

2003 No. 33

HEALTH AND SAFETY

**Control of Asbestos at Work Regulations
(Northern Ireland) 2003**

Made - - - - - *24th January 2003*

Coming into operation - - *28th February 2003*

All regulations except regulations 4 and 20

Regulation 4 *21st May 2004*

Regulation 20 *21st November 2004*

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The Department of Enterprise, Trade and Investment(a), being the Department concerned(b), in exercise of the powers conferred on it by Articles 17(1) to (6)(c) and 55(2) of, and paragraphs 1(1) to (4), 2(2), 5, 7 to 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(d) 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 under Article 13(1A)(e) of that Order after the carrying out by the said Executive of consultations in accordance with Article 46(3)(f) of that Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Control of Asbestos at Work Regulations (Northern Ireland) 2003 and shall come into operation on 28th February 2003 except regulation 4 which shall come into operation on 21st May 2004 and regulation 20 which shall come into operation on 21st November 2004.

Interpretation

2.—(1) In these Regulations, –

“action level” means one of the following cumulative exposures to asbestos over a continuous 12-week period when measured or calculated by a method approved by the Executive, namely –

- (a) where the exposure is solely to chrysotile, 72 fibre-hours per millilitre of air;
- (b) where exposure is to any other form of asbestos either alone or in mixtures including mixtures of chrysotile with any other form of asbestos, 48 fibre-hours per millilitre of air; or
- (c) where both types of exposure occur separately during the 12-week period concerned, a proportionate number of fibre-hours per millilitre of air;

“adequate” means adequate having regard only to the nature and degree of exposure to asbestos;

“appointed doctor” means a registered medical practitioner appointed for the time being in writing by the Executive for the purpose of these Regulations;

“approved” means approved for the time being in writing by the Executive;

“asbestos” means the following minerals, that is to say, crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite or fibrous tremolite or any mixture containing any of those minerals;

“asbestos area” and “respirator zone” shall be construed in accordance with regulation 17;

“control limit” means one of the following concentrations of asbestos in the atmosphere when measured or calculated by the reference method described in Annex I to Council Directive 83/477/EEC(g) or by a method giving equivalent results to that reference method approved by the Executive, namely –

(a) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Article 3(5)

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

(c) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)

(d) 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)

(e) Article 13(1) was substituted by S.I. 1998/2795 (N.I. 18), Article 4.

(f) Article 46(3) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraphs 8 and 18(c)

(g) O.J. No. L263, 24.9.83, p. 25

- (a) for chrysotile –
 - (i) 0.3 fibres per millilitre of air averaged over a continuous period of 4 hours,
 - (ii) 0.9 fibres per millilitre of air averaged over a continuous period of 10 minutes;
- (b) for any other form of asbestos either alone or in mixtures including mixtures of chrysotile with any other form of asbestos –
 - (i) 0.2 fibres per millilitre of air averaged over a continuous period of 4 hours,
 - (ii) 0.6 fibres per millilitre of air averaged over a continuous period of 10 minutes;

“control measure” means a measure taken to prevent or reduce exposure to asbestos (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, the provision and use of engineering controls and personal protective equipment);

“employment medical adviser” means an employment medical adviser appointed under Article 48(3) of the Health and Safety at Work (Northern Ireland) Order 1978;

“the Executive” means the Health and Safety Executive for Northern Ireland;

“ISO 17025” means European Standard EN ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories” accepted by the Comité Européen de Normalisation and the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC) on 6th December 1999(a), as revised or reissued from time to time;

“medical examination” includes any laboratory tests and X-rays that a relevant doctor may require;

“personal protective equipment” means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to his health, and any addition or accessory designed to meet that objective;

“registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(b);

“relevant doctor” means an appointed doctor or an employment medical adviser;

“the risk assessment” means the assessment of risk required by regulation 6(1)(a);

“territorial sea” means the territorial sea of the United Kingdom adjacent to Northern Ireland and “within the territorial sea” includes on, over and under it.

(2) For the purposes of these Regulations, except as specified in regulation 10(4), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the action level or a relevant control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.

Duties under these Regulations

3.—(1) Where a 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 activity carried out by the employer except that the duties of the employer –

- (a) under regulation 9 (information, instruction and training) shall not extend to persons who are not his employees unless those persons are on the premises where the work is being carried out; and
- (b) under regulation 21 (health records and medical surveillance) shall not extend to persons who are not his employees.

(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 an employee.

(3) Regulation 16(1), insofar as it requires an employer to ensure that premises are thoroughly cleaned, shall not apply to –

(a) Reference number EN ISO/IEC 17025: 2000

(b) 1983 c. 54

- (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 a 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.

Duty to manage asbestos in non-domestic premises

4.—(1) In this regulation “the dutyholder” means –

- (a) every person who has, by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access thereto or egress therefrom; or
- (b) in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access thereto or egress therefrom,

and where there is more than one dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

(2) Every person shall cooperate with the dutyholder so far as is necessary to enable the dutyholder to comply with his duties under this regulation.

(3) In order to enable him to manage the risk from asbestos in non-domestic premises, the dutyholder shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

(4) In making the assessment –

- (a) such steps as are reasonable in the circumstances shall be taken; and
- (b) the condition of any asbestos which is, or has been assumed to be, present in the premises shall be considered.

(5) Without prejudice to the generality of paragraph (4), the dutyholder shall ensure that –

- (a) account is taken of building plans or other relevant information and of the age of the premises; and
- (b) an inspection is made of those parts of the premises which are reasonably accessible.

(6) The dutyholder shall ensure that the assessment is 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 premises to which the assessment relates.

(7) The dutyholder shall ensure that the conclusions of the assessment and every review are recorded.

