STATUTORY RULES OF NORTHERN IRELAND

2003 No. 152

HEALTH AND SAFETY

Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003

Made - - - -	*7th March 2003*
Coming into operation	
All regulations except for regulations 5(4)(c), 7, 11, 15(2), 16(2) and 17(1) to (3)	*25th April 2003*
Regulations 15(2) and 16(2)	*30th May 2003*
Regulations 5(4)(c), 7, 11, and 17(1) to (3)	*30th June 2003*

The Department of Enterprise, Trade and Investment(**1**), being the Department concerned(**2**), in exercise of the powers conferred on it by Articles 17(1), (2), (3) and (5)(**3**), 45(1) and (2), 54(1) and 55(2) of, and paragraphs 1(1), (2) and (4), 5, 8, 10, 13, 15, 17, 18 and 19 of Schedule 3 to, the Health and Safety at Work (Northern Ireland) Order 1978(**4**) and of every other power enabling it in that behalf and for the purpose of giving effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland(**5**) under Article 13(1A) of that Order after the carrying out by the said Executive of consultations in accordance with Article 46(3) of that Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Dangerous Substances and Explosive Atmospheres Regulations (Northern Ireland) 2003 and shall come into operation –

(a) as respects all regulations except for regulations 5(4)(c), 7, 11, 15(2), 16(2) and 17(1) to (3) on 25th April 2003;

(**1**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Article 3(5)
(**2**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**3**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2); S.I. 1992/1728 (N.I. 17) was amended by S.I. 1996/275 (N.I. 2), Article 71(1) and Schedule 6
(**4**) 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 47A was inserted by Article 3, and Article 2 was amended by Articles 4 and 8, of S.I. 1997/1774 (N.I. 16)
(**5**) Article 46(1) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18

(b) as respects regulations 15(2) and 16(2) on 30th May 2003; and

(c) as respects regulations 5(4)(c), 7, 11, and 17(1) to (3) on 30th June 2003.

Interpretation

2. In these Regulations –

"approved classification and labelling guide" means the "Approved classification and labelling guide: Chemicals (Hazard Information and Packaging for Supply) Regulations 2002" (5th edition)(**6**) approved by the Executive for use with the CHIP Regulations on 12th November 2002;

"the CHIP Regulations" means the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2002(**7**);

"dangerous substance" means –

(a) a substance or preparation which meets the criteria in the approved classification and labelling guide for classification as a substance or preparation which is explosive, oxidising, extremely flammable, highly flammable or flammable, whether or not that substance or preparation is classified under the CHIP Regulations;

(b) a substance or preparation which because of its physico-chemical or chemical properties and the way it is used or is present at the workplace creates a risk, not being a substance or preparation falling within sub-paragraph (a); or

(c) any dust, whether in the form of solid particles or fibrous materials or otherwise, which can form an explosive mixture with air or an explosive atmosphere, not being a substance or preparation falling within sub-paragraphs (a) or (b);

"explosive atmosphere" means a mixture, under atmospheric conditions, of air and one or more dangerous substances in the form of gases, vapours, mists or dusts in which, after ignition has occurred, combustion spreads to the entire unburned mixture;

"hazard" means the physico-chemical or chemical property of a dangerous substance which has the potential to give rise to fire, explosion, or other events which can result in harmful physical effects of a kind similar to those which can be caused by fire or explosion, affecting the safety of a person;

"offshore installation" has the same meaning as is given by regulation 3 of the Offshore Installations and Pipeline Works (Management and Administration) Regulations (Northern Ireland) 1995(**8**) insofar as that regulation extends to mineral extracting industries within the scope of Article 2(a) of Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling(**9**);

"personal protective equipment" means all equipment 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 safety, and any addition or accessory designed to meet that objective;

"preparation" means a mixture or solution of two or more substances;

"risk" means the likelihood of a person's safety being affected by harmful physical effects being caused to him from fire, explosion or other events arising from the hazardous properties of a dangerous substance in connection with work and also the extent of that harm;

"risk assessment" means the assessment of risks required by regulation 5(1);

(**6**) L131; ISBN 0-7176-2369-6
(**7**) S.R. 2002 No. 301
(**8**) S.R. 1995 No. 340
(**9**) O.J. No. L348, 28.11.92, p. 9

"road" has the meaning assigned to it in Article 2(2) of the Road Traffic (Northern Ireland) Order 1995(**10**);

"safety data sheet" means a safety data sheet within the meaning of regulation 5 of the CHIP Regulations;

"substance" means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour;

"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;

"workplace" means any premises or part of premises used for or in connection with work, and includes –

(a) any place within the premises to which an employee has access while at work; and

(b) any room, lobby, corridor, staircase, road or other place –

(i) used as a means of access to or egress from that place of work, or,

(ii) where facilities are provided for use in connection with that place of work,

other than a road; and

"work processes" means all technical aspects of work involving dangerous substances and includes –

(a) appropriate technical means of supervision,

(b) connecting devices,

(c) control and protection systems,

(d) engineering controls and solutions,

(e) equipment,

(f) materials,

(g) machinery,

(h) plant,

(i) protective systems, and

(j) warning and other communication systems.

