STATUTORY RULES OF NORTHERN IRELAND

2007 No. 31

HEALTH AND SAFETY

The Control of Asbestos Regulations (Northern Ireland) 2007

Made - - - -	*22nd January 2007*
Coming into operation	
All Regulations except regulation 20(4)	*1st March 2007*
Regulation 20(4)	*6th April 2007*

The Department of Enterprise, Trade and Investment(**1**), being the Department concerned(**2**) makes the following Regulations in exercise of the powers conferred on it by 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(**3**) ("the 1978 Order"). It is a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**4**) in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations(**5**), and persistent organic pollutants, dangerous substances, preparations and chemicals(**6**). The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A)(**7**) of the 1978 Order after the Executive had carried out consultations in accordance with Article 46(3)(**8**) of the 1978 Order.

(**1**) Formerly the Department of Economic Development, *see* S.I. 1982/846 (N.I. 11), Article 3 and S.I. 1999/283 (N.I. 1), Article 3(5)
(**2**) *See* Article 2(2) of S.I. 1978/1039 (9)
(**3**) 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 2, paragraph 19
(**4**) 1972 c. 68; the enabling powers conferred by section 2(2) were extended by virtue of section 1 of the European Economic Area Act 1993 (c. 51)
(**5**) S.I. 1976/897
(**6**) S.I. 2006/608
(**7**) Article 13(1) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
(**8**) 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) 2007 and shall come into operation on 1st March 2007, except regulation 20(4) which shall come into operation on 6th April 2007.

Interpretation

2.—(1) In these Regulations

"adequate" means adequate having regard only to the nature and degree of exposure to asbestos;

"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;

(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;

"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;

"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 (**9**);

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

(**9**) 1999 No 90, as amended by S.R. 2003 No. 33

"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 Comité Européen de Normalisation Electrotechnique (CEN/CENELEC)(**10**);

"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 Comité Européen de Normalisation Electrotechnique (CEN/CENELEC)(**11**);

"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 his health, and any addition or accessory designed to meet that objective;

"relevant doctor" means an appointed doctor or an employment medical adviser;

"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.

"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(**12**);

(2) 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.

(3) 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.

(4) The Interpretation Act (Northern Ireland) 1954(**13**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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) Subject to paragraph (3), regulations 8 (licensing), 9 (notification of work with asbestos), 15(1) (arrangements to deal with accidents, incidents and emergencies), 18(1)(a) (asbestos areas) and 22 (health records and medical surveillance) shall not apply where—

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

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

(c) the work involves—

(i) short, non-continuous maintenance activities;

(**10**) The most recent version is Reference number EN ISO/IEC 17020: 2004, accepted by CEN/CENELEC on 15th July 2004
(**11**) The most recent version is Reference number EN ISO/IEC 17025: 2005, accepted by CEN/CENELEC on 15th March 2005
(**12**) ISBN 92 4 154496 1
(**13**) 1954 c. 33 (N.I.)

(ii) removal of materials in which the asbestos fibres are firmly linked in a matrix;

(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) No exposure to asbestos will be sporadic and of low intensity within the meaning of paragraph (2)(a) 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 approved by the Executive exceeds or is liable to exceed the concentration approved in relation to the specified reference period approved for the purposes of this paragraph by the Executive.

(4) Where a duty is placed by these Regulations on an employer in respect of his employees, he shall, so far as is reasonably practicable, be 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 the employer except that the duties of the employer—

(a) under regulation 10 (information, instruction and training) shall not extend to persons who are not his employees 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 his employees.

(5) Regulation 17, insofar as it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to—

(a) the fire and rescue authority for Northern Ireland within the meaning of article 3 of the Fire and Rescue Services (Northern Ireland) Order 2006(**14**), 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 in 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.

(6) 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.

PART 2

GENERAL REQUIREMENTS

Duty to manage asbestos in non-domestic premises

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

(a) every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access thereto or egress therefrom; or

(**14**) S.I. 2006/1254 (9) and S.R. 2006 No. 257 (C. 15)

(b) in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access thereto or egress therefrom,

and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

(2) Every person shall co-operate with the dutyholder so far as is necessary to enable the dutyholder to comply with his duties under this regulation.

(3) In order to enable him to manage the risk from asbestos in non-domestic premises, the dutyholder shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

(4) In making the assessment—

(a) such steps as are reasonable in the circumstances shall be taken; and

(b) the condition of any asbestos which is, or has been assumed to be, present in the premises shall be considered.

(5) Without prejudice to the generality of paragraph (4), the dutyholder shall ensure that—

(a) account is taken of building plans or other relevant information and of the age of the premises; and

(b) an inspection is made of those parts of the premises which are reasonably accessible.

(6) The dutyholder shall ensure that the assessment is reviewed forthwith if—

(a) there is reason to suspect that the assessment is no longer valid; or

(b) there has been a significant change in the premises to which the assessment relates.

(7) The dutyholder shall ensure that the conclusions of the assessment and every review are recorded.

(8) Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder shall ensure that—

(a) a determination of the risk from that asbestos is made;

(b) a written plan identifying those parts of the premises concerned is prepared; and

(c) the measures which are to be taken for managing the risk are specified in the written plan.

(9) The measures to be specified in the plan for managing the risk shall include adequate measures for—

(a) monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;

(b) ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and

(c) ensuring that information about the location and condition of any asbestos or any such substance is—

(i) provided to every person liable to disturb it; and

(ii) made available to the emergency services.

(10) The dutyholder shall ensure that—

(a) the plan is reviewed and revised at regular intervals, and forthwith if—

(i) there is reason to suspect that the plan is no longer valid; or

(ii) there has been a significant change in the premises to which the plan relates;