(8) Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder shall ensure that –

- (a) a determination of the risk from that asbestos is made;
- (b) a written plan identifying those parts of the premises concerned is prepared; and
- (c) the measures which are to be taken for managing the risk are specified in the written plan.

(9) The measures to be specified in the plan for managing the risk shall include adequate measures for –

- (a) monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;

- (b) ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and
- (c) ensuring that information about the location and condition of any asbestos or any such substance is –
 - (i) provided to every person liable to disturb it, and
 - (ii) made available to the emergency services.
- (10) The dutyholder shall ensure that –
 - (a) the plan is reviewed and revised at regular intervals, and forthwith if –
 - (i) there is reason to suspect that the plan is no longer valid, or
 - (ii) there has been a significant change in the premises to which the plan relates;
 - (b) the measures specified in the plan are implemented; and
 - (c) the measures taken to implement the plan are recorded.
- (11) In this regulation, a reference to –
 - (a) “the assessment” is a reference to the assessment required by paragraph (3);
 - (b) “the premises” is a reference to the non-domestic premises referred to in paragraph (1); and
 - (c) “the plan” is a reference to the plan required by paragraph (8).

Identification of the type of asbestos

- 5.** An employer shall not carry out work which exposes or is liable to expose his employees to asbestos unless either –
- (a) before commencing that work, he has identified, by analysis or otherwise, the type of asbestos involved in the work; or
 - (b) he has assumed that the asbestos is not chrysotile alone and for the purposes of these Regulations has treated it accordingly.

Assessment of work which exposes employees to asbestos

- 6.—(1)** An employer shall not carry out work which is liable to expose his employees to asbestos unless he has –
- (a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations;
 - (b) recorded the significant findings of that risk assessment as soon as is practicable after the risk assessment is made; and
 - (c) implemented the steps referred to in sub-paragraph (a).
- (2) Without prejudice to the generality of paragraph (1), the risk assessment shall –
- (a) subject to regulation 5, identify the type of asbestos to which employees are liable to be exposed;
 - (b) determine the nature and degree of exposure which may occur in the course of the work;
 - (c) consider the effect of control measures which have been or will be taken in accordance with regulation 10;
 - (d) consider the results of monitoring of exposure in accordance with regulation 18;
 - (e) set out the steps to be taken to prevent that exposure or reduce it to the lowest level reasonably practicable;
 - (f) consider the results of relevant medical surveillance; and
 - (g) include such additional information as the employer may need in order to complete the risk assessment.
- (3) The risk assessment shall be reviewed regularly and forthwith if –
- (a) there is reason to suspect that the existing risk assessment is no longer valid;
 - (b) there is a significant change in the work to which the risk assessment relates; or

- (c) the results of any monitoring carried out pursuant to regulation 18 show it to be necessary,

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

(4) Where, in accordance with the requirement in paragraph (2)(b), the risk assessment has determined that the exposure of his employees to asbestos may exceed the action level, the employer shall keep a copy of the significant findings of that risk assessment at those premises at which, and for such time as, the work to which that risk assessment relates is being carried out.

Plans of work

7.—(1) An employer shall not undertake any work with asbestos unless he has prepared a suitable written plan of work (hereinafter referred to in this regulation as “the plan of work”) detailing how that work is to be carried out.

- (2) The employer shall keep a copy of the plan of work –
 - (a) at those premises at which; and
 - (b) for such time as,

the work to which the plan relates is being carried out.

- (3) The plan of work shall include in particular details of –
 - (a) the nature and probable duration of the work;
 - (b) the location of the place where the work is to be carried out;
 - (c) the methods to be applied where the work involves the handling of asbestos or materials containing asbestos;
 - (d) the characteristics of the equipment to be used for –
 - (i) protection and decontamination of those carrying out the work,
 - (ii) protection of other persons on or near the worksite; and
 - (e) the measures which the employer intends to take in order to comply with the requirements of regulation 10.

(4) The employer shall ensure, so far as is reasonably practicable, that the work to which the plan of work relates is carried out in accordance with that plan.

Notification of work with asbestos

8.—(1) This regulation shall apply to work at the premises of the employer in which an employee is or is liable to be exposed to asbestos unless –

- (a) the extent of that exposure neither exceeds nor is liable to exceed the action level; or
- (b) the work is work to which the Asbestos (Licensing) Regulations (Northern Ireland) 1984(a) apply.

(2) An employer shall not carry out work to which this regulation applies for the first time unless he has notified the enforcing authority in writing of the particulars specified in Schedule 1 at least 14 days before commencing that work or before such shorter time as the enforcing authority may agree.

(3) Where an employer has notified work in accordance with paragraph (2) and there is a material change in that work which might affect the particulars so notified (including the cessation of the work), the employer shall forthwith notify the enforcing authority of that change.

(a) S.R. 1984 No. 205 as amended by S.R. 1999 No. 150 and S.R. 2000 No. 100

Information, instruction and training

9.—(1) Every employer shall ensure that adequate information, instruction and training is given to those of his employees –

- (a) who are or are liable to be exposed to asbestos, or who supervise such employees, so that they are aware of –
 - (i) the significant findings of the risk assessment,
 - (ii) the risks to health from asbestos,
 - (iii) the precautions which should be observed, and
 - (iv) the relevant control limit and action level,

in order to safeguard themselves and other employees; and

- (b) who carry out work in connection with the employer's duties under these Regulations, so that they can carry out that work effectively.

(2) The information, instruction and training required by paragraph (1) shall be –

- (a) given at regular intervals;
- (b) adapted to take account of significant changes in the type of work carried out or methods of work used by the employer; and
- (c) provided in a manner appropriate to the nature and degree of exposure identified by the risk assessment.

