STATUTORY RULES OF NORTHERN IRELAND

2012 No. 179

HEALTH AND SAFETY

The Control of Asbestos Regulations (Northern Ireland) 2012

Made - - - -	*25th April 2012*
Coming into operation	*28th May 2012*

The Department of Enterprise, Trade and Investment [F1], being the Department concerned [F2] makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [F3] ("the 1972 Act") and Articles 17(1) to (6) [F4], 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 [F5] ("the 1978 Order").

The Department was designated [F6] for the purposes of section 2(2) of the 1972 Act in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and persistent organic pollutants, dangerous substances, preparations and chemicals.

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A) [F7] of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3) [F8] of the 1978 Order.

F1 Formerly the Department of Economic Development; *see*S.I. 1999/283 (N.I. 1), **Article 3(5)**; that Department was formerly the Department of Manpower Services; *see*S.I. 1982/846 (N.I.11), **Article 3**.

F2 *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)

F3 1972 c.68

F4 Article 17 shall be read with S.I. 1992/1728 (N.I.17), **Articles 3(2)** and 4(2)

F5 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), **Articles 3(1)** and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), **Article 6(1)** and Schedule 1, paragraph 19

F6 *See* S.I. 1976/897 for the designation in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and S.I. 2007/1349 in relation to persistent organic pollutants, dangerous substances, preparations and chemicals

F7 Article 13(1A) was substituted by S.I. 1998/2795 (N.I. 18), **Article 4**

F8 Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), **Article 6(1)** and Schedule 1, paragraphs 8 and 18

PART 1

PRELIMINARY

Citation and Commencement

1. These Regulations may be cited as the Control of Asbestos Regulations (Northern Ireland) 2012 and shall come into operation on 28th May 2012.

Interpretation

2.—(1) In these Regulations—

"adequate" means adequate having regard only to the nature and degree of exposure to asbestos, and "adequately" shall be construed accordingly;

"appointed doctor" means a registered medical practitioner appointed for the time being in writing by the Executive for the purpose of these Regulations;

"approved" means approved for the time being in writing by the Executive;

"asbestos" means the following fibrous silicates—

(a) asbestos actinolite, CAS No 77536-66-4;

(b) asbestos grunerite (amosite) CAS No 12172-73-5;

(c) asbestos anthophyllite, CAS No 77536-67-5;

(d) chrysotile, CAS No 12001-29-5 or CAS No 132207-32-0;

(e) crocidolite, CAS NO 12001-28-4; and

(f) asbestos tremolite, CAS No 77536-68-6,

and references to "CAS" followed by a numerical sequence are references to CAS Registry Numbers assigned to chemicals by the Chemical Abstracts Service, a division of the American Chemical Society;

"asbestos cement" means a material which is predominantly a mixture of cement and chrysotile and which when in a dry state absorbs less than 30% water by weight;

"asbestos coating" means a surface coating which contains asbestos for fire protection, heat insulation or sound insulation but does not include textured decorative coatings;

"asbestos insulating board" (AIB) means any flat sheet, tile or building board consisting of a mixture of asbestos and other material except—

(a) asbestos cement; or

(b) any article of bitumen, plastic, resin or rubber which contains asbestos, and the thermal or acoustic properties of that article are incidental to its main purpose;

"asbestos insulation" means any material containing asbestos which is used for thermal, acoustic or other insulation purposes (including fire protection) except—

(a) asbestos cement, asbestos coating or asbestos insulating board; or

(b) any article of bitumen, plastic, resin or rubber which contains asbestos and the thermal and acoustic properties of that article are incidental to its main purpose;

"the control limit" means a concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method, or by a method giving equivalent results to that method approved by the Executive, of 0.1 fibres per cubic centimetre of air averaged over a continuous period of 4 hours;

"control measure" means a measure taken to prevent or reduce exposure to asbestos (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, and the provision and use of engineering controls and personal protective equipment);

"emergency services" include—

(a) Police, Fire, Rescue and Ambulance services;

(b) Her Majesty's Coastguard;

"employment medical adviser" means an employment medical adviser appointed under article 48(3) of the 1978 Order [F9];

"enforcing authority" means the Executive or district council, determined in accordance with the provisions of the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 [F10];

"the Executive" means the Health and Safety Executive for Northern Ireland;

"ISO 17020" means European Standard EN ISO/IEC 17020, "General criteria for the operation of various types of bodies performing inspection" as revised or reissued from time to time and accepted by the Comit Europen de Normalisation Electrotechnique (CEN/CENELEC) [F11];

"ISO 17025" means European Standard EN ISO/IEC 17025, "General requirements for the competence of testing and calibration laboratories" as revised or reissued from time to time and accepted by the Comit Europen de Normalisation Electrotechnique (CEN/CENELEC) [F12];

"licensable work with asbestos" is work—

(a) where the exposure to asbestos of employees is not sporadic and of low intensity; or

(b) in relation to which the risk assessment cannot clearly demonstrate that the control limit will not be exceeded; or

