

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT
WORK) (CARCINOGENS AND MUTAGENS) REGULATIONS 2007

2007 No. 3100

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Regulations complete implementation of Council Directive 2004/37/EC of 29 April 2004 on the introduction measures to protect workers from the risks related to carcinogens and mutagens at work by extending to the maritime sector the duty on employers to reduce the risk to their employees' health resulting from exposure to carcinogens and mutagens. Regulations introduced by the Health and Safety Executive have already implemented the Directive for land based workers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented for the maritime sector by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962).

4.2 Council Directive 2004/37/EC ("the Carcinogens and Mutagens Directive") (the sixth individual Directive within the meaning of Article 16(1) of the Framework Directive) is a consolidating Directive which consolidates and replaces Directive 1990/394/EEC (as amended by Directive 1997/42/EC and Directive 1999/38/EC) which introduced minimum safety and health requirements for the protection of workers from the risks related to exposure to carcinogens and mutagens at work. Negotiations on Directives 1990/394/EEC, 1997/42/EC and 1999/38/EC were undertaken, on behalf of the United Kingdom, by the Health and Safety Executive.

4.3 The requirements of Directive 2004/37/EC, which build on the general safety and health provisions contained in the Framework Directive, are to be implemented for workers in the maritime sector by means of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007. Regulations introduced by the Health and Safety Executive (The Control of Substances Hazardous to Health Regulations 2002 (SI. 2002/2677)) have already implemented the Directives now consolidated in the Carcinogens and Mutagens Directive for land based workers and these new Merchant Shipping and Fishing Vessel Regulations complete the United Kingdom's implementation of this Directive.

4.4 No legislation previously existed to directly safeguard the health and safety of workers in the maritime sector from the risks arising from exposure to carcinogens and mutagens at work, other than that relating specifically to the carriage of dangerous cargoes.

5. Extent

5.1 This instrument extends to all United Kingdom ships whether they are in the UK or anywhere else in the world and to all seafarers on such vessels irrespective of their nationality, ethnic origin, religion, gender etc. The Regulations also apply to non-UK ships when in UK waters in the normal course of business, other than when exercising their right of innocent passage.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 complete the UK implementation of Council Directive 2004/37/EC, concerning the introduction of minimum safety and health requirements for the protection of workers from the risks related to exposure to carcinogens and mutagens at work. As mentioned above, corresponding Regulations have been produced for land based workers. It is necessary to make these Regulations to complete UK implementation of the Directive by ensuring its application to workers in the maritime sector to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

7.2 The policy objectives of Directive 2004/37/EC are to protect the health of workers from the risks arising from exposure to carcinogens and mutagens at work. The Regulations require employers to identify which of their employees may be at risk from carcinogens and mutagens, to assess the degree of risk and to introduce reasonably practicable measures to eliminate or minimise the risk. The Regulations fully reflect the Directive requirements except that, in line with HSE's Regulations, Schedule 1 lists additional substances and processes to which the definition of carcinogen relates.

7.3 Exposure to carcinogens can lead to a variety of diseases including cancer. Carcinogens can take many forms. For example dust from hardwoods and used engine oil are both carcinogenic.

7.4 Exposure to mutagens can lead to genetic damage. No detailed information on the effects of such exposure in relation to the maritime sector is available.

7.5 The results of the public consultation on the Regulations are briefly summarised in section 3 of the attached Regulatory Impact Assessment. A more detailed summary of the responses can be found in the table at the end of the RIA.

8. Impact

8.1 A Regulatory Impact Assessment is attached as Annex 1 to this memorandum

9. Contact

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can answer any queries regarding the instruments.

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSALS

The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 implementing Council Directive 2004/37/EC on the introduction of measures to protect workers from the risks related to exposure to carcinogens and mutagens at work.

2. PURPOSE AND INTENDED EFFECT OF MEASURES

Objectives

The Regulations give effect, in respect of the maritime sector, to Council Directive 2004/37/EC on the minimum health and safety requirements regarding the risks to workers arising from exposure to carcinogens and mutagens at work. Regulations to implement the Carcinogens and Mutagens Directive for land-based workers have already been introduced by the Health and Safety Executive and these new maritime Regulations will complete UK implementation by extending the provisions of the Directive to workers in the maritime sector.

Background

Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (as amended) (the "General Duties" Regulations). Directive 2004/37/EC, which consolidates Directives 1990/394/EEC, 1997/42/EC and 1999/38/EC), is a "daughter" Directive of the Framework Directive and builds on its requirements by introducing specific requirements for the protection of the health and safety of workers at risk of exposure to carcinogens and mutagens at work. There is no current maritime legislation covering the provisions of Directive 2004/37/EC other than that relating specifically to the carriage of dangerous cargoes.

