STATUTORY RULES OF NORTHERN IRELAND

2003 No. 33

HEALTH AND SAFETY

Control of Asbestos at Work Regulations (Northern Ireland) 2003

Made - - - -	*24th January 2003*
Coming into operation	
All regulations except regulations 4 and 20	*28th February 2003*
Regulation 4	*21st May 2004*
Regulation 20	*21st November 2004*

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) to (6)(**3**) and 55(2) of, and paragraphs 1(1) to (4), 2(2), 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(**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 Asbestos at Work Regulations (Northern Ireland) 2003 and shall come into operation on 28th February 2003 except regulation 4 which shall come into operation on 21st May 2004 and regulation 20 which shall come into operation on 21st November 2004.

(**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), Article 3(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(c)

Interpretation

2.—(1) In these Regulations,–

"action level" means one of the following cumulative exposures to asbestos over a continuous 12-week period when measured or calculated by a method approved by the Executive, namely–

(a) where the exposure is solely to chrysotile, 72 fibre-hours per millilitre of air;

(b) where exposure is to any other form of asbestos either alone or in mixtures including mixtures of chrysotile with any other form of asbestos, 48 fibre-hours per millilitre of air; or

(c) where both types of exposure occur separately during the 12-week period concerned, a proportionate number of fibre-hours per millilitre of air;

"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 minerals, that is to say, crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite or fibrous tremolite or any mixture containing any of those minerals;

"asbestos area" and "respirator zone" shall be construed in accordance with regulation 17;

"control limit" means one of the following concentrations of asbestos in the atmosphere when measured or calculated by the reference method described in Annex I to Council Directive 83/477/EEC(**7**) or by a method giving equivalent results to that reference method approved by the Executive, namely–

(a) for chrysotile–

(i) 0.3 fibres per millilitre of air averaged over a continuous period of 4 hours,

(ii) 0.9 fibres per millilitre of air averaged over a continuous period of 10 minutes;

(b) for any other form of asbestos either alone or in mixtures including mixtures of chrysotile with any other form of asbestos–

(i) 0.2 fibres per millilitre of air averaged over a continuous period of 4 hours,

(ii) 0.6 fibres per millilitre of air averaged over a continuous period of 10 minutes;

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

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

"ISO 17025" means European Standard EN ISO/IEC 17025, "General requirements for the competence of testing and calibration laboratories" accepted by the Comité Européen de Normalisation and the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC) on 6th December 1999(**8**), as revised or reissued from time to time;

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

(**7**) O.J. No. L263, 24.9.83, p. 25
(**8**) Reference number EN ISO/IEC 17025: 2000

"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;

"registered medical practitioner" means a fully registered person within the meaning of the Medical Act 1983(**9**);

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

"the 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.

(2) For the purposes of these Regulations, except as specified in regulation 10(4), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the action level or a relevant control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.

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 activity carried out by the employer except that the duties of the employer–

(a) under regulation 9 (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 21 (health records and medical surveillance) shall not extend to persons who are not his employees.

(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.

(3) Regulation 16(1), insofar as it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to–

(a) the Fire Authority for Northern Ireland in respect of premises attended, for the purpose of fighting a fire or in an emergency, by the fire brigade maintained by that Authority; 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 regulation, "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.

Duty to manage asbestos in non-domestic premises

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

(a) every person who has, by virtue of any 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

(**9**) 1983 c. 54

(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 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 cooperate 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;

(b) the measures specified in the plan are implemented; and

(c) the measures taken to implement the plan are recorded.

(11) In this regulation, a reference to–

(a) "the assessment" is a reference to the assessment required by paragraph (3);

(b) "the premises" is a reference to the non-domestic premises referred to in paragraph (1); and

(c) "the plan" is a reference to the plan required by paragraph (8).

Identification of the type of asbestos

5. An employer shall not carry out work which exposes or is liable to expose his employees to asbestos unless either–

(a) before commencing that work, he has identified, by analysis or otherwise, the type of asbestos involved in the work; or

(b) he has assumed that the asbestos is not chrysotile alone and for the purposes of these Regulations has treated it accordingly.

Assessment of work which exposes employees to asbestos

6.—(1) An employer shall not carry out work which is liable to expose his employees to asbestos unless he has–

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

(b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and

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

(2) Without prejudice to the generality of paragraph (1), the risk assessment shall–

(a) subject to regulation 5, identify the type of asbestos to which employees are liable to be exposed;

(b) determine the nature and degree of exposure which may occur in the course of the work;

(c) consider the effect of control measures which have been or will be taken in accordance with regulation 10;

(d) consider the results of monitoring of exposure in accordance with regulation 18;

(e) set out the steps to be taken to prevent that exposure or reduce it to the lowest level reasonably practicable;

(f) consider the results of relevant medical surveillance; and

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

(3) The risk assessment shall be reviewed regularly and forthwith if–

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

(b) there is a significant change in the work to which the risk assessment relates; or

(c) the results of any monitoring carried out pursuant to regulation 18 show it to be necessary,

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