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STATUTORY INSTRUMENTS

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**1998 No. 3235**

**HEALTH AND SAFETY**

**The Control of Asbestos at Work  
(Amendment) Regulations 1998**

*Made - - - - 20th December 1998*

*Laid before Parliament 6th January 1999*

*Coming into force in accordance with regulation 1*

The Secretary of State in the exercise of the powers conferred on him by section 15(1), (2), (4), (5) (b), (6)(b) and (9) of, and paragraphs 1(1), (2), (4), 6(2), 8, 9, 10, 11, 13(1) and (3), 14, 15(1), 16 and 20 of Schedule 3 to, the Health and Safety at Work etc. Act 1974<sup>(1)</sup> (“the 1974 Act”) and of all other powers enabling him in that behalf and for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

**Citation and commencement**

1.—(1) These Regulations may be cited as the Control of Asbestos at Work (Amendment) Regulations 1998 and, subject to paragraph (2), shall come into force on 1st February 1999.

(2) Regulation 2, insofar as it relates to paragraph 13 of the Schedule, shall come into force on 1st August 1999.

**Amendments to the Control of Asbestos at Work Regulations 1987**

2. The Control of Asbestos at Work Regulations 1987<sup>(2)</sup> shall be amended in accordance with the Schedule to these Regulations.

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(1) 1974, c. 37; sections 15 and 50 were amended by the Employment Protection Act 1975 (c. 71), Schedule 15, paragraphs 6 and 16 respectively.  
(2) S.I. 1987/2115; relevant amending instrument is S.I. 1992/3068.

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Signed by authority of the Secretary of State.

20th December 1998

*Alan Meale*  
Parliamentary Under Secretary of State,  
Department of the Environment, Transport and  
the Regions

## THE SCHEDULE

Regulation 2

### AMENDMENTS TO THE CONTROL OF ASBESTOS AT WORK REGULATIONS 1987

1. In paragraph (1) of regulation 2—
  - (a) in the definition of “action level” for the number “96” substitute “72”;
  - (b) in the definition of “control limit” for the number “0.5” substitute “0.3” and for the number “1.5” substitute “0.9”; and
  - (c) before the definition of “the Executive” insert 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(3), as revised or reissued from time to time;”.
2. For paragraph (2) of regulation 2, substitute 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.”.
3. At the end of regulation 3, add 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) a fire authority in respect of premises attended, for the purpose of fighting a fire or in an emergency, by a 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.”.
4. At the end of regulation 5, add 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.”.
5. In regulation 5A—
  - (a) after paragraph (1), insert 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, add the following paragraph—

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(3) Reference number EN 45001: 1989 E.

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“(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.”.

6. In paragraph (2) of regulation 6, for the number “28” substitute “14”.

7. At the end of regulation 7, add 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.”.

8. In paragraph (2) of regulation 8, for the words “to a concentration which is below those control limits” substitute “(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”.

9. In paragraph (1) of regulation 10, after the words “in the case of exhaust ventilation equipment” insert “and respiratory protective equipment (except disposable respiratory protective equipment)”.

10. In regulation 11—

- (a) in paragraph (1), after the word “exposed” insert “or liable to be exposed”; and
- (b) in paragraph (3), for the words “where the work with asbestos is being done” substitute “where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning.”.

11. In regulation 12, for the words “with asbestos” substitute “under his control”.

12. In paragraph (1) of regulation 13, after the word “exposes” insert the words “or is liable to expose” and for the words “work with asbestos” substitute “such work”.

13. After regulation 15, insert 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.”.

14. For paragraph (3) of regulation 16, substitute 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.”.

15. For paragraph (1) of regulation 17, substitute 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.”.

16. In paragraph (3)(b) of regulation 18, for the words “Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1981” substitute “Carriage of Dangerous Goods by Road Regulations 1996(4)”.

17. After regulation 21, insert the following regulation—

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

21A. 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.”.

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

1. These Regulations amend the Control of Asbestos at Work Regulations 1987 (“the 1987 Regulations”).
2. Regulation 2, and the Schedule to these Regulations, amend the 1987 Regulations in that they—
  - (a) amend the definitions of action level and control limit (*paragraph 1 of the Schedule*);
  - (b) extend their application to all employees exposed to asbestos (whether or not they are working with asbestos or any product containing asbestos) (*paragraphs 2, 10(a), 11 and 12 of the Schedule*);
  - (c) modify the application to the fire service of regulation 13(1) (cleanliness of premises and plant) (*paragraph 3 of the Schedule*);
  - (d) require employers to keep a copy of their risk assessment and plan of work at the place to which they relate and while the work to which they relate is being carried out, and to ensure that, so far as is reasonably practicable, the work is carried out in accordance with the plan (*paragraphs 4 and 5 of the Schedule*);
  - (e) reduce to 14 days the period for advance notification to the enforcing authority of work with asbestos (*paragraph 6 of the Schedule*);
  - (f) require employers to examine and test respiratory protective equipment (*paragraph 9 of the Schedule*);
  - (g) require employers carrying out air monitoring to comply with, or to use a laboratory that complies with, European Standard EN 45001 (*paragraph 13 of the Schedule*); and

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(4) [S.I. 1996/2095](#).

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(h) introduce a defence in proceedings for contravention of the Regulations (*paragraph 17 of the Schedule*).

**3.** European Standard EN 45001, “General criteria for the operation of testing laboratories” accepted by CEN/CENELEC on 23rd June 1989 (reference number EN 45001: 1989 E) can be obtained from the joint European Standards Institution, Central Secretariat, rue Bréderode 2, B-1000 Brussels, Belgium.

**4.** A copy of the cost benefit assessment prepared in respect of these Regulations can be obtained from the Health and Safety Executive, Economic Advisers Unit, Rose Court, 2 Southwark Bridge, London SE1 9HS. Copies have been placed in the Library of each House of Parliament.