

<b>Title:</b> Proposed Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos)(Amendment) Regulations 20XX (the "Amendment Regulations") <b>IA No:</b> DfT00171 <b>Lead department or agency:</b> Maritime and Coastguard Agency (MCA) <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 10/1/2013		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> EU		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Michael Lines 02380 329246			

**Summary: Intervention and Options** **RPC:**

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£0.00m	£0.00m	£0.00m	No
			NA

**What is the problem under consideration? Why is government intervention necessary?**  
Workers exposed to asbestos at work can suffer adverse effects to their health. The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 (the "2010 Regulations") completed UK implementation of EU Directive 1983/477/EEC (as amended) by extending the protection provided by it to workers in the maritime sector, and mirrored the Health and Safety Executive (HSE)'s Regulations for land-based workers in several areas. The EU issued a Reasoned Opinion against the UK on 16/02/2011 in respect of the failure of HSE's Regulations to correctly implement that Directive. This was remedied by introducing the Control of Asbestos Regulations 2012. As the 2010 Regulations mirror HSE's original Regulations, there is equally a risk of infraction if the 2010 Regulations are not also amended.

**What are the policy objectives and the intended effects?**  
The objectives of the proposed Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) (Amendment) Regulations 20XX (the "Amendment Regulations") are to a) pre-empt infraction proceedings by amending the 2010 Regulations to address the deficiencies in implementation identified by the EU in the HSE Regulations which are also present in the 2010 Regulations; b) maintain consistency between HSE's Regulations and the 2010 Regulations; and c) insert a review clause into the 2010 Regulations in line with Government policy.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
"Do Nothing" - To do nothing would leave the UK in breach of its EU obligations and liable to infraction. "Do nothing" is not considered to be a viable option and is therefore not considered further in this Impact Assessment.  
  
Option 1 - Amend the 2010 Regulations by the minimum necessary to bring them in line with the EU requirements identified in the Reasoned Opinion and updating the definition of Chrysotile Asbestos in line with the EC REACH Regulation to cover the additional form of Chrysotile Asbestos. This would achieve the policy objectives outlined above and is therefore the preferred option.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 01/2018

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA	<b>Non-traded:</b> NA	

**I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.**

Signed by the responsible Minister: Stephen Hammond Date: 13/06/2013

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce the Amendment Regulations to amend the 2010 Regulations to do the minimum to correct the under-implementation issues identified by the EU, and introduce the updated definition of Chrysotile asbestos

## FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	High: NA	Best Estimate: £0m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	£0m	£0m	£0m

### Description and scale of key monetised costs by 'main affected groups'

No monetised costs have been identified in this Impact Assessment.

### Other key non-monetised costs by 'main affected groups'

As the changes proposed to be made to the 2010 Regulations are of a minor drafting nature and given the near 30 year ban on the use of asbestos on UK ships, the MCA do not anticipate that Option 1 would result in any additional costs for businesses. Consultees were invited to submit evidence on any costs that they foresee could arise. However, none was provided, which supports the MCA's view that no costs would result from the introduction of the Amendment Regulations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	£0m	£0m	£0m

### Description and scale of key monetised benefits by 'main affected groups'

No monetised benefits have been identified in this Impact Assessment.

### Other key non-monetised benefits by 'main affected groups'

For the reasons set out in the key non-monetised costs box above, the MCA do not anticipate that Option 1 would result in any benefits for businesses or seafarers. Again, consultees were invited to submit evidence on any benefits that would arise. However, none was provided, which supports the MCA's view that no benefits would result from the introduction of the Amendment Regulations.

### Key assumptions/sensitivities/risks

Discount rate (%)

NA

- 1.) Use of asbestos has effectively been prohibited on new ships for the UK register for many years and is also now banned by International and EC legislation.
- 2.) The 2010 Regulations already require employers to determine if certain defined types of asbestos are, or might be present, and to put appropriate safety measures in place if any is, or could be, present. (Note - The Amendment Regulations updated the scientific definition of Chrysotile Asbestos).
- 3.) The Amendment Regulations are not anticipated to change the status quo in any significant way.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	No	NA

# Evidence Base (for summary sheets)

## **1. TITLE OF PROPOSAL**

1.1. The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos)(Amendment) Regulations 20XX ("the Amendment Regulations")

## **2. RESULTS OF CONSULTATION**

2.1. The changes proposed to be made by the Amendment Regulations effectively only make minor textual changes to existing legislation. Ministers, RRC and HAC therefore agreed to a shortened public consultation period of 4 weeks which ran from 22 October to 19 November 2012. It was also agreed that the consultation be limited to 70 representatives from the Merchant Shipping, Fishing Vessel and Coded Vessel sectors.