Rationale for government intervention

The Directives consolidated by Directive 2004/37/EC (1990/394/EEC, 1997/42/EC and 1999/38/EC) came into force on 22 June 1990, 27 June 1997 and 29 April 1999 respectively. The Health and Safety Executive have already introduced Regulations implementing Directive 2004/37/EC for land based industry but their regulations do not apply to the master and crew of a UK ship in respect of normal shipboard activities. New Regulations applying the provisions of the Directive to the maritime sector are therefore required to complete full UK implementation of the Directive.

3. CONSULTATION

(i) Within Government

The devolved administrations and other Government Departments with a perceived interest in the subject were included in the consultation exercise..

(ii) Public Consultation

Some 257 consultees were included in the consultation exercise of which 143 covered the Merchant Shipping sector including the Chamber of Shipping (the trade association for the majority of UK ship owners), individual ship owners/operators and associations representing small vessel owners/operators. The remaining 115 consultees covered the fishing sector, from local associations to those at national level. In addition to the consultees referred to, who were sent hard copies of the consultation documents, hard copies were available to anyone else on request and electronic copies of the consultation documents were available for reference on the Maritime and Coastguard Agency website.

Separate Government specific consultation was not undertaken. However those Government Departments and Agencies, including those in the devolved administrations, appearing to have a direct interest in what is proposed were consulted as part of the general consultation process. Only 9 Responses were received of which 2 offered no comment, 3 were of a typographical nature and 1 related to the supporting guidance but was not relevant to either the Regulations or the Directive. Comments made by the remaining respondees have been taken into account in the Regulations in so far as is feasible within the constraints imposed by the Directive. A schedule of the comments received and the Maritime and Coastguard Agency response to them is attached.

4. OPTIONS

The alternatives available in respect of implementation of the Directive are to:-

- (a) do nothing;
- (b) rely on the provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (which implemented the Framework Directive) supplemented by guidance to implement the Carcinogens and Mutagens Directive.
- (c) introduce a new single set of Regulations to implement the Framework Directive and all the daughter Directives (including this one), the text of which would be a schedule to the Regulations; or
- (d) introduce a separate set of Regulations to implement the Carcinogens and Mutagens Directive.

So far as options (a) and (b) are concerned, only by implementing all of the provisions of the Directive in regulations will the UK adequately implement the Directive.

Option (c) whilst feasible is also not considered to be a realistic option as there are currently several Directives in the pipeline for implementation, each of which would require amendment to what would become a bulky single set of frequently amended Regulations. The result of this would

be a set of Regulations which was not user-friendly and would require cross referencing to amending Regulations.

Option (d) is therefore considered the most sensible way to proceed as it permits easy identification of provisions relating to exposure to carcinogens and mutagens at work. This option also accords with the route adopted by HSE in their Regulations thus permitting easier read across between the land-based Regulations and those applicable to the maritime sector. This is essential where land-based workers, e.g. stevedores, covered by HSE's Regulations, might be working on board ships to which the maritime Regulations apply.

5. COSTS AND BENEFITS

(i) Sectors and Groups Affected

Those primarily affected will be operators and managers of ships, fishing vessels, and other marine craft, including yachts, work boats etc which are registered in the UK and which have workers working on them. The Regulations will apply also to any non-UK vessels when operating in UK waters and also to charities and similar organisations which operate vessels. In the case of charities however the Regulations will only apply to workers employed on such vessels, and not to unpaid volunteers.

(ii) Benefits

The proposal is intended to standardise, throughout all EC Member States, the provisions relating to the protection of workers from the risks arising from exposure to carcinogens and mutagens, such that a "level playing field" applies to owners/operators of all EC registered vessels.

iii) Costs

a. Compliance costs

Consultees were asked to provide information on any costs that they envisaged would be incurred as a result of the introduction of the Regulations. No information was received from ship owners/operators or maritime unions the potential for increased costs. This may reflect the fact that many of the requirements are already considered by employers through implementation of the general requirements relating to the health and safety of workers of Directive 89/391/EEC (the "Framework Directive"). The Carcinogens and Mutagens Directive is a "daughter" Directive which simply elaborates these requirements by introducing more specialised requirements relating to carcinogens and mutagens.

b. Other costs

No comments were received indicating that any costs would be incurred. There is however a potential effect on international competitiveness in that the Carcinogens and Mutagens Regulations will implement a Directive which all EU Member States must bring into force in respect of the vessels on their registers. In addition there might be potential for a reduction in the number of cases of cancer or other carcinogenic or mutagen related illnesses, with potential savings to the NHS or removal of the need to pay benefits to seafarers who can continue to work rather than being declared unfit for service as a result.

c. Costs for a typical business

Given that no cost data were received from respondents to the consultation exercise it can only be assumed either that no costs will be incurred or that any costs will be minimal.

