

EXPLANATORY MEMORANDUM TO
THE CARCINOGENS AND MUTAGENS (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2020

2020 No. 40

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is

- to protect workers, and seafarers who are not workers, on United Kingdom ships from the risk of harm from exposure to carcinogenic or mutagenic substances at work;
- to ensure an equivalent level of protection for workers on ships and seafarers who are not workers, as for workers ashore; and
- to increase protections for those coal mine workers who work below ground in relation to exposure to one carcinogen, namely respirable crystalline silica dust (RCS dust).

2.2 The instrument transposes Directive 2017/2398/EC, which amends Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of regulations 1 to 6 (affecting merchant shipping and fishing vessels), is the United Kingdom.

4.2 The territorial application of this instrument, in relation to workers on ships, is all United Kingdom ships whether in the United Kingdom or anywhere else in the world, and all workers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. To the extent that a non-United Kingdom ship may be inspected to ascertain whether the standards required in relation to United Kingdom ships are met and other measures may be imposed where such standards are not met, the instrument also applies to non-UK ships when in UK waters.

- 4.3 The territorial extent of regulation 7 (affecting mines), is Great Britain.
- 4.4 The territorial application of this instrument, in relation to mines, is Great Britain, and any premises and activities specified in the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013 (S.I. 2013/240). Northern Ireland has its own legislation concerning mines.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Council Directive 89/391/EEC (the “Framework Directive”) introduced general measures to encourage improvements in the safety and health of workers at work and was implemented for the maritime sector by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) (“the General Duties Regulations”).
- 6.2 Council Directive 2004/37/EC (“the Carcinogens and Mutagens Directive”) (the sixth individual Directive within the meaning of Article 16(1) of the Framework Directive) is a consolidating Directive which consolidates and replaces Directive 1990/394/EEC (as amended by Directive 1997/42/EC and Directive 1999/38/EC) which introduced minimum safety and health requirements for the protection of workers from the risks related to exposure to carcinogens and mutagens at work.
- 6.3 The Carcinogens and Mutagens Directive builds on the general health and safety provisions of the Framework Directive and sets down occupational exposure limit values for a number of carcinogens and mutagens. It was implemented for the protection of workers on United Kingdom ships (and, in certain respects, non-UK ships when in UK waters), by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 (S.I. 2007/3100) (“the 2007 Regulations”). The 2007 Regulations include a list of substances and processes to which the definition of “carcinogen” relates and a table of “limit values” i.e. the maximum exposure to a carcinogen or mutagen which is permitted. Where a duty is owed by an employer to a worker on a ship in respect of a risk concerning workplace health and safety provided for in the 2007 Regulations, and at least one seafarer who is not a worker (e.g. a self-employed seafarer) is exposed to that risk, a duty is imposed in respect of seafarers who are not workers by regulation 13A of the General Duties Regulations. In such cases, the shipowner must, so far as reasonably practicable and appropriate, ensure that any action taken to discharge a relevant duty as regards workers is also taken as regards seafarers who are not workers.
- 6.4 In this Memorandum, where the term “workers on ships” is used, the same applies for seafarers who are not workers but who are to be afforded the same levels of protection as workers by virtue of Regulation 13A of the General Duties Regulations. A “seafarer” is any person who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship.
- 6.5 For all other workers, in Great Britain the Carcinogens and Mutagens Directive was implemented as part of the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677) (“the COSHH Regulations”). Occupational exposure limit values are implemented by the COSHH Regulations via the approved workplace

exposure limits (WELs) set down in the Health and Safety Executive's ("HSE") publication EH40/2005 Workplace Exposure Limits¹ ("EH40").

- 6.6 In relation to underground mining, Council Directive 92/104/EEC introduced minimum requirements for improving the safety and health protection of workers in surface and underground mineral extracting industries. Council Directive 92/104/EEC was implemented by the Mines Regulations 2014 (S.I 2014/3248) ("the Mines Regulations").

7. Policy background

What is being done and why?