Prevention or reduction of exposure to asbestos

10.—(1) Every employer shall –

- (a) prevent the exposure of his employees to asbestos so far as is reasonably practicable;
- (b) where it is not reasonably practicable to prevent such exposure –
 - (i) reduce the exposure of his employees to asbestos to the lowest level reasonably practicable by measures other than the use of respiratory protective equipment, and
 - (ii) ensure that the number of his employees who are exposed to asbestos is as low as is reasonably practicable.

(2) Without prejudice to the generality of paragraph (1), where employees may be exposed to asbestos in a manufacturing process or in the installation of a product, prevention of such exposure to asbestos shall be achieved, where it is practicable, by substituting for asbestos a substance which, under the conditions of its use, does not create a risk to the health of his employees or creates a lesser risk than that created by asbestos.

(3) Where it is not practicable to avoid the use of asbestos by substitution in accordance with paragraph (2), the measures referred to in paragraph (1)(b)(i) shall include, in order of priority –

- (a) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials in order to avoid or minimise the release of asbestos; and
- (b) the control of exposure at source, including adequate ventilation systems and appropriate organisational measures.

(4) Where, in pursuance of paragraph (1), it is not reasonably practicable to reduce the exposure of an employee to below the control limits which apply to that exposure, then, in addition to taking the measures required by that paragraph, the employer shall provide that employee with suitable respiratory protective equipment which will reduce the concentration of asbestos in the air inhaled by the employee (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.

(5) Personal protective equipment provided by an employer in accordance with this regulation or regulation 13(1) shall be suitable for the purpose and shall –

- (a) comply with any provision in the Personal Protective Equipment Regulations 2002^(a) which is applicable to that item of personal protective equipment; or

(a) S.I. 2002/1144

(b) in the case of respiratory protective equipment, where no provision referred to in subparagraph (a) applies, be of a type approved or shall conform to a standard approved, in either case, by the Executive.

(6) Every employer shall take immediate steps to remedy the situation where the concentration of asbestos in air inhaled by any employee exceeds the relevant control limit.

(7) Where asbestos is used in a work process, or is produced by a work process, the employer shall ensure that the quantity of asbestos and materials containing asbestos at the premises where that work is carried out is reduced to as low a level as is reasonably practicable.

Use of control measures etc.

11.—(1) Every employer who provides any control measure, other thing or facility pursuant to these Regulations shall ensure so far as is reasonably practicable that it is properly used or applied as the case may be.

(2) Every employee shall make full and proper use of any control measure, other thing or facility provided pursuant to these Regulations and, where relevant, shall –

(a) take all reasonable steps to ensure it is returned after use to any accommodation provided for it; and

(b) if he discovers a defect therein report it forthwith to his employer.

Maintenance of control measures etc.

12.—(1) Every employer who provides any control measure to meet the requirements of these Regulations shall ensure that, where relevant, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition.

(2) Where exhaust ventilation equipment or respiratory protective equipment (except disposable respiratory protective equipment) is provided to meet the requirements of these Regulations, the employer shall ensure that thorough examinations and tests of that equipment are carried out at suitable intervals by a competent person.

(3) Every employer shall keep a suitable record of the examinations and tests carried out in accordance with paragraph (2) and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary thereof shall be kept available for at least five years from the date on which it was made.

Provision and cleaning of protective clothing

13.—(1) Every employer shall provide adequate and suitable protective clothing for such of his employees as are exposed or are liable to be exposed to asbestos, unless no significant quantity of asbestos is liable to be deposited on the clothes of the employee while he is at work.

(2) The employer shall ensure that protective clothing provided in pursuance of paragraph (1) is either disposed of as asbestos waste or adequately cleaned at suitable intervals.

(3) The cleaning required by paragraph (2) shall be carried out either on the premises where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning, or in a suitably equipped laundry.

(4) The employer shall ensure that protective clothing which has been used and is to be removed from the premises referred to in paragraph (3) (whether for cleaning, further use or disposal) is packed, before being removed, in a suitable container which shall be labelled in accordance with the provisions of Schedule 2 as if it were a product containing asbestos or, in the case of protective clothing intended for disposal as waste, in accordance with regulation 23(3).

(5) Where, as a result of the failure or improper use of the protective clothing provided in pursuance of paragraph (1), a significant quantity of asbestos is deposited on the personal clothing of an employee, then, for the purposes of paragraphs (2), (3) and (4) that personal clothing shall be treated as if it were protective clothing.

Arrangements to deal with accidents, incidents and emergencies

14.—(1) Subject to paragraph (3) and without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000(a), in order to protect the health of his employees from an accident, incident or emergency related to the use of asbestos in a work process or to the removal or repair of asbestos-containing materials at the workplace, the employer shall ensure that –

- (a) procedures, including the provision of relevant safety drills (which shall be tested at regular intervals), have been prepared which can be put into effect when such an event occurs;
- (b) information on emergency arrangements, including –
 - (i) details of relevant work hazards and hazard identification arrangements, and
 - (ii) specific hazards likely to arise at the time of an accident, incident or emergency, is available; and
- (c) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs.

(2) The employer shall ensure that information on the procedure and systems required by paragraph (1)(a) and (c) and the information required by paragraph (1)(b) is –

- (a) made available to relevant accident and emergency services to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures; and
- (b) displayed at the workplace, if this is appropriate.

(3) Paragraph (1) shall not apply where –

- (a) the results of the risk assessment show that, because of the quantity of asbestos present at the workplace, there is only a slight risk to the health of employees; and
- (b) the measures taken by the employer to comply with the duty under regulation 10(1) are sufficient to control that risk.