6. SMALL FIRMS IMPACT TEST

No comments were received on this point. As the regulations implement an EC Directive, there is effectively no scope to minimise further, than has been done already, the effect on small firms. In addition given that these provisions build on the requirements introduced by the Framework Directive, it is likely that many of the requirements will already be under consideration by owners/operators and the overall impact will be low.

7. COMPETITION ASSESSMENT

No comment was made on this point. As the Regulations implement an EC Directive, there is effectively no scope to minimise further, than has already been done, the effect on competition. To do otherwise than fully implement the Directive could invite the risk of infraction proceedings.

8. MONITORING, ENFORCEMENT AND SANCTIONS

Monitoring - Compliance with the Regulations will be considered as part of the overall inspection regime for both UK and non-UK ships. No additional cost for MCA is envisaged as a result of inspection under these Regulations.

Enforcement - The provisions of the Regulations will be enforced by means of the inspections carried out by Surveyors/Inspectors from the Maritime and Coastguard Agency as part of the Agency's normal inspection regime. Where very minor non compliances are noted by Surveyors/Inspectors it may be sufficient for them to deal with the matter either by giving advice; by setting out a time limit for rectification; or, possibly detaining the vessel until the situation is rectified. This is a standard MCA procedure and no additional cost for MCA is envisaged as a result of this.

Sanctions – In the event of non compliance, the Regulations provide that any contravention of relevant provisions shall be an offence, punishable on summary conviction by penalties consisting of fines ranging from level 3 on the standard scale up to the statutory maximum. For some more serious offences, provision is also made for penalties on conviction on indictment of imprisonment for a term not exceeding two years or a fine or both. Some additional costs for MCA may arise from prosecutions but it is anticipated that such costs will be recovered from the party prosecuted. Until the Regulations are in force, it is however difficult to say what level of costs might arise as a result of prosecution action.

9. IMPLEMENTATION AND DELIVERY PLAN

As the proposals are intended to implement the provisions of an EC Directive, there is virtually no scope for flexibility in the method of implementation. It is a requirement that all provisions are fully implemented in UK legislation and this is what we are proposing to do. However in doing so we have, except in relation to the definition of "Other substances and processes to which the definition of carcinogen relates" contained in Schedule 1, as stated in the Explanatory Memorandum, accorded with government policy and gone no further than the minimum necessary to implement the Carcinogens and Mutagens Directive.

Whilst the Regulations themselves implement the Carcinogens and Mutagens Directive, a supporting Marine Guidance Note has been prepared which will be available free of charge (as well as being downloadable from the MCA's website) and will provide more detailed guidance on the requirements of the Regulations and how they can be met.

10. POST-IMPLEMENTATION REVIEW

Since these proposals implement an EC Directive the use of "sunset clauses" is not appropriate as the Regulations will need to remain in force until such time as the Directives are either revoked or amended by the EC.

As with other EC occupational health and safety Directives, there is a requirement to report to the European Commission every five years on the practical implementation of the Directive.

11. SUMMARY AND RECOMMENDATION

The proposed Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2006 are intended to implement for the maritime sector Council Directive 2004/37/EC which introduces measures to protect workers from the risks related to exposure to carcinogens and mutagens at work. These regulations complement similar regulations introduced by the Health and Safety Executive for land based workers and are necessary to complete the United Kingdom's implementation of this Directive. It is therefore recommended that the Carcinogens and Mutagens Regulations be made as drafted.

12. DECLARATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Jim Fitzpatrick

Date 29th October 2007

**Parliamentary Under Secretary of State for Transport
Department for Transport**

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**RESPONSES TO MCA CONSULTATION ON DRAFT MERCHANT SHIPPING AND FISHING VESSEL
(HEALTH AND SAFETY AT WORK) (CARCINOGENS AND MUTAGENS) REGULATIONS**

*[(NOTE - References to specific regulation numbers relate to the
regulation numbers in the final version of the Regulations)]*

<u>Respondee</u>	<u>Respondee Comment</u>	<u>MCA Comment</u>
HSE- Northern Ireland	Note that draft regulations refer to related HSE Regulations covering land based workers in Great Britain. Suggest therefore that as the maritime regulations apply to whole of UK reference should also be made to related HSE(NI) Regulations covering land based workers in Northern Ireland	Reference to Northern Ireland Regulations now included in regulation 3(3)(b).
Home Office	Content with proposals	None Required
Orpington Marine Office	Query reference to Code for Small Motor Vessels in definition of Sail Training Vessels Also suggest more guidance is required on disposal of cleaning materials	This practice was established by earlier health and safety regulations which implemented EC Directives. This will be rectified in due course when a single “Consolidated Code” is introduced to replace the existing Codes. This is relevant to supporting guidance and does not require coverage in the regulations
Scottish Environment Protection Agency	No Comment	None Required