2.2. Only 4 responses to the consultation were received. Consultees were invited to submit any additional evidence that is available on whether any additional costs or benefits would arise under the Amendment Regulations. However, none of the responses provided any evidence on whether any additional costs or benefits would arise under the Amendment Regulations.

2.3. Of the four responses received, two offered no comments on the proposals and the third sought information regarding the application of the existing 2010 Regulations to persons other than seafarers on ships and whether or not this was covered by other legislation. (Given that this third response was not relevant to the current proposal it was addressed by means of a separate written response providing the information requested). The fourth response was more relevant to the current proposal but even there it was restricted to suggesting that the supporting Marine Guidance Note should contain more information on the International Maritime Organization (IMO) asbestos prohibition and the problems that had arisen in respect of the detection of the presence of asbestos on new build ships and on ships that had previously been certified as being asbestos free.

## **3. BACKGROUND**

3.1. Current medical knowledge indicates that exposure to free asbestos fibres can give rise to several asbestos related diseases which can have a debilitating effect on those affected and even lead to premature death. Further details are available in the impact assessment for the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 (the "2010 Regulations"). A copy of the Impact Assessment is contained in the Explanatory Memorandum for the 2010 Regulations which can be accessed on the legislation.gov.uk website using the following link:- [http://www.legislation.gov.uk/ukxi/2010/2984/pdfs/ukxiem\\_20102984\\_en.pdf](http://www.legislation.gov.uk/ukxi/2010/2984/pdfs/ukxiem_20102984_en.pdf).

3.2. In an endeavour to protect workers whose health and safety may be put at risk as a result of undertaking work where there is an actual, or potential, risk of exposure to asbestos, the EU produced Directive 83/477/EEC (subsequently amended by Directives 91/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC) which introduced measures intended to protect workers from risks related to work potentially involving exposure to asbestos. The first three Directives (83/477/EEC, 91/382/EEC and 1998/24/EC) were initially disapplied in relation to sea transport, however Directive 2003/18/EC removed this disapplication and it became necessary to implement all the Directives for all types of vessels with workers on board irrespective of whether they operated at sea or on inland waters.

3.3. The Health and Safety Executive (HSE) and the Health and Safety Executive for Northern Ireland (HSE(NI)) had previously implemented Directive 1983/477/EEC (as amended) for land based workers in Great Britain and Northern Ireland respectively by means of the Control of Asbestos Regulations 2006 (the "CAR 2006 Regulations") and the Control of Substances Hazardous to Health Regulations 2002 (as amended) applicable to Great Britain and the Control of Asbestos Regulations (Northern Ireland) 2007 and the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (as amended). However HSE's Regulations did not follow exactly the provisions of the Directives as they omitted, from the provision implementing sub-paragraph (a) of paragraph 3 of Article 3 of the Directive, reference to maintenance activities "*in which only non-friable materials are handled*", and the references in sub-paragraph (b) of paragraph 3 of Article 3 to "*deterioration*" and "*non-degraded*" because HSE considered these terms to be ambiguous and confusing as they had no generally accepted definitions. Paragraphs

(8)(c)(i) and (ii) of regulation 4 of the 2010 Regulations introduced in late 2010 to implement Directive 1983/477/EC for the maritime sector, followed suit on the grounds of ensuring consistency between the two sets of regulations when land-based workers and seafarers worked together on a ship in a UK port.

3.4. In addition to the omissions referred to above, HSE's CAR 2006 Regulations introduced a reference period for the control limit i.e. the maximum concentration of asbestos fibres in air to which a worker can be exposed, which varied from that set out in the Directives. The Directives set a single control limit for all types of asbestos and requires that no worker is exposed in excess of 0.1 f/cm<sup>3</sup> airborne fibres averaged over an 8 hour period. In CAR 2006 Regulations the control limit was also set at 0.1 f/cm<sup>3</sup> but was averaged over 4 hours instead of 8 hours. The justification for this was that the 4 hour period is used in the UK to better reflect normal working patterns for licensed workers and additionally was in use before the Directives introduced the single control limit. In order to ensure consistency with CAR 2006 Regulations, essential when land-based workers are working along side seafarers covered by MCA's Regulations, the 2010 Regulations adopted a similar approach which raised no concerns from industry when consulted upon. **NOTE** - In this paragraph "f/cm<sup>3</sup>" means the number of asbestos fibres per cubic centimetre of air.

