1990 No. 374

HEALTH AND SAFETY

Control of Substances Hazardous to Health Regulations (Northern Ireland) 1990

Made . . . . . *11th October 1990*

Coming into operation . . *11th April 1991*

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The Department of Agriculture, the Department of Economic Development, the Department of the Environment and the Department of Health and Social Services acting jointly as the Department concerned(**a**) in exercise of the powers conferred by Articles 17(1), (2), (3), (5) and (6), and 55(2) of, and paragraphs 1(1) and (2), 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(**b**) and of every other power enabling them in that behalf, after consultation in accordance with Article 46(1) of that Order with the Health and Safety Agency for Northern Ireland and such other bodies as appeared to them to be appropriate, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Control of Substances Hazardous to Health Regulations (Northern Ireland) 1990 and shall come into operation on 11th April 1991.

Interpretation

2.—(1) In these Regulations—

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

"approved list" means the list approved by the Health and Safety Commission and the Department entitled "Information Approved for the Classification, Packaging and Labelling of Dangerous Substances (3rd edition)" as revised or re-issued from time to time;

"the Department" means the Department of Economic Development;

"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(**c**);

"maximum exposure limit" for a substance hazardous to health means the maximum exposure limit for that substance set out in Schedule 1 in relation to the reference period specified therein when calculated by an approved method;

"micro-organism" includes any microscopic biological entity which is capable of replication;

(**a**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
(**b**) S.I. 1978/1039 (N.I. 9)
(**c**) 1974 c. 37

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

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

"statutory provision" has the same meaning as in section 1(*f*) of the Interpretation Act (Northern Ireland) 1954(**a**);

"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 1A of the approved list as dangerous for supply within the meaning of the Classification, Packaging and Labelling of Dangerous Substances Regulations (Northern Ireland) 1985(**b**) and for which the general indication of nature of risk is specified as very toxic, toxic, harmful, corrosive or irritant;

(*b*) a substance for which a maximum exposure limit is specified in Schedule 1 or for which an occupational exposure standard has been approved;

(*c*) a micro-organism which creates a hazard to the health of any person;

(*d*) dust of any kind, when present at a substantial concentration in air;

(*e*) a substance, not being a substance mentioned in sub-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 sub-paragraphs.

(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, instruction and training) shall not extend

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(**a**) 1954 c. 33 (N.I.)

(**b**) S.R. 1985 No. 81 amended by S.R. 1988 No. 288, S.R. 1989 No. 182, S.R. 1990 No. 120 and S.R. 1990 No. 303

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.

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

(*a*) 2-naphthylamine, benzidine, 4-aminodiphenyl, 4-nitrodiphenyl, their salts and any substance containing any of those compounds in a total concentration exceeding 0.1per cent.; and

(*b*) matches made with white phosphorus.

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 either of the following Regulations apply, namely—

(i) the Control of Lead at Work Regulations (Northern Ireland) 1986(**a**), or

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

(*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; or

(*d*) below ground in any mine within the meaning of section 156 of the Mines Act (Northern Ireland) 1969(**c**).

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

(**a**) S.R. 1986 No. 36
(**b**) S.R. 1988 No. 74
(**c**) 1969 c. 6 (N.I.)

(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) Subject to regulation 16(1) (transitional provisions), 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 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 shall be secured by measures other than the provision of personal protective equipment.

(3) Where the measures taken in accordance with paragraph (2) do not prevent, or provide adequate control of, exposure to substances hazardous to the health of employees, 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 substances hazardous to health.

(4) Where there is exposure of an employee to a substance for which a maximum exposure limit is specified in Schedule 1, the control of that exposure shall, so far as the inhalation of the 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 so specified.

(5) Without prejudice to the generality of paragraph (1), where there is exposure of an employee to a substance for which an occupational exposure standard has been approved, the control of that 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.