J Marr & Company	Comments are directed at the related guidance	No action required re regulations as not relevant to them.
HSE - GB	<p>Drew attention to the lapsing of the transitional measure in Schedule 2 of the draft regulations and suggested deletion</p> <p>Also offered comments on draft guidance</p>	<p>Noted and acted upon</p> <p>No action required re regulations as not relevant to them.</p>
NUMAST	<p>Note inclusion of “reasonably practicable” and “possible” in square brackets in Regulations 3 and 19 and would request that “possible” be adopted instead of “reasonably practicable” as the latter whilst accepted in the UK is not recognised in Europe nor the Commission as satisfying the requirement to fully implement the Directive.</p> <p>Seek clarification of “Secretary of State” in the regulations to make clear which Secretary of State has responsibility for shipping</p>	<p>“Reasonably practicable” is the provision normally included in legislation implementing EC Health & Safety Directives and its purpose is to avoid requiring employers to have to go to extraordinary lengths and costs to reduce to nil risks which are minimal. This is in line with HSE’s regulations for land based workers. The EC previously expressed concerns about the use of “reasonably practicable”. HSE and lawyers put forward a robust defence and the outcome was that the European Court of Justice ruled in favour of the United Kingdom.</p> <p>As drafted this is in line with normal regulatory practice and no need for change is seen.</p>

	Also offered comments on draft guidance	None required as not relevant to the Regulations.
Chamber of Shipping	Queried the inclusion of Coal Tar in the list of carcinogenic substances in Schedule 1 as this is one of the most effective treatments for psoriasis	Recognising the concerns expressed the reference in Schedule 1 has been amended so it now refers to “work involving exposure to polycyclic aromatic hydrocarbons present in coal soot, coal tar or coal pitch” and the related guidance clarifies that this excludes medicinal coal tar used for treatment of psoriasis.
Chamber of Shipping (continued)	<p>Query that Regulation 13 on Information and Training of Workers makes no mention of Approved Products Lists or Material Safety Data Sheets</p> <p>Have concerns about duty, in Regulation 15(9) to notify cases of cancer arising from occupational exposure. whilst this is a requirement of the Directive it will be difficult to comply with as the cause of the cancer may be unclear in many cases,</p> <p>Finally draw attention to a typographical error in the Explanatory Note</p>	<p>Approved Products Lists and Material Safety Data Sheets are not required by the Directive and in implementing the Directive the Regulations go so far as is required by it. References to Approved Products Lists and Material Safety Data Sheets have however been included in the related guidance as a means whereby employers might meet their obligations under the regulations.</p> <p>Whilst noting the Chamber’s concern the reporting requirement is, as they rightly say, included in the Directive. We therefore have no option but to include it or face the prospect of infraction proceedings for failure to implement the Directive in full.</p> <p>Noted and corrected</p>

<p>Honourable Company of Master Mariners</p>	<p>In the case of Regulations 3(2)(b) and 10(2) it is considered that the final form of the words contained in the square brackets should reflect a need for the employer to provide the highest level of protection for workers</p> <p>In the case of regulation 5(1)(a)(iii) it is considered the assessment of risks should take account of the individual characteristics of the personal undertaking the work, including whether they are on any medications or are suffering or recovering from any illness.</p> <p>Concern is also expressed about the possible effects on a foetus of the exposure of a pregnant female worker to mutagenic substances. They consider no female worker should be involved in this work if they have any suspicion they may be pregnant. However it is also considered that this should not be used by employers as an excuse not to employ female workers.</p>	<p>This is similar to the point raised by NUMAST in respect of “reasonably practicable” and “possible” and the response is the same.</p> <p>It is considered that this is appropriately covered by the Risk assessment provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) which implemented the Framework Directive</p> <p>The requirement to take account of the possibility of pregnancy is already dealt with by regulations 8 to 10 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962)</p>
<p>Honourable Company of Master Mariners (continued)</p>	<p>In the case of Regulation 15 it is considered that steps must be taken to ensure the privacy of an individual’s medical records following health surveillance</p> <p>Finally it is considered that the list in Schedule 1 should not be seen as definitive</p>	<p>This is covered in the related MGN</p> <p>It is not considered that the list in Schedule 1 can be regarded as definitive as the definition of “carcinogen” in Regulation 2 is much wider ranging and refers to any substance or preparation which if classified in accordance with HSE’s CHIP Regulations would be classified as a category 1 or</p>

	Attention is also drawn to a typographical error in the Explanatory Note	category 2 carcinogen Noted and rectified
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TRANSPOSITION NOTE

Relating to the implementation for the maritime sector of Council Directive 2004/37/EC of 29 April 2004 (the sixth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (which consolidates and replaces Directive 1990/394/EEC as amended by Directive 1997/42/EC and Directive 1999/38/EC) on the introduction of measures to protect workers from the risks related to exposure to carcinogens or mutagens at work.