3.5. Subsequent to the introduction of HSE's Regulations to implement Directive 1983/477/EC (as amended), the European Commission notified HSE, who lead for the UK on such matters, that they considered the omissions referred to in paragraphs 3.3 and 3.4, together with other matters not relevant, to the 2010 Regulations, constituted a failure by the UK to correctly implement Directive 1983/477/EC (as amended). Following further discussions between HSE and the Commission, a Reasoned Opinion was issued requiring the UK to correct their implementing regulations by including the omitted words referred to in paragraph 3.3 or face Infraction Proceedings. The issues raised in paragraph 3.4 were not proceeded with by the EC. Rather than argue the case further at law, the UK accepted the Reasoned Opinion and HSE made the Control of Asbestos Regulations 2012 ("CAR 2012 Regulations") which revoke and replace the CAR 2006 Regulations and, inter alia, correct the wording covered by the Reasoned Opinion.

3.6. When making regulations to address the EC concerns over under-implementation of Directive 83/477/EEC (as amended) HSE reviewed the whole of their existing CAR 2006 Regulations, including the lower limit value referred to in paragraph 3.4. It should be noted, however, that the CAR 2012 Regulations do retain the lower, more stringent, limit value contained in the CAR 2006 Regulations.

3.7. In addition, the CAR 2012 Regulations updated the scientific definition of Chrysotile asbestos by adding an additional Chemical Abstract Service (CAS) number. This does not come from Directive 1983/477/EEC (as amended) but instead comes from the EC "REACH" Regulation 1907/2006 (as amended). This ensures that the regulations are scientifically correct. "REACH" means EC Regulation No 1907/2006 of the European Parliament and of the Council of 18 December 2006 (as amended) concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals. "REACH" applies to the United Kingdom and was given the force of law by The REACH Enforcement Regulations 2008 which came into force on 1 December 2008 and which provide for the enforcement of Regulation (EC) No. 1907/2006. REACH has however subsequently been amended by EC Regulation No 552/2009 of 22 June 2009.

3.8. "REACH", as amended, is a production, marketing and use Regulation, and in the case of asbestos prohibits the manufacture, placing on the market and use of asbestos fibres and of articles containing asbestos fibres added intentionally and in this contexts lists two CAS numbers for Chrysotile Asbestos. Member States are however permitted to exempt the placing on the market and use of diaphragms containing chrysotile (of either CAS number) for existing electrolysis installations until they reach the end of their service life, or until suitable asbestos-free substitutes become available, whichever is the sooner. In addition the use of articles containing chrysotile asbestos fibres (of either CAS number) which were already installed and/or in service before 1 January 2005 are permitted to continue in use until they are disposed of or reach the end of their service life.

3.9. In parallel with the "REACH" Regulations, the IMO introduced, from 1 July 2002, a prohibition on the installation of materials that contain asbestos on all ships, except for some vanes, joints and insulation. Prior to the coming into force of the 2010 Regulations, an article in the Nautilus Telegraph indicated that asbestos had been found on some new ships built for a Netherlands shipowner. It is understood however that these ships were not UK registered. The Nautilus Telegraph article also referred to the finding of asbestos on previously "asbestos free" ships as a result of repair

work/extensions undertaken in shipyards outside Europe or the use of spare parts containing asbestos. From 1 January 2011, the IMO prohibition was extended so that the installation of any new material containing asbestos was internationally prohibited on all ships without exception. However despite the national provisions contained in the 2010 Regulations and the international prohibitions on the use of asbestos contained in the EC REACH Regulations and the 2011 “extended” IMO prohibition, MCA understands that a non-UK shipowner recently identified the presence of asbestos containing material on some new ships constructed in China, albeit the ships were not built for the UK register. It therefore remains a possibility that there might also be instances where asbestos has been introduced on to older ships that were previously asbestos free. Apart therefore from the requirement that EC Directive 83/477/EEC (as amended) must be implemented in UK law, it seems clear that the 2010 Regulations (as amended) may also now be necessary to ensure that UK vessels remain asbestos free and that, should asbestos be present in contravention of the national and international prohibitions, seafarers on board are properly protected until such time as the asbestos can be removed. Costs incurred as a result of the removal of asbestos which has been used on board a ship in contravention of the national and international prohibitions, will however be a matter for resolution between the shipowner and the shipyard as they are not considered to result from the 2010 Regulations as amended.