(c) on asbestos coating; or

(d) on asbestos insulating board or asbestos insulation for which the risk assessment—

  (i) demonstrates that the work is not sporadic and of low intensity; or

  (ii) cannot clearly demonstrate that the control limit will not be exceeded; or

  (iii) demonstrates that the work is not short duration work;

"medical examination" includes any laboratory tests and X-rays that a relevant doctor may require;

"personal protective equipment" means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to that person's health, and any addition or accessory designed to meet that objective;

"relevant doctor" means an appointed doctor or an employment medical adviser. In relation to work with asbestos which is not licensable work with asbestos and is not exempted by regulation 3(2) "relevant doctor" also includes an appropriate fully registered medical practitioner who holds a licence to practise;

"risk assessment" means the assessment of risk required by regulation 6(1)(a);

"territorial sea" means the territorial sea of the United Kingdom adjacent to Northern Ireland and "within the territorial sea" includes on, over and under it;

"textured decorative coatings" means decorative and textured finishes, such as paints and ceiling and wall plasters which are used to produce visual effects and which contain asbestos. These coatings are designed to be decorative and any thermal or acoustic properties are incidental to their purpose; and

"the 1997 WHO recommended method" means the publication "Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)", WHO (World Health Organisation), Geneva 1997 [F13].

(2) A reference to work with asbestos in these Regulations shall include—

(a) work which consists of the removal, repair or disturbance of asbestos or materials containing asbestos;

(b) work which is ancillary to such work; and

(c) supervision of such work and such ancillary work.

(3) For the purposes of these Regulations, work with asbestos is not "short duration work" if, in any seven day period—

(a) that work, including any ancillary work liable to disturb asbestos, takes more than two hours; or

(b) any person carries out that work for more than one hour.

(4) For the purposes of these Regulations, no exposure to asbestos will be sporadic and of low intensity if the concentration of asbestos in the atmosphere, when measured in accordance with the 1997 WHO recommended method or by a method giving equivalent results to that method and approved by the Executive, exceeds or is liable to exceed the concentration approved in relation to a specified reference period approved for the purposes of this paragraph by the Executive.

(5) For the purposes of these Regulations, except in accordance with regulation 11(3) and (5), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.

(6) In these Regulations the provisions of Appendix 7 to Annex XVII of the REACH Regulations [F14], which determine the labelling requirements of articles containing asbestos, are reproduced in Schedule 2 (with minor changes reflecting the practical implementation of the requirements).

(7) The Interpretation Act (Northern Ireland) 1954 [F15] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F9 Article 48(3) was amended by S.I. 1998/2795 (N.I.18), **Article 5**

F10 S.R. 1999 No 90, as amended by S.R. 2000 No. 375, S.R. 2003 No. 33, S.R. 2006 No. 205, S.R. 2006 No. 425, S.R. 2007 No. 31, S.R. 2007 No. 291 and S.R. 2009 No. 238

F11 The most recent version is Reference number EN ISO/IEC 17020: 2004, accepted by CEN/CENELEC on 15th July 2004

F12 The most recent version is Reference number EN ISO/IEC 17025: 2005, accepted by CEN/CENELEC on 15th March 2005

F13 ISBN 92 4 154496 1

F14 OJ No L396 30.12.2006,p840

F15 1954 c. 33 (N.I.)

Application

3.—(1) These Regulations shall apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee.

(2) Regulations 9 (notification of work with asbestos), 18(1)(a) (designated areas) and 22 (health records and medical surveillance) do not apply where—

(a) the exposure to asbestos of employees is sporadic and of low intensity; and

(b) it is clear from the risk assessment that the exposure to asbestos of any employee will not exceed the control limit; and

(c) the work involves—

(i) short, non-continuous maintenance activities in which only non-friable materials are handled; or

(ii) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix; or

(iii) encapsulation or sealing of asbestos-containing materials which are in good condition; or

(iv) air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos.

(3) Where a duty is placed by these Regulations on an employer in respect of employees of that employer, the employer is, so far as is reasonably practicable, under a like duty in respect of any other person, whether at work or not, who may be affected by the work activity carried out by that employer except that the duties of the employer—

(a) under regulation 10 (information, instruction and training) shall not extend to persons who are not employees of that employer unless those persons are on the premises where the work is being carried out; and

(b) under regulation 22 (health records and medical surveillance) shall not extend to persons who are not employees of that employer.

(4) Regulation 17 (cleanliness of premises and plant), to the extent that it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to—

(a) the Northern Ireland Fire and Rescue Service Board within the meaning of article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006 [F16], in respect of premises attended by its employees for the purpose of fighting a fire or in an emergency; 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 for the purposes of this paragraph "ship" includes all vessels and hovercraft which operate on water or land and water, and "dock premises" means a 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) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master, and for the purposes of this paragraph "ship" includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy.

F16 S.I. 2006/1254 (N.I. 9) and S.R. 2006 No. 257 (C. 15)

PART 2

GENERAL REQUIREMENTS

Duty to manage asbestos in non-domestic premises

4.—(1) In this regulation "the dutyholder" means—