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 (in this note referred to as “the Carcinogens and Mutagens Regulations 2007”) implement Council Directive 2004/37/EC for the maritime sector, which includes all commercial sea-going and inland waterway, merchant and fishing vessels of whatever size. The regulations also apply to commercial and private pleasure vessels on which workers are employed. Implementation of Council Directive 2004/37/EC in respect of workers employed in land based industries is the responsibility of the Health and Safety Executive who have introduced regulations to cover such workers.

The responsibility for implementation of Council Directive 2004/37/EC for the maritime sector rests with the Secretary of State through the introduction of new Regulations.

Maritime and Coastguard Agency
Department for Transport
October 2007

**TABLE RELATING TO IMPLEMENTATION OF
ARTICLES OF DIRECTIVE 2004/37/EC**

Article	Objective of Article or Paragraph of Article	Implementation
1	Objectives	
1.1	States that the Directive has as its aim the protection of workers against risks to their health and safety, including the prevention of such risks, arising or likely to arise from exposure to carcinogens or mutagens at work. In this respect it lays down minimum requirements in this area, including limit values.	Transposition not required.
1.2	States that the Directive shall not apply to workers exposed only to radiation covered by the Treaty establishing the European Atomic Energy Community.	Transposed by regulation 3(3)(a) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
1.3	States that Directive 89/391/EEC shall apply fully to the whole area referred to in paragraph 1, without prejudice to more stringent and/or specific provisions contained in this Directive.	Transposed by regulation 3(4) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007 <i>NOTE - Directive 89/391/EEC (the Framework Directive on health and safety at work) referred to in this paragraph was implemented in respect of merchant shipping and fishing vessels by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962, amended by SI 1998/2411 and SI 2001/54)</i>
1.4	States that as regards asbestos, which is dealt with by Directive 83/477/EEC, the provisions of this Directive shall apply whenever they	Transposition not required as Directive 83/477/EEC was not applicable to sea transport. This will change with the implementation of

	are more favourable to health and safety at work.	Directive 2003/18/EC which amends Directive 83/477/EEC so that it applies to ships and fishing vessels. Implementation of Directive 2003/18/EC by means of separate Regulations is currently in hand.
3	Scope - Determination and assessment of risks	
3.1	Provides that the provisions of the Directive shall apply to activities in which workers are or are likely to be exposed to carcinogens or mutagens as a result of their work.	Transposed by regulation 3(1) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
3.2	<p>Requires that where any activity is likely to involve a risk of exposure to carcinogens or mutagens, the nature, degree and duration of workers' exposure shall be determined by the employer in order to make it possible to assess any risk to the workers' health or safety and to lay down the measures to be taken.</p> <p>The assessment shall be renewed regularly and in any event when any change occurs in the conditions which may affect workers' exposure to carcinogens or mutagens.</p> <p>The employer is also required to supply the authorities responsible at their request with the information used for making the risk assessment.</p>	<p>Transposed by regulation 4(1)(a)(i) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p> <p><i>NOTE</i> - <i>Regulation 4(1)(a) cross refers to the Risk Assessment requirement set out in regulation 7 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 which implemented Directive 89/391/EEC</i></p> <p>Transposed by regulation 4(1)(b) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p> <p>Transposed by regulation 4(1)(c) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>
3.3	Requires that when assessing the risk, account is to be taken of all	Transposed by regulation 4(1)(a)(ii) of the Merchant Shipping and

	other routes of exposure, such as absorption into and/or through the skin.	Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
3.4	Requires that when a risk assessment is carried out, employers are to give particular attention to any effects concerning the health or safety of workers at particular risk and shall take account of the desirability of not employing such workers in areas where they may come into contact with carcinogens or mutagens.	Transposed by regulation 4(1)(a)(iii) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
4	Reduction and replacement	
4.1	Requires the employer to reduce the use of a carcinogen or mutagen at the place of work, in particular by replacing it, in so far as is technically possible, by a substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to workers' health or safety, as the case may be.	Transposed by regulation 6(1) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
4.2	Requires the employer, upon request, to submit the findings of his investigations to the relevant authorities.	Transposed by regulation 5(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
5	Prevention and reduction of exposure	
5.1	Requires that where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, workers' exposure must be prevented.	Transposed by regulation 6(1) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
5.2	Requires that where it is not technically possible to replace the carcinogen or mutagen by a	Transposed by regulation 6(2) and (3) of the Merchant Shipping and Fishing Vessels (Health and Safety at