(4) In the event of an accident, incident or emergency related to the unplanned release of asbestos at the workplace, the employer shall ensure that –

- (a) immediate steps are taken to –
 - (i) mitigate the effects of the event,
 - (ii) restore the situation to normal, and
 - (iii) inform any person who may be affected; and
- (b) 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 –
 - (i) appropriate respiratory protective equipment and protective clothing, and
 - (ii) any necessary specialised safety equipment and plant,which shall be used until the situation is restored to normal.

Duty to prevent or reduce the spread of asbestos

15. Every employer shall prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable, the spread of asbestos from any place where work under his control is carried out.

Cleanliness of premises and plant

16.—(1) Every employer who undertakes work which exposes or is liable to expose his employees to asbestos shall ensure that –

- (a) the premises or those parts of premises where that work is carried out and the plant used in connection with that work are kept in a clean state; and
- (b) where such work has been completed the premises or those parts of the premises where the work was carried out are thoroughly cleaned.

(a) S.R. 2000 No. 388

(2) Subject to paragraph (3), where a manufacturing process which gives rise to asbestos dust is carried out in a building, the employer shall ensure that any part of the building in which the process is carried out is –

- (a) so designed and constructed as to facilitate cleaning; and
- (b) is equipped with an adequate and suitable vacuum cleaning system which shall, where reasonably practicable, be a fixed system.

(3) Paragraph (2)(a) shall not apply to a building in which, prior to 25th April 1988, there was carried out a process to which either –

- (a) as then in operation, regulation 13 of the Asbestos Regulations (Northern Ireland) 1969(a) applied and the process was carried out in compliance with that regulation; or
- (b) that regulation did not apply.

Designated areas

17.—(1) Every employer shall ensure that any area in which work under his control is carried out is designated as –

- (a) an asbestos area, where the exposure to asbestos of an employee who worked in that area for the whole of his working time would exceed or would be liable to exceed the action level; and
- (b) a respirator zone, where the concentration of asbestos in that area would exceed or would be liable to exceed a relevant control limit.

(2) Asbestos areas and respirator zones shall be clearly and separately demarcated and identified by notices indicating –

- (a) that the area is an asbestos area or a respiratory zone or both, as the case may be; and
- (b) in the case of a respirator zone, that the exposure of an employee who enters it is liable to exceed a relevant control limit and, if it does, that respiratory protective equipment must be worn.

(3) The employer shall not permit any employee, other than an employee who by reason of his work is required to be in an area designated in accordance with paragraph (1), to enter or remain in any such area and only employees who are so permitted shall enter or remain in any such area.

- (4) Every employer shall ensure that –
 - (a) his employees do not eat, drink or smoke in an area designated as an asbestos area or a respirator zone; and
 - (b) arrangements are made for such employees to eat or drink in some other place.

Air monitoring

18.—(1) Subject to paragraph (2), every employer shall monitor the exposure of his employees to asbestos by measurement of asbestos fibres present in the air –

- (a) at regular intervals; and
- (b) when a change occurs which may affect that exposure.

(2) Paragraph (1) shall not apply where –

- (a) the exposure of an employee is not liable to exceed the action level; or
- (b) the employer is able to demonstrate by another method of evaluation that the requirements of regulation 10(1) have been complied with.

(3) The employer shall keep a suitable record of –

- (a) monitoring carried out in accordance with paragraph (1); and
- (b) where he decides that monitoring is not required because paragraph (2)(b) applies, the reason for that decision.

(4) The record required by paragraph (3), or a suitable summary thereof, shall be kept –

(a) S.R. 1969 No. 337, revoked by S.R. 1988 No. 74

- (a) in a case where exposure is such that a health record is required to be kept under regulation 21, for at least 40 years; or
 - (b) in any other case, for at least 5 years, from the date of the last entry made in it.
- (5) In relation to the record required by paragraph (3), the employer shall –
- (a) on reasonable notice being given, allow an employee access to his personal monitoring record;
 - (b) provide the Executive with copies of such monitoring records as the Executive may require; and
 - (c) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all monitoring records kept by him.

Standards for air testing

19.—(1) Every employer who carries out any measurement of the concentration of asbestos fibres present in the air shall ensure that he meets criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items and reporting results.

(2) Every employer who requests a person to carry out any measurement of the concentration of asbestos fibres present in the air shall ensure that that person is accredited by an appropriate body as complying with ISO 17025.

Standards for analysis

20.—(1) Every employer who analyses a sample of any material to determine whether it contains asbestos shall ensure that he meets criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items and reporting results.

(2) Every employer who requests a person to analyse a sample of any material to determine whether it contains asbestos shall ensure that that person is accredited by an appropriate body as complying with ISO 17025.

Health records and medical surveillance

21.—(1) Every employer shall ensure that –

- (a) a health record containing particulars approved by the Executive relating to each of his employees who is exposed to asbestos is maintained unless the exposure of that employee does not exceed the action level; and
- (b) that record or a copy thereof is kept available in a suitable form for at least 40 years from the date of the last entry made in it.

(2) Every employer shall ensure that each of his employees who is exposed to asbestos is under adequate medical surveillance by a relevant doctor unless the exposure of that employee does not exceed the action level.

(3) The medical surveillance required by paragraph (2) shall include –

- (a) a medical examination not more than 2 years before the beginning of such exposure; and
- (b) periodic medical examinations at intervals of not more than 2 years or such shorter time as the relevant doctor may require while such exposure continues, and

each such medical examination shall include a specific examination of the chest.

(4) Where an employee has been examined in accordance with paragraph (3), the relevant doctor shall issue a certificate to the employer and employee stating –

- (a) that the employee has been so examined; and

(b) the date of the examination,

and the employer shall keep that certificate or a copy thereof for at least 40 years from the date on which it was issued.

