 December 2001 (Ninth report - Session 2001 - 02 reference 22701). The proposed UK negotiating position strongly supported the objective of the proposed Directive but identified a number of minor reservations on the detail of the proposal to be addressed during negotiations in the Council's Social Question Working Group (SQWG).

9. Following further discussions in Europe, on 23 September 2002 the Council adopted its common position unanimously and this was re-submitted to the EP for second reading. On 17 December 2002, the European Parliament adopted three amendments at second reading to the Council's common position. Directive (2003/18/EC) amending 83/477/EEC was finally adopted on 18 February 2003 and published in the Official Journal of the European Communities on 15 April 2003 (L97/48). The Directive had to be transposed into UK legislation by 15 April 2006.

10. The changes were transposed by the Control of Asbestos Regulations 2006. The most contentious issue arising from the Directive during the development of the regulations was the removal of work on textured decorative coatings from the scope of licensed work on grounds of demonstrated low risk as measured by low fibre levels during the work. This gave rise to concerns from some that Article 3 in the directive was unclear and so as transposed risked being unclear. Despite these concerns, the way in which the "sporadic and low intensity" derogation has been implemented in regulation 3(2) was justified at the time in terms of the clarity it provided. What was key in deciding whether or not exposure is sporadic and of low intensity was the nature and degree of exposure rather than the precise detail of how that exposure may arise. As a result, it was said that whether or not the materials are friable, deteriorated or degraded should be assessed on the basis of the extent of risk of release of asbestos fibres in relation to the condition of the materials. To aid clarity a peak maximum

fibre level in air was incorporated into guidance. Copy out was not used. A complaint was made to the EC from within the UK which it eventually upheld in a reasoned opinion in February 2011.

### Summary

11. The original Directive and its subsequent amendments were all subject to standard scrutiny procedures applicable at the time. The 2006 Control of Asbestos Regulations have been scrutinised by both the Merits Committee and the Joint Committee on Statutory Instruments and our records indicate no matters of concern have been drawn to the attention of either Houses of Parliament, though the Regulations were drawn to the special attention of the House on the ground that they give rise to issues of public policy likely to be of interest to the House.

Please see

<http://www.publications.parliament.uk/pa/ld200506/ldselect/ldmerit/263/26303.htm>