	substance, preparation or process which, under its conditions of use, is not dangerous or is less dangerous to health or safety, the employer shall ensure that the carcinogen or mutagen is, in so far as is technically possible, manufactured and used in a closed system.	Work)Carcinogens and Mutagens Regulations 2007
5.3	Requires that where a closed system is not technically possible, the employer shall ensure that the level of exposure of workers is reduced to as low a level as is technically possible.	Transposed by regulation 6(4) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
5.4	Requires that exposure shall not exceed the limit value of a carcinogen as set out in Annex III.	Transposed by regulation 6(5) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
5.5	Requires that wherever a carcinogen or mutagen is used, the employer shall apply all the following measures: (a) limitation of the quantities of a carcinogen or mutagen at the place of work; (b) keeping as low as possible the number of workers exposed or likely to be exposed; (c) design of work processes and engineering control measures so as to avoid or minimise the release of carcinogens or mutagens into the place of work; (d) evacuation of carcinogens or mutagens at source, local extraction system or general ventilation, all such methods to be appropriate and compatible with the need to protect public health and the environment; (e) use of existing appropriate	Transposed by regulation 6(6) and Schedule 3 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007

	<p>procedures for the measurement of carcinogens or mutagens, in particular for the early detection of abnormal exposures resulting from an unforeseeable event or an accident;</p> <p>(f) application of suitable working procedures and methods;</p> <p>(g) collective protection measures and/or, where exposure cannot be avoided by other means, individual protection measures;</p> <p>(h) hygiene measures, in particular regular cleaning of floors, walls and other surfaces;</p> <p>(i) information for workers;</p> <p>(j) demarcation of risk areas and use of adequate warning and safety signs including 'no smoking' signs in areas where workers are exposed or likely to be exposed to carcinogens or mutagens;</p> <p>(k) drawing up plans to deal with emergencies likely to result in abnormally high exposure;</p> <p>(l) means for safe storage, handling and transportation, in particular by using sealed and clearly and visibly labelled containers;</p> <p>(m) means for safe collection, storage and disposal of waste by workers, including the use of sealed and clearly and visibly labelled containers.</p>	
<p>6</p>	<p>Information for the competent authority</p> <p>States that where the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or</p>	<p>Transposed by regulation 7(a) to (g) of the Merchant Shipping and Fishing Vessels (Health and Safety at</p>

	<p>safety, employers shall, when requested, make available to the competent authority appropriate information on:</p> <p>(a) the activities and/or industrial processes carried out, including the reasons for which carcinogens or mutagens are used;</p> <p>(b) the quantities of substances or preparations manufactured or used which contain carcinogens or mutagens;</p> <p>(c) the number of workers exposed;</p> <p>(d) the preventive measures taken;</p> <p>(e) the type of protective equipment used;</p> <p>(f) the nature and degree of exposure;</p> <p>(g) the cases of replacement.</p>	Work)Carcinogens and Mutagens Regulations 2007
7	Unforeseen exposure	
7.1	Requires that in the event of an unforeseeable event or an accident which is likely to result in an abnormal exposure of workers, the employer shall inform the workers thereof.	Transposed by regulation 8(1)(a) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
7.2	<p>Requires that until the situation has been restored to normal and the causes of the abnormal exposure have been eliminated:</p> <p>(a) only those workers who are essential to the carrying out of repairs and other necessary work shall be permitted to work in the affected area;</p>	Transposed by regulation 8(1) and (2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007

	<p>(b) the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear; the exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker;</p> <p>(c) unprotected workers shall not be allowed to work in the affected area.</p>	
8	Foreseeable exposure	
8.1	<p>Requires that for certain activities such as maintenance, in respect of which it is foreseeable that there is the potential for a significant increase in exposure of workers, and in respect of which all scope for further technical preventive measures for limiting workers' exposure has already been exhausted, the employer shall determine, after consultation of the workers and/or their representatives in the undertaking or establishment, without prejudice to the employer's responsibility, the measures necessary to reduce the duration of workers' exposure to the minimum possible and to ensure protection of workers while they are engaged in such activities.</p> <p>Requires that pursuant to the first subparagraph, the workers concerned shall be provided with protective clothing and individual respiratory protection equipment which they must wear as long as the abnormal exposure persists; that exposure may not be permanent and shall be kept to the strict minimum of time necessary for each worker.</p>	<p>Transposed by regulation 10(1), (2) and (3) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p> <p>Transposed by regulation 9(4)(a) and (b) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>
8.2	Requires that appropriate measures shall be taken to ensure that the areas	Transposed by regulation 9(4)(c) of the Merchant Shipping and Fishing