(5) An employee to whom this regulation applies shall, when required by his employer and at the cost of the employer, present himself during his working hours for such examination and tests as may be required for the purposes of paragraph (3) and shall furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require.

(6) Where, for the purpose of carrying out his functions under these Regulations, a relevant doctor requires to inspect any record kept for the purposes of these Regulations, the employer shall permit him to do so.

(7) Where medical surveillance is carried out on the premises of the employer, the employer shall ensure that suitable facilities are made available for the purpose.

(8) The employer shall –

- (a) on reasonable notice being given, allow an employee access to his personal health record;
- (b) provide the Executive with copies of such personal health records as the Executive may require; and
- (c) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all personal health records kept by him.

(9) Where, as a result of medical surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor to be the result of exposure to asbestos at work the employer of that employee shall –

- (a) ensure that a suitable person informs the employee accordingly and provides the employee with information and advice regarding further medical surveillance;
- (b) review the risk assessment;
- (c) review any measure taken to comply with regulation 10, taking into account any advice given by a relevant doctor or by the Executive;
- (d) consider assigning the employee to alternative work where there is no risk of further exposure to asbestos, taking into account any advice given by a relevant doctor; and
- (e) provide for a review of the health of every other employee who has been similarly exposed, including a medical examination (which shall include a specific examination of the chest) where such an examination is recommended by a relevant doctor or by the Executive.

Washing and changing facilities

22.—(1) Every employer shall ensure that, for any of his employees who is exposed or liable to be exposed to asbestos, there are provided –

- (a) adequate washing and changing facilities;
 - (b) where he is required to provide protective clothing, adequate facilities for the storage of –
 - (i) that protective clothing, and
 - (ii) personal clothing not worn during working hours; and
 - (c) where he is required to provide respiratory protective equipment, adequate facilities for the storage of that equipment.
- (2) The facilities provided under paragraph (1) for the storage of –
- (a) personal protective clothing;
 - (b) personal clothing not worn during working hours; and
 - (c) respiratory protective equipment,

shall be separate from each other.

Storage, distribution and labelling of raw asbestos and asbestos waste

23.—(1) Every employer who undertakes work with asbestos shall ensure that raw asbestos or waste which contains asbestos is not –

- (a) stored;
- (b) received into or despatched from any place of work; or
- (c) distributed within any place of work, except in a totally enclosed distribution system,

unless it is in a sealed container clearly marked in accordance with paragraphs (2) and (3) showing that it contains asbestos.

(2) Raw asbestos shall be labelled in accordance with the provisions of Schedule 2.

(3) Waste containing asbestos shall be labelled –

- (a) where the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations (Northern Ireland) 1997^(a) apply, in accordance with those Regulations;
- (b) where the waste is conveyed by road in a road tanker or tank container in circumstances where the Carriage of Dangerous Goods by Road Regulations (Northern Ireland) 1997^(b) apply, in accordance with those Regulations; and
- (c) in any other case, in accordance with the provisions of Schedule 2.

Supply of products containing asbestos for use at work

24.—(1) Subject to paragraph (2), a person shall not supply a product which contains asbestos, being an article or substance for use at work, unless that product is labelled in accordance with the provisions of Schedule 2.

(2) Where a component of a product contains asbestos it shall be sufficient compliance with this regulation if that component is labelled in accordance with the provisions of Schedule 2 except that where the size of that component makes it impossible for a label to be fixed to it neither that component nor the product need be labelled.

Exemption certificates

25.—(1) Subject to paragraph (2), the Executive may, by a certificate in writing, exempt any person or class of persons from all or any of the requirements or prohibitions imposed by regulations 4, 5, 11, 12, 20 and 21(5) to (7) of these Regulations and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a further certificate in writing at any time.

(2) The Executive shall not grant any such exemption unless having regard to the circumstances of the case and in particular to –

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Application within the territorial sea

26. Within the territorial sea these Regulations shall apply only to and in relation to the premises and activities to which any of paragraphs 2 to 6 of Schedule 3 applies.

Revocations, amendments and savings

27.—(1) The following Regulations are revoked –

- (a) the Control of Asbestos at Work Regulations (Northern Ireland) 1988^(c);

(a) S.R. 1997 No. 247 amended by S.R. 1997 No. 360, S.R. 1998 No. 448 and S.R. 2002 No. 34

(b) S.R. 1997 No. 248 amended by S.R. 1998 No. 448 and S.R. 2002 No. 34

(c) S.R. 1988 No. 74

- (b) the Control of Asbestos at Work (Amendment) Regulations (Northern Ireland) 1993(a);
and
- (c) the Control of Asbestos at Work (Amendment) Regulations (Northern Ireland) 2000(b).

(2) In regulation 5(1) of the Asbestos (Licensing) Regulations (Northern Ireland) 1984(c) for the words “the Executive” where they first appear there shall be substituted the words “the enforcing authority” and for the words “the Executive” where they next appear there shall be substituted the words “that authority”.

(3) After paragraph 4 of Schedule 2 to the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999(d), there shall be inserted the following paragraph –

“(4A) The reference in paragraph (4)(a)(iii) to a physically segregated area does not include an area segregated only in order to prevent the escape of asbestos; and in this paragraph “asbestos” has the meaning assigned to it by regulation 2(1) of the Control of Asbestos at Work Regulations (Northern Ireland) 2003(e).”.

(4) Any record or register required to be kept under any Regulations revoked by paragraph (1) shall, notwithstanding that revocation, be kept in the same manner and for the same period as specified in those Regulations as if these Regulations had not been made, except that the Executive may approve the keeping of records at a place or in a form other than at the place where, or in the form in which, records were required to be kept under the Regulations so revoked.