- 7.1 The policy objective of the Carcinogens and Mutagens Directive is to protect the health of workers from the risks arising from exposure to carcinogens and mutagens at work. The 2007 Regulations require employers to identify which of their employees may be at risk from carcinogens and mutagens, to assess the degree of risk and to introduce reasonably practicable measures to eliminate or minimise the risk.
- 7.2 Exposure to carcinogens can lead to a variety of diseases including cancer. Carcinogens can take many forms. For example, dust from hardwoods and used engine oil are both carcinogenic.
- 7.3 Exposure to mutagens can lead to genetic damage. No detailed information on the effects of such exposure in relation to the maritime sector or the mines sector is available.
- 7.4 Directive 2017/2398/EU amends the Carcinogens and Mutagens Directive to add work involving respirable crystalline silica dust generated by a work process to the list of substances and processes to which the definition of carcinogen relates and to update the table of limit values. It also introduces a requirement that, where the doctor or health surveillance provider recommends that health surveillance for workers extends beyond the end of exposure to a carcinogen or mutagen, the employer must provide health surveillance for as long as recommended.
- 7.5 The instrument updates the 2007 Regulations to fully implement these amendments to the Directive. This will ensure that workers on ships have the same level of protection as workers ashore who are protected by the COSHH Regulations. In addition, the instrument inserts a review clause in the 2007 Regulations, requiring that the regulations are reviewed at five-yearly intervals.
- 7.6 The instrument also updates the Mines Regulations to implement the new European limit value of 0.1 mg/m³ for RCS dust below ground in coal mines. There is already an established workplace exposure limit (WEL) for RCS dust in Great Britain of 0.1mg/m³ but that WEL is dis-applied below ground in coal mines by the Mines Regulations. Under the Mines Regulations, an exposure level of up to 0.3mg/m³ is permitted below ground in coal mines and remedial action is required to be taken above this level.

¹ <https://www.hse.gov.uk/pubns/books/eh40.htm>. This document is available from the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS.

7.7 The instrument amends the Mines Regulations to remove the disapplication of the RCS dust WEL. The WEL for RCS dust under the COSHH Regulations will therefore apply below ground in coal mines. The various requirements of the COSHH Regulations apply to “substances hazardous to health”, which are defined in the COSHH Regulations as (among other things) substances for which HSE has approved a WEL. All of the other requirements under the COSHH Regulations will therefore apply in relation to RCS dust below ground in coal mines. The Mines Regulations are also amended to remove all references to RCS dust so that remedial action will no longer be required for RCS dust under the Mines Regulations, to simplify the regulatory framework. The removal of the disapplication does not reduce existing health and safety standards in relation to RCS dust, indeed it enhances the protections of coal miners’ health. The Mines Regulations already contain a review clause.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not relevant.

10. Consultation outcome

10.1 Initial discussions with the National Maritime Health and Safety Committee (which consists of representatives of shipowners and seafarer unions) identified no particular difficulties in implementing the proposed amendments for the maritime sector.

10.2 Public consultation took place in October and November 2019. More than 50 organisations representing all sectors of the shipping industry were notified of the consultation and the consultation documents were published on www.gov.uk for 5 weeks. The devolved administrations were also notified of the public consultation. Only one written response was received, which did not require changes to the Regulations; it related to supporting guidance. The proposals were discussed again by the National Maritime Health and Safety Committee on 3 December 2019 and the Committee confirmed its support for the Regulations as proposed.

10.3 HSE publicly consulted on the changes for four weeks. The consultation began 4 November and ended 2 December 2019. The consultation letter, questionnaire, consultation-stage Impact Assessment and draft proposal for changes to the Mines Regulations were sent to all relevant mine operators, trade unions and trade associations (43 in total including eight producing coal mines). The consultation letter and questionnaire were also published on HSE’s website.

10.4 Eleven responses were received, three from underground coal mines (two operational, one planned), three from professional bodies / trade associations and six from public sector / other. Consultees were asked about current exposure levels, whether they would need to make any changes to comply with the limit, and any associated costs. No significant additional costs were identified. An analysis of consultation responses is available on HSE’s website.

11. Guidance

- 11.1 Guidance on the 2007 Regulations is published as MGN 356 (M+F)². In addition, the Code of Safe Working Practice for Merchant Seafarers³ the handbook for health and safety on all UK ships (where carriage is mandatory) and many non-UK ships, includes, in Chapter 21, guidance on working with hazardous substances, including carcinogens which gives guidance on compliance with the Regulations. Both sets of guidance will be updated to reflect the requirements introduced by this instrument and will be available on www.gov.uk.
- 11.2 EH40, which sets down WELs, and the HSE's published Guidance on the Mines Regulations 2014 (L149)⁴ will also be updated. The revised L149 guidance will give practical advice on how to comply with the Mines Regulations and more specifically the COSHH Regulations in relation to RCS dust below ground in coal mines.

