STATUTORY RULES OF NORTHERN IRELAND

2000 No. 98

HEALTH AND SAFETY

Control of Asbestos at Work (Amendment) Regulations (Northern Ireland) 2000

Made - - - - 20th March 2000

Coming into operation in accordance with regulation 1

The Department of Enterprise, Trade and Investment, being the Department concerned(**1**), in exercise of the powers conferred on it by Article 17(1), (2), (4), (5) and (6)(**2**) of, and paragraphs 1(1), (2) and (4), 5(2), 7, 8, 9, 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**) and of every other power enabling it in that behalf after consultation in accordance with Article 46(1)(**4**) of that Order with the Health and Safety Executive for Northern Ireland and such other bodies as appeared to the Department to be appropriate, hereby makes the following Regulations:

Citation and commencement

1.—(1) These Regulations may be cited as the Control of Asbestos at Work (Amendment) Regulations (Northern Ireland) 2000 and, subject to paragraph (2), shall come into operation on 2nd May 2000.

(2) Regulation 2(2)(*e*), (14), (18) and (20) and the Schedule shall come into operation on 1st October 2000.

Amendment of the Control of Asbestos at Work Regulations (Northern Ireland) 1988

2.—(1) The Control of Asbestos at Work Regulations (Northern Ireland) 1988(**5**) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2—

(a) in the definition of "action level" for the number "96" there shall be substituted "72";

(b) in the definition of "control limit" for the number "0.5" there shall be substituted "0.3" and for the number "1.5" there shall be substituted "0.9";

(**1**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**2**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
(**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), 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)
(**4**) Article 46(1) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18
(**5**) S.R. 1988 No. 74; relevant amending Regulations are S.R. 1993 No. 26 and S.R. 1999 No. 150

(c) in the definition of "employment medical adviser", the final word "and" shall be omitted;

(d) before the definition of "the Executive" there shall be inserted the following definition—

> ""EN 45001" means European Standard EN 45001, "General criteria for the operation of testing laboratories" accepted by the Comité Européen de Normalisation and the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC) on 23rd June 1989(**6**), as revised or reissued from time to time;"; and

(e) after the definition of "medical examination" there shall be added the following definition —

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

(3) For paragraph (2) of regulation 2, there shall be substituted the following paragraph—

"(2) For the purposes of these Regulations, except as specified in regulation 8(2), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the action level or any control limit, no account shall be taken of any respiratory protective equipment which, for the time being, is being worn by that employee.".

(4) At the end of regulation 3, there shall be added the following paragraph—

"(4) Regulation 13(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 any 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.".

(5) At the end of regulation 5, there shall be added the following paragraph—

"(5) The employer shall keep a copy of any assessment required by paragraph (1) which is in writing at any place at which the work to which the assessment relates is being carried out and for any period during which the work to which the assessment relates is being carried out.".

(6) In regulation 5A—

(a) after paragraph (1), there shall be inserted the following paragraph—

> "(1A) The employer shall keep a copy of the plan of work made in pursuance of paragraph (1) at any place at which the work to which the plan relates is being carried out and for any period during which the work to which the plan relates is being carried out.";

(b) at the end, there shall be added the following paragraph—

(**6**) Reference number EN 45001: 1989 E

"(3) The employer shall ensure, so far as is reasonably practicable, that the work to which the plan of work made in pursuance of paragraph (1) relates is carried out in accordance with that plan.".

(7) In paragraph (2) of regulation 6, for the number "28" there shall be substituted "14".

(8) Regulation 7 shall be re-numbered as paragraph (1) of that regulation and after that paragraph there shall be added the following paragraph—

"(2) The information, instruction and training referred to in paragraph (1) shall be—

(a) given at suitable intervals; and

(b) adapted to take account of any significant changes in the type of work carried out or methods of work used by the employer.".

(9) In paragraph (2) of regulation 8, for the words "to a concentration which is below those control limits" there shall be substituted "(after taking into account the effect of that respiratory protective equipment) to a concentration which is as low as is reasonably practicable and in any event below those control limits".

(10) In paragraph (1) of regulation 10, after the words "in the case of exhaust ventilation equipment" there shall be inserted "and respiratory protective equipment (except disposable respiratory protective equipment)".

(11) In regulation 11—

(a) in paragraph (1), after the word "exposed" there shall be inserted "or liable to be exposed"; and

(b) in paragraph (3), for the words "where the work with asbestos is being done" there shall be substituted "where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning,".

(12) In regulation 12, for the words "with asbestos" there shall be substituted "under his control".

(13) In paragraph (1) of regulation 13, after the word "exposes" there shall be inserted the words "or is liable to expose" and for the words "work with asbestos" there shall be substituted "such work".

(14) After regulation 15, there shall be inserted the following regulation—

"**Compliance with EN 45001**

15A.—(1) Every employer who carries out any measurement of the concentration of asbestos fibres present in the air, whether or not in pursuance of regulation 15(1), shall ensure that he meets criteria equivalent to those set out in paragraphs 5.1, 5.2, 5.3, 5.4.1 and 5.4.2 of EN 45001.

(2) Every employer who requests a laboratory to carry out any measurement of the concentration of asbestos fibres present in the air, whether or not in pursuance of regulation 15(1), shall ensure that that laboratory is accredited by an appropriate body as complying with EN 45001.".

(15) For paragraph (3) of regulation 16, there shall be substituted the following paragraph—

"(3) Where an employee has been examined in accordance with paragraph (2), the employment medical adviser or appointed doctor shall issue to the employer and that employee a certificate stating that he has been so examined and the date of the examination and the employer shall keep that certificate or a copy thereof for at least four years from the date on which it was issued.".

(16) For paragraph (1) of regulation 17, there shall be substituted the following paragraph—

"(1) Every employer shall ensure that, for any of his employees who is exposed or liable to be exposed to asbestos, adequate and suitable—

(a) washing and changing facilities;

(b) where he is required to provide protective clothing, facilities for the storage of—

(i) that protective clothing, and

(ii) personal clothing not worn during work hours;

(c) where he is required to provide respiratory protective equipment, facilities for the storage of that equipment,

are provided.".

(17) In paragraph (3)(*b*) of regulations 18, for the words "Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations (Northern Ireland) 1988" there shall be substituted "Carriage of Dangerous Goods by Road Regulations (Northern Ireland) 1997(**7**)".

(18) After regulation 20, there shall be inserted the following regulation—

"**Application within territorial waters**

20A. Within territorial waters these Regulations shall apply only to or in relation to the premises and activities to which any of paragraphs (2) to (6) of Schedule 3 applies.".

(19) After regulation 20A, there shall be inserted the following regulation—

"**Defence in proceedings for contravention of these Regulations**

20B. In any proceedings for an offence consisting of a contravention of these Regulations it shall be a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence.".

(20) After Schedule 2, there shall be added Schedule 3 as set out in the Schedule.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 20th March 2000.

Adrianne L. Brown
A senior officer of the
Department of Enterprise, Trade and Investment

(**7**) S.R. 1997 No. 248