	<p>in which the activities referred to in the first subparagraph of paragraph 1 take place are clearly demarcated and indicated or that unauthorised persons are prevented by other means from having access to such areas.</p>	<p>Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>
9	<p>Access to risk areas</p> <p>Requires that appropriate measures shall be taken by employers to ensure that access to areas in which the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' safety or health take place are accessible solely to workers who, by reason of their work or duties, are required to enter them.</p>	<p>Transposed by regulation 10 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>
10	<p>Hygiene and individual protection</p>	
10.1	<p>States that employers shall be obliged, in the case of all activities for which there is a risk of contamination by carcinogens or mutagens, to take appropriate measures to ensure that:</p> <p>(a) workers do not eat, drink or smoke in working areas where there is a risk of contamination by carcinogens or mutagens;</p> <p>(b) workers are provided with appropriate protective clothing or other appropriate special clothing;</p> <p>(c) separate storage places are provided for working or protective clothing and for street clothes;</p> <p>(d) workers are provided with appropriate and adequate washing and toilet facilities;</p>	<p>Transposed by regulation 11(a) to (f) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>

	<p>(e) protective equipment is properly stored in a well-defined place and is checked and cleaned if possible before, and in any case after, each use;</p> <p>(f) defective equipment is repaired or replaced before further use.</p>	
10.2	Requires that workers may not be charged for the cost of the measures set out in paragraph 10.1.	Transposed by regulation 25 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
11	Information and training of workers	
11.1	<p>Requires that appropriate measures shall be taken by the employer to ensure that workers and/or workers' representatives in the undertaking or establishment receive sufficient and appropriate training, on the basis of all available information, in particular in the form of information and instructions, concerning:</p> <p>(a) potential risks to health, including the additional risks due to tobacco consumption;</p> <p>(b) precautions to be taken to prevent exposure;</p> <p>(c) hygiene requirements;</p> <p>(d) wearing and use of protective equipment and clothing;</p> <p>(e) steps to be taken by workers, including rescue workers, in the case of incidents and to prevent incidents.</p> <p>The training shall be:</p>	Transposed by regulation 12(1) and (2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007

	<p>— adapted to take account of new or changed risk, and</p> <p>— repeated periodically if necessary.</p>	
11.2	<p>Requires that employers shall inform workers of installations and related containers containing carcinogens or mutagens, ensure that all containers, packages and installations containing carcinogens or mutagens are labelled clearly and legibly, and display clearly visible warning and hazard signs.</p>	<p>Transposed by regulation 12(3) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>
12	<p>Information for workers</p> <p>Requires that appropriate measures shall be taken to ensure that:</p> <p>(a) workers and/or any workers' representatives in the undertaking or establishment can check that this Directive is applied or can be involved in its application, in particular with regard to:</p> <p>(i) the consequences for workers' safety and health of the selection, wearing and use of protective clothing and equipment, without prejudice to the employer's responsibility for determining the effectiveness of protective clothing and equipment;</p> <p>(ii) the measures determined by the employer which are referred to in the first subparagraph of Article 8(1), without prejudice to the employer's responsibility for determining such measures;</p> <p>(b) workers and/or any workers' representatives in the undertaking or establishment are informed as quickly as possible of abnormal exposures, including those referred</p>	<p>Transposed by regulation 12(4) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007</p>

	<p>to in Article 8, of the causes thereof and of the measures taken or to be taken to rectify the situation;</p> <p>(c) the employer keeps an up-to-date list of the workers engaged in the activities in respect of which the results of the assessment referred to in Article 3(2) reveal a risk to workers' health or safety, indicating, if the information is available, the exposure to which they have been subjected;</p> <p>(d) the doctor and/or the competent authority as well as all other persons who have responsibility for health and safety at work have access to the list referred to in point (c);</p> <p>(e) each worker has access to the information on the list which relates to him personally;</p> <p>(f) workers and/or any workers' representatives in the undertaking or establishment have access to anonymous collective information.</p>	
<p>13</p>	<p>Consultation and participation of workers</p> <p>Requires that consultation and participation of workers and/or their representatives in connection with matters covered by this Directive shall take place in accordance with Article 11 of Directive 89/391/EEC.</p>	<p>Transposed by regulation 13 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007 which cross refers to the consultation requirement set out in regulation 20 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (The "General Duties" Regulations) which implemented 89/391/EEC</p>
<p>14</p>	<p>Health Surveillance</p>	