Defence

28. Subject to regulation 21 of the Management of Health and Safety at Work Regulations (Northern Ireland) 2000(f), 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.

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 24th January 2003.

(L.S.)

Michael J. Bohill

A senior officer of the Department of Enterprise, Trade and Investment

(a) S.R. 1993 No. 26
(b) S.R. 2000 No. 98
(c) S.R. 1984 No. 205 as amended by S.R. 1999 No.305
(d) S.R. 1999 No. 90
(e) S.R. 2003 No. 33
(f) S.R. 2000 No. 388

SCHEDULE 1

Regulation 8(2)

PARTICULARS TO BE INCLUDED IN A NOTIFICATION

The following particulars are to be included in a notification made in accordance with regulation 8(2), namely –

- (a) the name of the notifier and the address and telephone number of his usual place of business;
- (b) a brief description of –
 - (i) the type(s) of asbestos to be used or handled (crocidolite, amosite, chrysotile or other),
 - (ii) the maximum quantity of asbestos to be held at any one time on the premises at which the work is to take place,
 - (iii) the activities or processes involved, and
 - (iv) the products to be manufactured, where applicable; and
- (c) the date of commencement of the work activity.

SCHEDULE 2

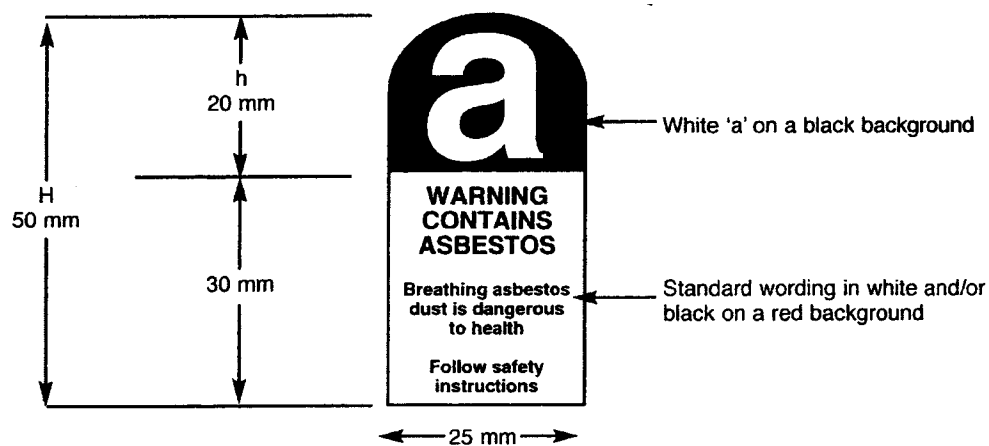
Regulations 13(4), 23(2)
and (3) and 24

THE LABELLING OF RAW ASBESTOS, ASBESTOS WASTE AND PRODUCTS CONTAINING ASBESTOS

1.—(1) Subject to sub-paragraphs (2) and (3) of this paragraph, the label to be used on –

- (a) raw asbestos (together with the labelling required under the Chemicals (Hazard Information and Packaging for Supply) Regulations (Northern Ireland) 2002(a) and the Carriage of Dangerous Goods (Classification, Packaging and Labelling) and Use of Transportable Pressure Receptacles Regulations (Northern Ireland) 1997);
- (b) asbestos waste, when required to be so labelled by regulation 23(3); and
- (c) products containing asbestos, including used protective clothing to which regulation 13(2) applies,

shall be in the form and in the colours of the following diagram and shall comply with the specifications set out in paragraphs 2 and 3.



(2) In the case of a product containing crocidolite, the words “contains asbestos” shown in the diagram shall be replaced by the words “contains crocidolite/blue asbestos”.

(3) Where the label is printed directly onto a product, a single colour contrasting with the background colour may be used.

2. The dimensions in millimetres of the label referred to in paragraph 1(1) shall be those shown on the diagram in that paragraph, except that larger measurements may be used, but in that case the dimension indicated as h on the diagram shall be 40% of the dimension indicated as H.

(a) S.R. 2002 No. 301

3. The label shall be clearly and indelibly printed so that the words in the lower half of the label can be easily read, and those words shall be printed in black or white.

4.—(1) Where a product containing asbestos may undergo processing or finishing it shall bear a label containing safety instructions appropriate to the particular product and in particular the following instructions –

“operate if possible out of doors or in a well ventilated place”;

“preferably use hand tools or low speed tools equipped, if necessary, with an appropriate dust extraction facility. If high speed tools are used, they should always be so equipped”;

“if possible, dampen before cutting or drilling”; and

“dampen dust, place it in a properly closed receptacle and dispose of it safely”.

(2) Additional safety information given on a label shall not detract from or contradict the safety information given in accordance with sub-paragraph (1).

5.—(1) Labelling of packaged and unpackaged products containing asbestos in accordance with the foregoing paragraphs shall be effected by means of –

(a) an adhesive label firmly affixed to the product or its packaging, as the case may be;

(b) a tie-on label firmly attached to the product or its packaging, as the case may be; or

(c) direct printing onto the product or its packaging, as the case may be.

(2) Where, in the case of an unpackaged product containing asbestos, it is not reasonably practicable to comply with the provisions of sub-paragraph (1) the label shall be printed on a suitable sheet accompanying the product.

(3) Labelling of raw asbestos and asbestos waste shall be effected in accordance with sub-paragraph (1)(a) or (c).

(4) For the purposes of this Schedule but subject to sub-paragraph (5), a product supplied in loose plastic or other similar wrapping (including plastic and paper bags) but no other packaging, shall be treated as being supplied in a package whether the product is placed in such wrapping at the time of its supply or was already so wrapped previously.

