STATUTORY RULES OF NORTHERN IRELAND

2003 No. 34

HEALTH AND SAFETY

Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003

Made - - - -	*24th January 2003*
Coming into operation	*28th February 2003*

The Department of Enterprise, Trade and Investment(**1**), being the Department concerned(**2**), in exercise of the powers conferred on it by Articles 2(5), 17(1), (2), (3), (4), (5) and (6)(**3**) and 55(2) of, and paragraphs 1(1) to (4), 2(1), 5(1), 7, 8, 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(**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 under Article 13(1A)(**5**) of that Order after the carrying out by the said Executive of consultations in accordance with Article 46(3)(**6**) of that Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 and shall come into operation on 28th February 2003.

Interpretation

2.—(1) In these Regulations–

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978;

"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;

(**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)
(**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 13(1) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
(**6**) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18

"approved classification" of a biological agent means the classification of that agent approved by the Executive;

"approved supply list" has the meaning assigned to it in regulation 2(1) of the CHIP Regulations;

"biological agent" means a micro-organism, cell culture, or human endoparasite, whether or not genetically modified, which may cause infection, allergy, toxicity or otherwise create a hazard to human health;

"carcinogen" means–

(a) a substance or preparation which if classified in accordance with the classification provided for by regulation 4 of the CHIP Regulations would be in the category of danger, carcinogenic (category 1) or carcinogenic (category 2) whether or not the substance or preparation would be required to be classified under those Regulations; or

(b) a substance or preparation–

  (i) listed in Schedule 1; or

  (ii) arising from a process specified in Schedule 1 which is a substance hazardous to health;

"cell culture" means the in-vitro growth of cells derived from multicellular organisms;

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

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

"employment medical adviser" means an employment medical adviser appointed under Article 48(3) of the 1978 Order;

"fumigation" means an operation in which a substance is released into the atmosphere so as to form a gas to control or kill pests or other undesirable organisms;

"Group", in relation to a biological agent, means one of the four hazard Groups specified in paragraph 2 of Schedule 3 to which that agent is assigned;

"hazard", in relation to a substance, means the intrinsic property of that substance which has the potential to cause harm to the health of a person;

"health surveillance" means assessment of the state of health of an employee, as related to exposure to substances hazardous to health, and includes biological monitoring;

"health record" means any record kept under regulation 11(3) and in relation to any employee "personal health record" means any such record as relates to him;

"inhalable dust" means airborne material which is capable of entering the nose and mouth during breathing, as defined by BS EN 481 1993;

"maximum exposure limit" for a substance hazardous to health means the maximum exposure limit approved by the Executive for that substance in relation to the specified reference period when calculated by a method approved by the Executive;

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

"micro-organism" means a microbiological entity, cellular or non-cellular, which is capable of replication or of transferring genetic material;

(**7**) S.R. 2002 No. 301

"monitoring record" means any record kept under regulation 10(5) and in relation to any employee "personal monitoring record" means any such record as relates to him;

"mine" has the meaning assigned to it by section 156 of the Mines Act (Northern Ireland) 1969(**8**);

"occupational exposure standard" for a substance hazardous to health means the standard approved by the Executive for that substance in relation to the specified reference period when calculated by a method approved by the Executive;

"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;

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

"public road" includes any part of a public road and any bridge or tunnel over or through which passes a public road, as defined by Article 2 of the Road Traffic (Northern Ireland) Order 1995(**9**);

"registered dentist" has the meaning assigned to it in section 53(1) of the Dentists Act 1984(**10**);

"registered medical practitioner" means a fully registered person within the meaning of the Medical Act 1983(**11**);

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

"respirable dust" means airborne material which is capable of penetrating to the gas exchange region of the lung, as defined by BS EN 481 1993;

"risk", in relation to the exposure of an employee to a substance hazardous to health, means the likelihood that the potential for harm to the health of a person will be attained under the conditions of use and exposure and also the extent of that harm;

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

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

"substance" means a natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour (including micro-organisms);

"substance hazardous to health" means a substance (including a preparation)–

(a) which is listed in Part I of the approved supply list as dangerous for supply within the meaning of the CHIP Regulations and for which an indication of danger specified for the substance is very toxic, toxic, harmful, corrosive or irritant;

(b) for which the Executive has approved a maximum exposure limit or an occupational exposure standard;