3.10. The 2010 regulations implemented for the maritime sector, EC Health and Safety Directive 1983/477/EEC (as amended by Directives 1991/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC) which was intended to control exposure of workers to asbestos, and require monitoring and reporting of exposures. The types of asbestos listed in that Directive did not include the second type of Chrysotile asbestos. It is not known why this was omitted, although the first four Asbestos Directives predate REACH. Only Directive 2007/30/EC, was introduced post-REACH, and its sole purpose was to introduce changes to numerous Directives intended to simplify and rationalise Member State reporting of the implementation of those Directives to the EC. It seems highly probable that as scientific knowledge has increased, chrysotile asbestos has been proven to exist in more than one form (e.g. “pure” and “in combination with other substances”), and scientists have therefore assigned each a separate number to take account of this. Basically they are the same scientific substance, and the addition of the additional number simply ensures that the 2010 Regulations are fully scientifically correct and maintain consistency with HSE’s CAR2012 Regulations.

#### **4. PROBLEM UNDER CONSIDERATION**

4.1. The problem under consideration is that Directive 1983/477/EEC (as amended) was intended to address the risks to health and safety resulting from the undertaking of work by workers where there is an actual, or potential, risk of exposure to asbestos. This was discussed earlier in paragraphs 3.1 and 3.2.

#### **5. RATIONALE FOR INTERVENTION**

5.1. EU Directives are required to be implemented by means of legislation in all Member States. HSE/HSE(NI) accordingly implemented Directive 1983/477/EEC (as amended) for land-based workers in the UK and the 2010 Regulations completed UK implementation of the Directive by implementing it for the maritime sector. Failure to correctly implement an EU Directive leaves a Member State open to infraction proceedings by the Commission and could potentially also result in ships registered in that State being delayed, or even detained, in other EU ports if the Port State considers that they are not in full compliance with the requirements of an EU Directive. In the case of Directive 1983/477/EEC (as amended) both HSE’s CAR 2006 Regulations and the 2010 Regulations did not, for the reasons stated in paragraphs 3.3 and 3.4 above, completely follow the wording of the Directives in a couple of points and this resulted in a Reasoned Opinion being received from the Commission. Failure to correct the points identified by the Commission could result in Infraction Proceedings against the UK and could also render the UK Government liable to pay compensation to all those affected under the *Francovich* principle of state liability in damages whereby the European Court of Justice, in the case of *Andrea Francovich and Others v. Italian Republic*, developed a general principle of state responsibility for compliance with EU law in a case in the field of employment rights.

5.2. HSE have made the CAR 2012 Regulations to address the issues raised in the Reasoned Opinion and similar changes are required to be made to the 2010 Regulations in order to avoid the risk of Infraction Proceedings against the UK. Amending the 2010 Regulations to conform with Directive 1983/477/EEC (as amended) will also ensure that similar regulatory requirements can continue to be

applied to both land-based workers (e.g. stevedores and other port workers) and seafarers when working together on the same ship in a UK port.

## **6. POLICY OBJECTIVE**

The policy objectives of the Amendment Regulations are to:

- correct the 2010 Regulations so they comply, with the UK's European legislative obligations in relation to implementation of Directive 1983/477/EEC (as amended), thus avoiding the risk of infraction proceedings being taken against the UK and the potential for action to be taken against the UK by other parties under the *Francovich* principle;
- maintain consistency with HSE's CAR 2012 Regulations;
- insert a Review Clause into the 2010 Regulations in line with Government policy.

## **7. DESCRIPTION OF POLICY OPTIONS CONSIDERED (INCLUDING DO NOTHING)**

### **Do nothing**

7.1. EU Member States are required to implement EU Directives by legislative means or face the likelihood of infraction proceedings being initiated by the Commission with the potential for ongoing fines until the situation is remedied. Failure to address the Commission's concerns expressed in the Reasoned Opinion might not only result in Infraction Proceedings but could also result in action being taken under the *Francovich* principle, against the UK Government, by any persons affected by the failure of the UK to implement the Directives.

7.2. Given the above, it is considered that doing nothing is not a viable option and accordingly it is not covered further in this IA.