14.1	Requires that Member States shall establish, in accordance with national laws and/or practice, arrangements for carrying out relevant health surveillance of workers for whom the results of the assessment referred to in Article 3(2) reveal a risk to health or safety.	Transposed by regulation 14(1) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
14.2	Requires that the arrangements referred to in paragraph 1 shall be such that each worker shall be able to undergo, if appropriate, relevant health surveillance: — prior to exposure, — at regular intervals thereafter. Those arrangements shall be such that it is directly possible to implement individual and occupational hygiene measures.	Transposed by regulation 14(2) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
14.3	Requires that if a worker is found to be suffering from an abnormality which is suspected to be the result of exposure to carcinogens or mutagens, the doctor or authority responsible for the health surveillance of workers may require other workers who have been similarly exposed to undergo health surveillance. In that event, a reassessment of the risk of exposure shall be carried out in accordance with Article 3(2).	Transposed by regulation 14(3) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
14.4	Requires that in cases where health surveillance is carried out, an individual medical record shall be kept and the doctor or authority responsible for health surveillance shall propose any protective or preventive measures to be taken in	Transposed by regulation 14(4) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007

	respect of any individual workers.	
14.5	Requires that information and advice must be given to workers regarding any health surveillance which they may undergo following the end of exposure.	Transposed by regulation 14(5) of the Carcinogens and Mutagens Regulations 2007
14.6	Requires that in accordance with national laws and/or practice: — workers shall have access to the results of the health surveillance which concern them, and — the workers concerned or the employer may request a review of the results of the health surveillance.	Transposed by regulation 14(6) and (7) Merchant Shipping and Fishing Vessels (Health and Safety at Work)of the Carcinogens and Mutagens Regulations 2007
14.7	Sets out practical recommendations for the health surveillance of workers are given in Annex II.	Transposed by regulation 14(8) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
14.8	Requires that all cases of cancer identified in accordance with national laws and/or practice as resulting from occupational exposure to a carcinogen or mutagen shall be notified to the competent authority.	Transposed by regulation 14(9) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
15	Record keeping	
15.1	Requires that the list referred to in point (c) of Article 12 and the medical record referred to in Article 14(4) shall be kept for at least 40 years following the end of exposure, in accordance with national laws and/or practice.	Transposed by regulation 15(1) of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
15.2	Requires that those documents shall be made available to the responsible	Transposed by regulation 15(2) of the Merchant Shipping and Fishing

	authority in cases where the undertaking ceases activity, in accordance with national laws and/or practice.	Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
16	Limit values	
16.1	States that the Council shall, in accordance with the procedure laid down in Article 137(2) of the Treaty, set out limit values in Directives on the basis of the available information, including scientific and technical data, in respect of all those carcinogens or mutagens for which this is possible, and, where necessary, other directly related provisions.	Transposition not required as provision requires only the Council to set limit values.
16.2	States that limit values and other directly related provisions are set out in Annex III.	Transposed by Schedule 2 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)Carcinogens and Mutagens Regulations 2007
17	Annexes	
17.1	States that Annexes I and III may be amended in accordance only with the procedure laid down in Article 137(2) of the Treaty.	Transposition not required
17.2	States that purely technical adjustments to Annex II in the light of technical progress, changes in international regulations or specifications and new findings in the field of carcinogens or mutagens shall be adopted in accordance with the procedure laid down in Article 17 of Directive 89/391/EEC.	Transposition not required
18	Use of data	
	States that the Commission shall	Transposition not required

	have access to the use made by the competent national authorities of the information referred to in Article 14(8).	
19	<p>Notifying the Commission</p> <p>Requires Member States to communicate to the Commission the provisions of national law which they adopt in the future in the field governed by this Directive.</p>	Transposition not required
20	<p>Repeal</p> <p>States that Directive 90/394/EEC, as amended by the Directives referred to in Annex IV, Part A of this Directive is repealed. Also states that references to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex V.</p>	Transposition not required
21	<p>Entry into force</p> <p>States that the Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.</p>	Transposition not required
22	<p>Addressees</p> <p>States that the Directive is addressed to the Member States and that it was done at Strasbourg on 29 April 2004.</p>	Transposition not required
Annex 1	<p>List of substances, preparations and processes</p>	Transposed by Schedule 1 to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007. However in the interests of compatibility with the HSE regulations for land based workers additional substances have

		been added which are known to be carcinogenic.
Annex II	Practical Recommendation for the health surveillance of workers	Transposed by regulation 14(8) and Schedule 4 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007
Annex III	Limit values and other directly related provisions	Transposed by Schedule 2 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Carcinogens and Mutagens Regulations 2007 <i>NOTE - The Directive currently contains no information under the heading "Other directly related provisions".</i>
Annex IV Part A	Repealed Directive and its successive amendments	Transposition not required as only specifies those Directives replaced by Directive 2004/37/EC
Annex IV Part B	Deadlines for transposition into national law	Transposition not required
Annex V	Correlation Table	Transposition not required as only shows how provisions of the Directives replaced by Directive 2004/37/EC are covered in Directive 2004/37/EC