(5) No wrapping in which a product is placed at the time of its supply shall be regarded as packaging if any product contained in it is labelled in accordance with the requirements of this Schedule or any other packaging in which that product is contained is so labelled.

SCHEDULE 3

Regulation 26

PREMISES AND ACTIVITIES WITHIN THE TERRITORIAL SEA

Interpretation

1.—(1) In this Schedule –

“activity” includes a diving operation;

“designated area” means any area designated by Order under section 1(7) of the Continental Shelf Act 1964(a) and “within a designated area” includes over and under it;

“diving operation” has the same meaning as it has in the Diving Operations at Work Regulations (Northern Ireland) 1994(b) save that it includes an activity in which a person takes part as a diver wearing an atmospheric pressure suit and without breathing in air or other gas at a pressure greater than atmospheric pressure;

“energy structure” means a fixed or floating structure, other than a vessel, for producing energy from wind or water;

“offshore installation” shall be construed in accordance with paragraph 2(2) and (3);

“supplementary unit” means a fixed or floating structure, other than a vessel, for providing energy, information or substances to an offshore installation;

(a) 1964 c. 29; section 1 was amended by the Oil and Gas (Enterprise) Act 1982 (1982 c. 23), Schedule 3, paragraph 1

(b) S.R. 1994 No. 146

“stand-by vessel” means a vessel which is ready to give assistance in the event of an emergency on or near an offshore installation;

“vessel” includes a hovercraft and any floating structure which is capable of being staffed.

(2) For the purposes of this Schedule, any structures and devices on top of a well shall be treated as forming part of the well.

(3) Any reference in this Schedule to premises and activities includes a reference to any person, article or substance on those premises or engaged in, or, as the case may be, used or for use in connection with any such activity, but does not include a reference to an aircraft which is airborne.

Offshore installations

2.—(1) This paragraph shall apply to and in relation to –

- (a) any offshore installation and any activity on it;
- (b) any activity in connection with an offshore installation, or any activity which is immediately preparatory thereto, whether carried on from the installation itself, in or from a vessel or in any other manner, other than –
 - (i) transporting, towing or navigating the installation; and
 - (ii) any activity in or from a vessel being used as a stand-by vessel;
- (c) a diving operation involving –
 - (i) the survey and preparation of the sea bed for an offshore installation;
 - (ii) the survey and restoration of the sea bed consequent on the removal of an offshore installation.

(2) Subject to sub-paragraph (3), in this paragraph, “offshore installation” means a structure which is, or is to be, or has been, used while standing or stationed in water, or on the foreshore or other land intermittently covered with water –

- (a) for the exploitation, or exploration with a view to exploitation, of mineral resources by means of a well;
- (b) for the storage of gas in or under the shore or bed of any water or the recovery of gas so stored;
- (c) for the conveyance of things by means of a pipe; or
- (d) mainly for the provision of accommodation for persons who work on or from a structure falling within any of the provisions of this sub-paragraph,

together with any supplementary unit which is ordinarily connected to it, and all the connections.

(3) Any reference in sub-paragraph (2) to a structure or unit does not include –

- (a) a structure which is connected with dry land by a permanent structure providing access at all times and for all purposes;
- (b) a well;
- (c) a structure which has ceased to be used for any of the purposes specified in sub-paragraph (2) and has since been used for a purpose not so specified;
- (d) a mobile structure which has been taken out of use and is not yet being moved with a view to its being used for any of the purposes specified in sub-paragraph (2); and
- (e) any part of a pipeline.

Wells

3.—(1) Subject to sub-paragraph (2), this paragraph applies to and in relation to –

- (a) a well and any activity in connection with it; and
- (b) an activity which is immediately preparatory to any activity in sub-paragraph (a).

(2) Sub-paragraph (1) includes keeping a vessel on station for the purpose of working on a well but otherwise does not include navigation or an activity connected with navigation.

Pipelines

4.—(1) This paragraph applies to and in relation to –

- (a) any pipeline;
- (b) any pipeline works;
- (c) the following activities in connection with pipeline works –
 - (i) the loading, unloading, fuelling or provisioning of a vessel;
 - (ii) the loading, unloading, fuelling, repair and maintenance of an aircraft in a vessel,

being in either case a vessel which is engaged in pipeline works.

(2) In this paragraph –

“pipeline” means a pipe or system of pipes for the conveyance of any thing, together with –

- (a) any apparatus for inducing or facilitating the flow of any thing through, or through part of, the pipe or system;
- (b) any apparatus for treating or cooling any thing which is to flow through, or through part of, the pipe or system;
- (c) valves, valve chambers and similar works which are annexed to, or incorporated in the course of, the pipe or system;
- (d) apparatus for supplying energy for the operation of any such apparatus or works as are mentioned in heads (a) to (c);
- (e) apparatus for the transmission of information for the operation of the pipe or system;
- (f) apparatus for the cathodic protection of the pipe or system; and
- (g) a structure used or to be used solely for the support of a part of the pipe or system;

but not including a pipeline of which no initial or terminal point is situated in the United Kingdom, within the territorial sea adjacent to the United Kingdom, or within a designated area;

“pipeline works” means –

- (a) assembling or placing a pipeline or length of pipeline including the provision of internal or external protection for it;
- (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipeline or length of pipeline;
- (c) changing the position of or dismantling or removing a pipeline or length of pipeline;
- (d) opening the bed of the sea for the purposes of the works mentioned in heads (a) to (c), and tunnelling or boring for those purposes;
- (e) any activities incidental to the activities described in heads (a) to (d);
- (f) a diving operation in connection with any of the works mentioned in heads (a) to (e) or for the purpose of determining whether a place is suitable as part of the site of a proposed pipeline and the carrying out of surveying operations for settling the route of a proposed pipeline.