**OPTION 1 - Introduce Amendment Regulations to correct the failure of the 2010 Regulations to fully implement Directive 1983/477/EEC (as amended) as identified by the EU and update the scientific definition of "Chrysotile asbestos" by including the additional Chemical Abstract Service (CAS) number which is also applicable to that type of asbestos.**

7.3. Option 1 meets the Commission's concerns by correcting the alleged under-implementation of Directive 1983/477/EEC identified by the EU by including the Directive wording omitted from the 2010 Regulations thus ensuring that the Directive is fully and correctly implemented in UK law. In addition, for the reasons set out in section 3.7 above, inclusion of the second CAS number for Chrysotile Asbestos ensures consistency is maintained with HSE's Regulations for land based workers and is included for purposes of completeness.

7.4. Additionally, the Amendment Regulations will retain the existing limit value established by HSE in their CAR 2006 Regulations and subsequently incorporated into the 2010 Regulations covering the maritime sector. As noted in paragraph 3.4, the CAR 2006 Regulations introduced a lower limit value than that provided for in Directive 1983/477/EEC (as amended) because this provided for better safety for workers as well as reflecting the limit values in use before the Directive was introduced. In the interests of maintaining consistency between HSE's Regulations and those applicable to the maritime sector it was considered appropriate to include similar limit values in the 2010 Regulations to cover those occasions when land based workers and seafarers work together on ships in UK ports. To do otherwise would have resulted in lower standards being applied to seafarers than to land based workers. The CAR 2012 Regulations retain the existing lower limit values so, again in the interests of consistency, as well as on health and safety grounds, it is considered appropriate that these limit values are not increased for seafarers.

7.5. The costs and benefits of Option 1 are considered in Section 8 below.

## **8. COSTS AND BENEFITS**

8.1. The 2010 Regulations apply to all UK vessels of any size on which workers are employed, irrespective of whether or not such vessels are registered and whether or not they operate at sea or

solely on inland waters. However not all vessels will have been directly affected by the introduction of those Regulations (e.g. because there was no asbestos on board). Under Option 1, the proposed Amendment Regulations would insert into the 2010 Regulations the words from the Directive, set out in paragraph 3.3 above which were omitted from the 2010 Regulations, but which the Commission insist must be included in order to give full effect to the provisions of Directive 1983/477/EC (as amended). In addition, under Option 1, the proposed Amendment Regulations would update the definition of Chrysotile asbestos to include the additional CAS number. Given the effective ban on using asbestos that has been in place for nearly 30 years, together with the EC REACH" Regulation that requires replacement of dangerous substances (such as asbestos used for specialised purposes) by non-dangerous ones, and the IMO ban on the use of Asbestos on ships, the Maritime and Coastguard Agency do not consider that Option 1 would result in any additional costs or benefits, nor create any administrative burden for business. As part of the consultation exercise, consultees were invited to submit any evidence that was available on any additional costs or benefits that would result from the proposed Amendment Regulations. However, no evidence regarding costs or benefits was received. It is considered that this supports the MCA's view that the proposed Amendment Regulations would not result in any additional costs or benefits.

## Key Assumptions

8.2. The key assumption in this impact assessment is that no employers would be affected by the proposed Amendment Regulations as the primary purpose of the Regulations is to avoid the risk of future Infraction Proceedings in relation to the UK implementation of Directive 1983/477/EC (as amended). The basis on which the Reasoned Opinion was issued in respect of the CAR 2006 Regulations is equally applicable to the 2010 Regulations as they mirror the specific provisions about which the Commission expressed concern. It is not however considered that the proposed changes would have any effect on industry and this view is supported by the result of consultation exercises undertaken prior to the introduction of the 2010 Regulations. Responses to the first round of consultation on those regulations (undertaken in 2006) resulted in only one response being received, from a society operating a historic steam ship, which indicated the possibility of a vessel having some asbestos present on board. However, a second round of consultation undertaken in 2010 produced no responses regarding concerns about the presence of asbestos on any UK vessel. Given the near 30 year ban on the use of asbestos on UK ships, this lack of indication of potential asbestos problems is completely credible. Consultees were invited to submit any additional evidence regarding the assumption that no employers would be affected by the proposed Amendment Regulations. However, no evidence was received. It is considered that this indicates that this assumption is correct.

