STATUTORY RULES OF NORTHERN IRELAND

2000 No. 120

HEALTH AND SAFETY

Control of Substances Hazardous to Health Regulations (Northern Ireland) 2000

Made - - - -	*31st March 2000*
Coming into operation	*1st June 2000*

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), (6)(**3**) and 55(2) of, and paragraphs 1(1) and (2), 2(1), 5(1), 7, 8, 10, 12(1) and (3), 13, 14(1) and 15 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(1) 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 Control of Substances Hazardous to Health Regulations (Northern Ireland) 2000 and shall come into operation on 1st June 2000.

Interpretation

2.—(1) In these Regulations—

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

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

"approved supply list" has the meaning assigned to it in regulation 4 of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 1995(**6**);

(**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
(**6**) S.R. 1995 No. 60 as amended by S.R. 1996 No. 376, S.R. 1997 No. 455, S.R. 1998 No. 459 and S.R. 1999 No. 150

"biological agent" means any micro-organism, cell culture, or human endoparasite, including any which have been genetically modified, which may cause any infection, allergy, toxicity or otherwise create a hazard to human health;

"carcinogen" means—

(a) any substance or preparation which if classified in accordance with the classification provided for by regulation 5 of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 1995 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) any 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;

"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;

"the Health and Safety Commission" means the Health and Safety Commission established under section 10 of the Health and Safety at Work etc. Act 1974(**7**);

"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;

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

"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;

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

"registered dentist" has the meaning assigned to it by section 53(1) of the Dentists Act 1984(**9**);

"registered medical practitioner" means a fully registered medical practitioner within the meaning of the Medical Act 1983(**10**);

"respirable dust" means airborne material which is capable of penetrating to the gas exchange region of the lung;

"substance" means any 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 any substance (including any preparation) which is—

(a) a substance which is listed in Part I of the approved supply list as dangerous for supply within the meaning of the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 1995 and for which an indication of danger specified for the substance in Part V of that list is very toxic, toxic, harmful, corrosive or irritant;

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

(**7**) 1974 c. 37
(**8**) 1969 c. 6 (N.I.)
(**9**) 1984 c. 24
(**10**) 1983 c. 54

(c) a biological agent;

(d) 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 total inhalable dust, or

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

(e) a substance, not being a substance mentioned in paragraphs (*a*) to (*d*), which creates a hazard to the health of any person which is comparable with the hazards created by substances mentioned in those paragraphs;

"territorial waters" means United Kingdom territorial waters adjacent to Northern Ireland and "within territorial waters" includes on, over and under them;

"total inhalable dust" means airborne material which is capable of entering the nose and mouth during breathing and is thereby available for deposition in the respiratory tract.

(2) In these Regulations, any 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 which is under the control of his employer.

Duties under these Regulations

3.—(1) Where any 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 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 and 12(1) and (2) (which relate respectively to monitoring and information, training, etc.) shall not extend to persons who are not his employees, unless those persons are on the premises where the work is being carried on.

(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, 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; or

(b) matches made with white phosphorus.

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

Application of regulations 6 to 12

5.—(1) Regulations 6 to 12 shall have effect with a view to protecting persons against risks 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) 1998(**11**),

(ii) the Control of Asbestos at Work Regulations (Northern Ireland) 1988(**12**);

(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;

(d) where the substance hazardous to health is total inhalable dust which is below ground in any mine of coal.

(2) In paragraph (1)(*c*) "medical treatment" means medical or dental examination or treatment which is conducted by, or under the direction of, a registered medical practitioner or registered dentist and includes any such examination, treatment or administration of any substance conducted for the purpose of research.

(3) Nothing in these Regulations shall prejudice any requirement imposed by or under any statutory provision relating to public health or the protection of the environment.

Assessment of health risks created by work involving substances hazardous to health

6.—(1) An employer shall not carry on any work which is liable to expose any employees to any substance hazardous to health unless he has made a suitable and sufficient assessment of the risks 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.

(2) The assessment required by paragraph (1) shall be reviewed regularly and 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 work to which the assessment relates,

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

Prevention or control of exposure to substances hazardous to health

7.—(1) Every employer shall ensure that the exposure of his employees to substances hazardous to health is either prevented or, where this is not reasonably practicable, adequately controlled.

(2) So far as is reasonably practicable, the prevention or adequate control of exposure of employees to a substance hazardous to health, except to a carcinogen or a biological agent, shall be secured by measures other than the provision of personal protective equipment.

(3) Without prejudice to the generality of paragraph (1), where the assessment made under regulation 6 shows that it is not reasonably practicable to prevent exposure to a carcinogen by using an alternative substance or process, the employer shall apply all the following measures, namely—

(a) the total enclosure of the process and handling systems unless this is not reasonably practicable;

(**11**) S.R. 1998 No. 281 as amended by S.R. 1999 No. 150
(**12**) S.R. 1988 No. 74 as amended by S.R. 1993 No. 26 and S.R. 1999 No. 150

(b) the use of plant, processes and systems of work which minimise the generation of, or suppress and contain, spills, leaks, dust, fumes and vapours of carcinogens;

(c) the limitation of the quantities of a carcinogen at the place of work;

(d) the keeping of the number of persons who might be exposed to a carcinogen to a minimum;

(e) the prohibition of eating, drinking and smoking in areas that may be contaminated by carcinogens;

(f) the provision of hygiene measures including adequate washing facilities and regular cleaning of walls and surfaces;

(g) the designation of those areas and installations which may be contaminated by carcinogens, and the use of suitable and sufficient warning signs; and

(h) the safe storage, handling and disposal of carcinogens and use of closed and clearly labelled containers.

(4) Where the measures taken in accordance with paragraph (2) or (3), as the case may be, do not prevent, or provide adequate control of, exposure to substances hazardous to health to which those paragraphs apply, then, in addition to taking those measures, the employer shall provide those employees with such suitable personal protective equipment as will adequately control their exposure to those substances.

(5) Any personal protective equipment provided by an employer in pursuance of this regulation shall comply with any provision in the Personal Protective Equipment (EC Directive) Regulations 1992(**13**) which is applicable to that item of personal protective equipment.

(6) Where there is exposure to a substance for which a maximum exposure limit has been approved, the control of exposure shall, so far as the inhalation of that substance is concerned, only be treated as being adequate if the level of exposure is reduced so far as is reasonably practicable and in any case below the maximum exposure limit.

(7) Without prejudice to the generality of paragraph (1), where there is exposure to a substance for which an occupational exposure standard has been approved, the control of exposure shall, so far as the inhalation of that substance is concerned, be treated as being adequate if—

(a) that occupational exposure standard is not exceeded; or

(b) where that occupational exposure standard is exceeded, the employer identifies the reasons for the standard being exceeded and takes appropriate action to remedy the situation as soon as is reasonably practicable.

(8) Where respiratory protective equipment is provided in pursuance of this regulation, then it shall—

(a) be suitable for the purpose; and

(b) comply with paragraph (5) or, where no requirement is imposed by virtue of that paragraph, be of a type approved or shall conform to a standard approved, in either case, by the Executive.

(9) In the event of the failure of a control measure which might result in the escape of carcinogens into the workplace, the employer shall ensure that—

(a) only those persons who are responsible for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with suitable respiratory protective equipment and protective clothing; and

(b) employees and other persons who may be affected are informed of the failure forthwith.

(10) Schedule 3 shall have effect in relation to biological agents.

(**13**) S.I. 1992/3139 as amended by S.I. 1993/3074 and S.I. 1994/2326