Application

3.—(1) These Regulations, apart from regulations 15, 16 and 17(4) and (5), shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal ship-board 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 –

(a) "ship" includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy or an offshore installation; and

(b) the reference to the normal ship-board activities of a ship's crew includes –

(i) the construction, reconstruction or conversion of a ship within territorial limits; and

(ii) the repair of a ship save repair when carried out in dry dock;

(2) Regulations 5(4)(c), 7 and 11 shall not apply to –

(a) areas used directly for and during the medical treatment of patients;

(**10**) S.I. 1995/2994 (N.I. 18)

(b) the use of gas appliances burning gaseous fuel (that is to say, any fuel which is in a gaseous state at a temperature of 15°C under a pressure of 1 bar) which –

(i) are used for cooking, heating, hot water production, refrigeration, lighting or washing; and

(ii) have, where applicable, a normal water temperature not exceeding 105°C,

including forced draft burners and heating bodies to be equipped with such burners but not including an appliance specifically designed for use in an industrial process carried out on industrial premises;

(c) gas fittings within the meaning of the Gas Safety (Installation and Use) Regulations (Northern Ireland) 1997(**11**) located in domestic premises, not being gas appliances falling within sub-paragraph (b);

(d) the manufacture, handling, use, storage and transport of explosives or chemically unstable substances;

(e) any activity at a mine within the meaning of section 156(1) of the Mines Act (Northern Ireland) 1969(**12**) carried out for the purposes of the mine;

(f) any activity at a quarry within the meaning of Article 2(2) of the Quarries (Northern Ireland) Order 1983(**13**) carried out for the purposes of the quarry;

(g) any activity at a borehole site within the meaning of regulation 2(1) of the Borehole Sites and Operations Regulations (Northern Ireland) 1995(**14**) carried out for the purposes of the borehole site;

(h) any activity at an offshore installation carried out for the purposes of the offshore installation; and

(i) the use of means of transport by land, water or air which is regulated by international agreements and the European Community Directives giving effect to them insofar as they fall within the disapplication in Article 1.2.(e) of Council Directive 99/92/EC on minimum requirements for improving the safety and health protection of workers potentially at risk from explosive atmospheres(**15**), except for any means of transport intended for use in a potentially explosive atmosphere.

(3) Regulations 5(2)(f), (g), (h) and (i), 6(4)(d), 6(5)(b) and (e) and 8(1)(d) and (e) and the requirements of paragraphs 5 and 6 of Schedule 1 shall not apply to any activity at an offshore installation carried out for the purposes of the offshore installation.

Duties under these Regulations

4.—(1) 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 carried on by the employer, except that –

(a) the duties of the employer under regulations 6(5)(f) and 7(5) (which relate, respectively, to the provision of suitable personal protective equipment and the provision of appropriate work clothing) shall not extend to persons who are not his employees; and

(b) the duties of the employer under regulations 8 and 9 (which relate, respectively, to dealing with accidents and to provision of information, instruction and training) shall not extend to persons who are not his employees, unless those persons are at the workplace where the work is being carried on and subject to the following, namely, that, in relation to the

(**11**) S.R. 1997 No. 194
(**12**) 1969 c. 6 (N.I.)
(**13**) S.I. 1983/150 (N.I. 4)
(**14**) S.R. 1995 No. 491
(**15**) O.J. No. L23, 28.1.00, p. 57

application of regulation 9 to such persons, regulation 9 shall apply to the extent that is required by the nature and the degree of the risk.

(2) 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 employee.

Risk assessment

5.—(1) Where a dangerous substance is or is liable to be present at the workplace, the employer shall make a suitable and sufficient assessment of the risks to his employees which arise from that substance.

(2) The risk assessment shall include consideration of –

(a) the hazardous properties of the substance;

(b) information on safety provided by the supplier, including information contained in any relevant safety data sheet;

(c) the circumstances of the work including –

(i) the work processes and substances used and their possible interactions;

(ii) the amount of the substance involved;

(iii) where the work will involve more than one dangerous substance, the risk presented by such substances in combination; and

(iv) the arrangements for the safe handling, storage and transport of dangerous substances and of waste containing dangerous substances;

(d) activities, such as maintenance, where there is the potential for a high level of risk;

(e) the effect of measures which have been or will be taken pursuant to these Regulations;

(f) the likelihood that an explosive atmosphere will occur and its persistence;

(g) the likelihood that ignition sources, including electrostatic discharges, will be present and become active and effective;

(h) the scale of the anticipated effects of a fire or an explosion;

(i) any places which are or can be connected via openings to places in which explosive atmospheres may occur; and

(j) such additional safety information as the employer may need in order to complete the risk assessment.

(3) The risk assessment shall be reviewed by the employer regularly so as to keep it up to date and particularly if –

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

(b) there has been a significant change in the matters to which the risk assessment relates including when the workplace, work processes, or organisation of the work undergoes significant changes, extensions or conversions;

and where, as a result of the review, changes to the risk assessment are required, those changes shall be made.

(4) Where the employer employs five or more employees, the employer shall record the significant findings of the risk assessment as soon as is practicable after that assessment is made, including in particular –

(a) the measures which have been or will be taken by him pursuant to these Regulations;

(b) sufficient information to show that the workplace and work processes are designed, operated and maintained with due regard for safety and that, in accordance with the