## Changes due to the Amendment Regulations (Option 1)

8.3. Paragraph 3 of Article 3 of Directive 83/477/EEC (as amended) provides that where worker exposure is sporadic and of low intensity, and it is clear from the results of the risk assessment that the exposure limit for asbestos will not be exceeded in the air of the working area, the requirements of Articles 4 (Notification of work involving asbestos), 15 (Assessments of workers' health) and 16 (Maintenance of record of workers potentially exposed to asbestos in the course of their work) of the Directive may be waived in respect of work involving: -

- (a) *short, non-continuous maintenance activities **in which only non-friable materials are handled**,*
- (b) *removal **without deterioration** of **non-degraded** materials in which the asbestos fibres are firmly linked in a matrix,*
- (c) *encapsulation or sealing of asbestos-containing materials which are in good condition,*
- (d) *air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos".*

However when transposing paragraphs (a) and (b) into UK legislation both the CAS 2006 Regulations and the 2010 Regulations omitted the words shown bold and underlined above. It is the omission of these words which the EU requires to be corrected and which the proposed Amendment Regulations would address by providing for them to be inserted into sub-paragraphs (c)(i) and (ii) respectively of paragraph (8) of regulation 4 of the 2010 Regulations.

8.4. In addition to the above the proposed Amendment Regulations also insert the second CAS number for Chrysotile asbestos, into the 2010 Regulations. This second CAS number is already included in the CAR 2012 Regulations and mirrors that in the REACH Regulation which is binding on all Member States.

## **Costs of the Amendment Regulations (Option 1)**

### **8.5 Compliance costs for businesses**

8.5.1. As the changes proposed to be made to the 2010 Regulations are of a minor drafting nature and given the near 30 year ban on the use of asbestos on UK ships, together with the EC Reach Regulation and the IMO asbestos ban, MCA do not anticipate that Option 1 would result in any compliance costs for businesses. Consultees were invited to offer any additional evidence that is available on whether the Amendment Regulations would result in any compliance costs. However, no evidence was forthcoming. It is considered that this supports MCA's view that Option 1 would not result in any compliance costs for businesses.

### **8.6 Familiarisation costs for businesses**

8.6.1. Given the minor nature of the changes being made to the 2010 Regulations, it is not envisaged that there would be any familiarisation costs for business. Consultees were asked to offer any additional evidence that is available on whether the Amendment Regulations would result in any familiarisation costs. However, no evidence was forthcoming. It is considered that this supports the MCA's view that Option 1 would not result in any familiarisation costs for businesses.

### **8.7. Enforcement costs**

8.7.1. It is not envisaged that the inclusion of the additional wording required by the EU in the 2010 Regulations, or the revised definition of Chrysotile Asbestos, would have any effect on enforcement costs given that for the last 30 years an almost total prohibition has been in place regarding the use of asbestos on UK ships and that subsequently an IMO ban and the EC Reach Regulation had been introduced which effectively prohibited the use of asbestos entirely.

### **8.8. Benefits of the Amendment Regulations (Option 1)**

8.8.1. For the reasons set out under previous headings, it is not considered that the proposed Amendment Regulations would result in any significant benefits given that their primary purpose is to insert, in the 2010 Regulations, wording previously omitted which the EU consider to be under-implementation of Directive 1983/477/EC (as amended) and which they require to be included in those regulations. Inclusion of the revised definition of Chrysotile Asbestos is also unlikely to have any benefit given the existing ban on this form of asbestos via "REACH". Consultees were invited to offer any additional evidence that is available on whether the Amendment Regulations would result in any benefits. However, again, no evidence of any benefits was supplied.

## **9. "GOLD-PLATING" ISSUES**

### **The 2010 Regulations**

9.1. When implementing Directive 1983/477/EEC (as amended) the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 generally did only the minimum necessary to implement that necessary. There were only two instances where this was not the case and one of these was the deletion of certain wording about which the EC issued the Reasoned Opinion. This however is under implementation so does not fall within the definition of "gold-plating".

9.2. As indicated previously in this IA, there is one provision in the 2010 Regulations which represents existing "gold-plating". As drafted Article 8 of Directive 1983/477/EEC requires that "*Employers shall ensure that no worker is exposed to an airborne concentration of asbestos in excess of 0,1 fibres per cm<sup>3</sup> as an eight-hour time-weighted average (TWA)*" however when implementing this into their CAR 2006 Regulations HSE amended this limit to 0,1 fibres per cm<sup>3</sup> as a four-hour time-weighted average.