12. Impact

- 12.1 An Impact Assessment has not been prepared for this instrument insofar as it relates to workers on ships, because the instrument is not expected to have any significant impact, for the following reasons:
- (a) Most of the substances for which limit values have been introduced or amended by the instrument are unlikely to be present on ships other than as bulk or packaged cargo, the carriage of which is regulated by International Maritime Organisation codes concerning the transport of hazardous goods which minimise the risk of exposure (e.g. the International Maritime Dangerous Goods Code and International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk⁵, which are implemented in domestic law by regulations such as the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 (S.I. 1997/2367)). The exceptions are hydrazine and RCS dust. However:
 - (i) Hydrazine is a liquid used as an oxygen scavenger in boiler water treatment systems but it comes in drums with dosing equipment attached to the drum, so the risk of exposure is minimal.
 - (ii) RCS dust may be created by sanding down marine paints which contain quartz. Existing best practice is promulgated in Chapter 25 of the UK's Code of Safe Working Practices for Merchant Seafarers⁶, is to minimise the creation of dust by wetting the surfaces to be sanded, and to wear respiratory protection. This recognises the risks from breathing

² <https://www.gov.uk/government/publications/mgn-356-merchant-shipping-and-fishing-vessels-health-and-safety-at-work-carcinogens-mutagens-regulations-2007>. This document is available from the Maritime and Coastguard Agency Headquarter, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

³ <https://www.gov.uk/government/publications/code-of-safe-working-practices-for-merchant-seafarers-2019>. This document is available from the Maritime and Coastguard Agency Headquarter, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

⁴ <https://www.hse.gov.uk/pubns/books/l149.htm>. This document is available from the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS.

⁵ Available for view by appointment at the Maritime and Coastguard Agency Headquarters, Spring Place, 105 Commercial Road, Southampton SO15 1EG or for purchase from the International Maritime Organisation <http://www.imo.org/en/Publications/Pages/Home.aspx>.

⁶ <https://www.gov.uk/government/publications/code-of-safe-working-practices-for-merchant-seafarers-2019>. This document is available from the Maritime and Coastguard Agency Headquarter, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

paint dust (due to lead content etc). The Code of Safe Working Practices for Merchant Seafarers is produced by the Maritime and Coastguard Agency in consultation with UK shipowner and seafarer organisations and sets the benchmark for health and safety practice on UK ships.

- (b) There is already a requirement in the UK under the COSHH Regulations for health surveillance to continue after exposure has ended, where this is recommended by the doctor or company responsible for health surveillance. As this is existing practice in the UK, extending the requirement to workers on ships is unlikely to impose a new burden on shipowners.
- 12.2 HSE have prepared an Impact Assessment for the part of the instrument that amends the Mines Regulations 2014. HSE do not expect there to be any additional costs for coal mine operators below ground to comply with the changes. The new European limit value for RCS dust of 0.1 mg/m³ is the same as the current WEL that applies in Great Britain in all workplaces other than below ground in coal mines and so in that respect businesses would not be expected to do anything additional to what they should be doing now to reduce workers' exposure to RCS dust.
- 12.3 HSE does not expect significant additional costs to businesses operating below ground in coal mines. Evidence gathered, including the public consultation, indicates that these businesses are already operating within the new limit for RCS dust and will not need to take additional control measures.
- 12.4 Familiarisation costs should be minimal. The WEL system is already well established in Great Britain and businesses should not need to spend time determining further measures to control exposures, as they are already compliant.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is based around risk assessment and leaves any affected company free to determine how to address the risks to health and safety. However, in principle workers on ships should have the same level of protection from risks to their health and safety regardless of whether they work for a large or a small business.
- 13.3 The Mines Regulations 2014 apply to small and micro businesses and this instrument is not expected to impact disproportionately upon them. The hazards related to mining (including exposure to RCS dust) exist regardless of the size of the mine. Placing these mines outside the scope would mean they might not benefit from the enhanced protection of coal miners' health.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to consult the National Maritime Occupational Health and Safety Committee on the implementation in the light of experience.
- 14.2 This instrument inserts a review clause in the 2007 Regulations, so that both the 2007 Regulations and the Mines Regulations 2014 have a statutory requirement to review them every 5 years. Post Implementation Review reports are published on www.legislation.gov.uk.

15. Contact

- 15.1 Julie Carlton at the Maritime and Coastguard Agency Telephone: 020 3817 2498 or email: Julie.Carlton@mcga.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Stewart McEwen at the Health and Safety Executive can answer any questions regarding the Mines Regulations 2014 Tel:020 3028 3271 or email: stewart.mcewen@hse.gov.uk
- 15.3 Ajit Jacob, Deputy Director for Seafarer Services at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Nusrat Ghani, Minister for Shipping, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.