Mines

5.—(1) This paragraph applies to and in relation to a mine within the territorial sea or extending beyond it, and any activity in connection with it, while it is being worked.

(2) In this paragraph “mine” has the same meaning as in the Mines Act (Northern Ireland) 1969(a).

Other activities

6.—(1) Subject to paragraph (2), this paragraph applies to and in relation to –

- (a) the construction, reconstruction, alteration, repair, maintenance, cleaning, use, operation, demolition and dismantling of any building, energy structure or other structure, not being in any case a vessel, or any preparation for any such activity;
- (b) the transfer of people or goods between a vessel or aircraft and a structure (including a building) mentioned in head (a);
- (c) the loading, unloading, fuelling or provisioning of a vessel;
- (d) a diving operation;
- (e) the construction, reconstruction, finishing, refitting, repair, maintenance, cleaning or breaking up of a vessel except when carried out by the master or any officer or member of the crew of that vessel;
- (f) the maintaining on a station of a vessel which would be an offshore installation were it not a structure to which paragraph 2(3)(d) applies;
- (g) the operation of a cable for transmitting electricity from an energy structure to shore;
- (h) the transfer of people or goods between a vessel or aircraft and a structure mentioned in head (f).

(2) This paragraph shall not apply –

- (a) to a case where paragraph 2, 3, 4 or 5 applies; or
- (b) to vessels which are registered outside the United Kingdom and are on passage through the territorial sea.

(a) 1969 c. 6 (N.I.)

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations re-enact, with modifications, the Control of Asbestos at Work Regulations (Northern Ireland) 1988 (S.R. 1988 No. 74) (“the 1988 Regulations”) as amended. The 1988 Regulations imposed requirements for the protection of employees who might be exposed to asbestos at work and of other persons who might be affected by such work and also imposed certain duties on employees concerning their own protection from such exposure.

2. The Regulations, with the exception of regulations 4, 5, 11, 12, 20 and 21(5) to (7), implement as respects Northern Ireland –

- (a) Council Directive 76/769/EEC (“the Marketing and Use Directive”) (O.J. No. L262, 27.9.76, p. 201) as amended by Council Directive 83/478/EEC (O.J. No. L263, 24.9.83, p. 33) on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, insofar as it relates to the labelling of products for use at work containing asbestos;
- (b) Council Directive 83/477/EEC (O.J. No. L263, 24.9.83, p. 25) as amended by Council Directive 91/382/EEC (O.J. No. L206, 29.7.91, p. 16) on the protection of workers from the risks related to exposure to asbestos at work except insofar as this Directive was implemented by the Asbestos (Prohibitions) Regulations (Northern Ireland) 1993 (S.R. 1993 No. 25) which prohibited asbestos spraying;
- (c) Council Directive 90/394/EEC (O.J. No. L196, 26.7.90, p. 38) on the protection of workers from the risks related to exposure to carcinogens at work (sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) insofar as it relates to asbestos; and
- (d) Council Directive 98/24/EC (O.J. No. L131, 5.5.98, p. 11) on the protection of the health and safety of workers from risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) insofar as it relates to risks to health from exposure to asbestos.

3. In addition to minor and drafting amendments, the Regulations make the following changes of substance –

- (a) include certain further definitions (regulation 2);
- (b) introduce a duty to manage asbestos in non-domestic premises. Persons with repair and maintenance responsibilities for the premises will need to ensure that asbestos-containing materials within those premises are properly managed, and that information about the location and condition of the materials is passed on to those likely to disturb them (regulation 4);
- (c) extend the matters to be considered when carrying out an assessment of the risk from exposure to asbestos and require the risk assessment to be reviewed when the results of monitoring show it to be necessary (regulation 6);
- (d) introduce a duty on the employer to prepare procedures, provide information and establish warning systems to deal with an emergency in the workplace related to the use of asbestos in a work process or the removal or repair of asbestos-containing materials (regulation 14);
- (e) provide that air monitoring must occur unless the exposure of an employee to asbestos is not likely to exceed the action level or the employer can demonstrate in another way that the requirements in regulation 10(1) have been complied with (regulation 18);
- (f) require any person analysing a material in order to determine whether it contains asbestos to comply with European Standard EN ISO/IEC 17025 (regulation 20);
- (g) extend the duties on employers with respect to health records and medical surveillance where an employee is found to have an identifiable disease or adverse health effect caused by exposure to asbestos at work (regulation 21);

- (h) amend the Asbestos (Licensing) Regulations (Northern Ireland) 1984 (S.R. 1984 No. 205) so that a notice required by regulation 3(2)(b)(ii) is given to the enforcing authority instead of the Health and Safety Executive for Northern Ireland – (the Executive) (regulation 27); and
- (i) amend the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 90) in order to clarify that the Executive will not be the enforcing authority solely because an area has been segregated in order to prevent the spread of asbestos (regulation 27).

4. European Standard EN ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories” accepted by CEN/CENELEC on 6th December 1999 can be obtained from the British Standards Institution, BSI House, 389 Chiswick High Road, London, W4 4AL.

5. In Great Britain, the corresponding Regulations are the Control of Asbestos at Work Regulations 2002 (S.I. 2002/2675). The Great Britain Health and Safety Executive has prepared a regulatory impact assessment in relation to those Regulations and a copy of that assessment together with a Northern Ireland Supplement prepared by the Health and Safety Executive for Northern Ireland is held at the offices of that Executive at 83 Ladas Drive, Belfast BT6 9FR from where a copy may be obtained on request.

6. A person who contravenes the Regulations is guilty of an offence under Article 31 of the Health and Safety at Work (Northern Ireland) Order 1978 and is liable, on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000) or, on conviction on indictment, to a fine.

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