The grounds for making this change was that the 4 hour period was used in the UK to better reflect normal working patterns for licensed workers and had been in use before the Directive introduced its limit value. In the interests of ensuring consistency between the regulations governing land-based workers and those governing seafarers, the 2010 Regulations followed CAR 2006 Regulations by adopting the lower HSE limit. This ensured that equal limit applied to both seafarers and shoreside workers (e.g. stevedores) when working together on a ship in a UK port. To do otherwise would have resulted in seafarers being potentially subjected to a less onerous health and safety regime in respect of asbestos and thus being potentially at greater risk than their land-based colleagues. This was not an acceptable situation and could have resulted in confusion over applicable limits especially where land-based and seafaring workers were employed by the same employer. No adverse comments were received from industry on this point from which it can be presumed that they were content with the lower limit value being applied.

9.3. Subsequent to the Reasoned Opinion from the EC, HSE have reviewed their CAR 2006 Regulations and have replaced them by the CAR 2012 Regulations which meet the concerns of the EC. It should however be noted that the lower limit values contained in the CAR 2006 Regulations have been retained in the CAR 2012 Regulations. In order to maintain the consistency Regulations applicable to land-based workers and those applicable to seafarers, it is considered that there is no option but to retain the existing limit value set out in the 2010 Regulations. In the light of previous lack of comment, it is not considered this will have any effect on maritime and fishing sectors. No comments on this point were received as part of the consultation.

### **The Amendment Regulations**

9.4. The Amendment Regulations do not “Gold-plate” the provisions of Directive 1983/477/EEC (as amended). However they do add the additional “CAS” Number to the definition of Chrysotile Asbestos contained in regulation 2(1) of the 2010 Regulations. This second CAS number is not included in the Directive but it, along with the original CAS number (which is quoted in Directive 1983/477/EEC), is quoted in the REACH Regulation, which places further restrictions on the use inter alia of asbestos. The REACH Regulation dates back to 2006 and applies to Member states. On that basis, the 2010 Regulations ought to have contained the reference to the second CAS number for Chrysotile asbestos for purposes of completeness.

9.5. Both CAS numbers are contained in the CAR 2012 Regulations and, for reasons already stated, in the interests of consistency with the HSE Regulations and scientific accuracy, it is considered appropriate to utilise the Amendment Regulations to insert the second CAS number for Chrysotile asbestos into the 2010 Regulations. As the insertion of the additional number makes no material difference to the duties that employers must perform, there are no costs to industry or MCA from its inclusion. No comments on the inclusion of the second CAS number were received as part of the consultation.

## **10. RISKS**

10.1. As noted in section 5 of this impact assessment, failure to comply with the EU Reasoned Opinion by correctly implementing Directive 1983/477/EC (as amended) in UK law could potentially result in infraction proceedings by the EU and action under the *Francovich* principle against the UK Government. .

## **11. SPECIFIC IMPACT TESTS**

### **Equalities Assessment**

11.1. The Amendment Regulations would be applicable to all seafarers working on all UK vessels, both sea-going and non sea-going and wherever they are in the world, to which the Regulations apply irrespective of their age, ethnic origin, gender, nationality, race, sexual orientation or disability. The Amendment Regulations would also be applicable to non-UK ships when in UK waters.

### **Competition Assessment**

11.2 EU Directives introduce a set of minimum standards that apply to EU ships worldwide and to non-EU ships when in EU waters, which should promote a more level competitive playing field internationally and reduce the ability of less scrupulous ship operators to gain a competitive advantage through poor treatment

of seafarers especially in respect of matters relating to their health and safety. This was the purpose of Directive 1983/477/EC (as amended) in respect of Asbestos. It is not however expected that the Amendment Regulations would have an impact on competition as they merely correct the wording of the 2010 Regulations to bring it in line in line with the Directive and update the scientific definition of Chrysotile Asbestos to bring it in line with the EC REACH Regulation.

11.3. When operating in EU waters, it is considered that compliance with EU health and safety requirements would be more likely to provide a competitive benefit than a disadvantage to operators of UK registered ships engaged in international voyages within the EU as they would be less likely to be delayed or detained in ports of other EU Member States for non-compliance with the relevant Directives. Consultees were invited to provide any additional evidence that was available on the potential for the Amendment Regulations to impact on competition. However, no evidence was received.