(c) which is a biological agent;

(d) which is dust of any kind, except dust which is a substance within paragraph (a) or (b), when present at a concentration in air equal to or greater than–

(i) 10 mg/m^3, as a time-weighted average over an 8-hour period, of inhalable dust; or

(ii) 4 mg/m^3, as a time-weighted average over an 8-hour period, of respirable dust;

(**8**) 1969 c. 6 (N.I.)
(**9**) S.I. 1995/2994 (N.I. 18)
(**10**) 1984 c. 24
(**11**) 1983 c. 54

(e) which, not being a substance falling within sub-paragraphs (a) to (d), because of its chemical or toxicological properties and the way it is used or is present at the workplace creates a risk to health;

"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 public road.

(2) In these Regulations, a reference to an employee being exposed to a substance hazardous to health is a reference to the exposure of that employee to a substance hazardous to health arising out of or in connection with work at the workplace.

(3) Where a biological agent has an approved classification, any reference in these Regulations to a particular Group in relation to that agent shall be taken as a reference to the Group to which that agent has been assigned in that approved classification.

Duties under these Regulations

3.—(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 out by the employer except that the duties of the employer–

(a) under regulation 11 (health surveillance) shall not extend to persons who are not his employees; and

(b) under regulations 10, 12(1) and (2) and 13 (which relate respectively to monitoring, information and training and dealing with accidents) shall not extend to persons who are not his employees, unless those persons are on the premises where the work to which the duty relates is being carried out.

(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 an employee, except that regulations 10 and 11 shall not apply to a self-employed person.

(3) The duties imposed by these Regulations shall not extend to the master or crew of a sea-going ship or to the employer of such persons in relation to the normal shipboard activities of a ship's crew under the direction of the master.

Prohibitions relating to certain substances

4.—(1) Those substances described in Column 1 of Schedule 2 are prohibited to the extent set out in the corresponding entry in Column 2 of that Schedule.

(2) A person shall not supply during the course of or for use at work any of the following substances or articles, namely–

(a) 2-naphthylamine, benzidine, 4-aminodiphenyl, 4-nitrodiphenyl, their salts and any substance containing any of those compounds in a total concentration equal to or greater than 0·1 per cent. by mass;

(b) matches made with white phosphorus.

(3) A person shall not supply during the course of or for use at work, benzene or a substance containing benzene unless its intended use is not prohibited by item 11 of Schedule 2.

Application of regulations 6 to 13

5.—(1) Regulations 6 to 13 shall have effect with a view to protecting persons against a risk to their health, whether immediate or delayed, arising from exposure to substances hazardous to health except–

(a) where and to the extent that the following Regulations apply, namely–

(i) the Control of Lead at Work Regulations (Northern Ireland) 2003(**12**); or

(ii) the Control of Asbestos at Work Regulations (Northern Ireland) 2003(**13**);

(b) where the substance is hazardous to health solely by virtue of its radioactive, explosive or flammable properties, or solely because it is at a high or low temperature or a high pressure;

(c) where the risk to health is a risk to the health of a person to whom the substance is administered in the course of his medical treatment.

(2) In paragraph (1)(c) "medical treatment" means medical or dental examination or treatment which is conducted by, or under the direction of, a–

(a) registered medical practitioner;

(b) registered dentist; or

(c) other person who is an appropriate practitioner for the purposes of section 58 of the Medicines Act 1968(**14**),

and includes any such examination or treatment conducted for the purpose of research.

Assessment of the risk to health created by work involving substances hazardous to health

6.—(1) An employer shall not carry out work which is liable to expose any employees to any substance hazardous to health unless he has–

(a) made a suitable and sufficient assessment of the risk created by that work to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations; and

(b) implemented the steps referred to in sub-paragraph (a).

(2) The risk assessment shall include consideration of–

(a) the hazardous properties of the substance;

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

(c) the level, type and duration of exposure;

(d) the circumstances of the work, including the amount of the substance involved;

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

(f) any relevant occupational exposure standard, maximum exposure limit or similar occupational exposure limit;

(g) the effect of preventive and control measures which have been or will be taken in accordance with regulation 7;

(**12**) S.R. 2003 No. 35
(**13**) S.R. 2003 No. 33
(**14**) 1968 c. 67