### **Small Firms Impact Test**

11.4 It is appropriate that the working conditions for all workers should be underpinned by common minimum health and safety standards regardless of the size of the company for which they work. Any costs arising from these proposals may have the greatest impact on small firms or micro businesses with a small turnover. As EU Health and Safety Directives set minimum requirements for the protection of the health and safety of workers, they do not normally make concessions in those requirements. Wherever possible the UK makes use of any flexibility in a Directive whether in relation to a smaller vessel or a large one. However as indicated in paragraph 8.2 above, consultations undertaken in 2006 and 2010 respectively only produced a single response indicating that a historic steam ship might have asbestos present on it. Given also that the changes proposed to be made by the Amendment Regulations effectively only correct the wording of two sub-paragraphs of the 2010 Regulations to bring them in line with the Directive, and update the scientific definition of Chrysotile Asbestos to bring it in line with the EC REACH Regulation, it is not envisaged that the proposed changes will have any effect on small firms. Consultees were invited to provide any additional evidence that was available on the potential for the Amendment Regulations to impact on small businesses. However, no evidence was received.

### **Greenhouse Gas Impact Test**

11.5. No greenhouse gas impacts have been identified in relation to the proposed Amendment Regulations.

### **Wider Environmental Issues**

11.6. Wider environmental issues are considered unlikely to arise from the proposed Amendment Regulations.

### **Health and Well-Being Impact Test**

11.7. Directive 1983/477/EC (as amended) introduced specific measures intended to protect workers from the risks resulting from exposure to asbestos at work and was implemented by the 2010 Regulations. Given the almost complete ban on the use of asbestos on UK ships which has existed for some 30 years, together with the REACH Regulation which requires the replacement of parts containing hazardous materials by non-hazardous ones, and the IMO prohibition, it is not considered that the changes proposed by the Amendment Regulations will have any impact on the health and well-being of seafarers.

### **Human Rights**

11.8. There are no Human Rights compatibility issues arising from the proposed Amendment Regulations.

### **Justice System**

11.9. The Amendment Regulations contain no provisions relating to enforcement or offences and penalties. Such provisions were established by the 2010 Regulations and are not being changed.

### **Sustainable Development**

11.10. There are no sustainable development issues arising from the Amendment Regulations.

## **12. ONE IN, ONE OUT**

12.1. The changes made to paragraphs (8)(c)(i) and (ii) of regulation 4 of the 2010 Regulations by the Amendment Regulations are out of scope of “One In/One Out “(OIOO) because they only address EC concerns over under implementation of EC Directive 1983/477/EEC by reinstating wording from sub-paragraphs (a) and (b) of paragraph 3 of Article 3 of the Directive which had originally been omitted on the grounds of lack of clarity.

12.2. Inclusion of the second CAS number for Chrysotile asbestos for purposes of completeness is also outside the scope of OIOO, as it follows the EC “REACH” Regulation which already applies to all Member States. This change would bring the 2010 Regulations in line with the scientific definition of chrysotile asbestos in the EC REACH Regulation, and would not impose any new restrictions.

12.3. Finally, there would be no additional costs and benefits associated with retaining the existing “gold-plating” of the lower limit value in the 2010 Regulations. Because this is not introducing any new requirements, this is also outside the scope of OIOO.

12.4. Therefore the Amendment Regulations are classed as out of scope of OIOO.

## **13. SUMMARY AND PREFERRED OPTION**

13.1. Introducing the Amendment Regulations (Option 1) is the only viable policy option. It would fully implement in UK legislation EU Directive 1983/477/EC (as amended) and thus address the concerns expressed by the EU in their Reasoned Opinion on implementation of this Directive and remove the likelihood of Infraction Proceedings. They would also accord with the EC REACH Regulation by amending the definition of Chrysotile Asbestos to bring it in line with the EC REACH Regulation.

## **14. IMPLEMENTATION PLAN**

14.1. As the “Reasoned Opinion” issued to HSE is now understood to have been closed out, in respect of the implementation of this Directive, the risk of Infraction Proceedings has potentially receded albeit this does not preclude the European Commission from revisiting the matter and issuing a separate “Reasoned Opinion” in respect of the 2010 Regulations should they become aware that those Regulations have still to be amended. Subject to normal scrutiny procedures, it is therefore proposed that the Amendment Regulations be brought into force as soon as possible.

14.2. The Amendment Regulations will be supported by a Marine Guidance Note explaining the changes and their effects for industry.