

**2009 No. 414**

**HEALTH AND SAFETY**

**The Control of Asbestos (Amendment) Regulations (Northern Ireland) 2009**

*Made* - - - - *14th December 2009*

*Coming into operation* - *25th January 2010*

The Department of Enterprise, Trade and Investment(**a**), being the Department concerned(**b**) makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**c**) (“the 1972 Act”) and Articles 17(1) to (6)(**d**), 20(2), 54(1) and 55(2) of, and paragraphs 1(1) to (4), 2(2), 3, 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(**e**) (“the 1978 Order”).

The Department was designated(**f**) for the purposes of section 2(2) of the 1972 Act in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and persistent organic pollutants, dangerous substances, preparations and chemicals.

The Regulations give effect without modifications to proposals submitted to it by the Health and Safety Executive for Northern Ireland under Article 13(1A)(**g**) of the 1978 Order.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Control of Asbestos (Amendment) Regulations (Northern Ireland) 2009 and shall come into operation on 25th January 2010.

(2) The Interpretation Act (Northern Ireland) 1954(**h**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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- (**a**) Formerly the Department of Economic Development; *see* S.I. 1999/283 (N.I. 1), Article 3(5); that Department was formerly the Department of Manpower Services, *see* S.I. 1982/846 (N.I. 11), Article 3
- (**b**) *See* Article 2(2) of S.I. 1978/1039 (N.I. 9)
- (**c**) 1972 c. 68: the enabling powers conferred by section 2(2) were extended by virtue of section 1 of the European Economic Area Act 1993 (c. 51)
- (**d**) Article 17 must be read with S.I. 1992/1728 (N.I. 17), Articles 3(2) and 4(2)
- (**e**) 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), Articles 3(1) and 4(1). Article 55(2) was amended by S.I. 1998/2795 (N.I. 18), Article 6(1) and Schedule 1, paragraph 19
- (**f**) *See* S.I. 1976/897 for the designation in relation to the regulation and control of classification, packaging and labelling of dangerous substances and preparations and S.I. 2007/1349 in relation to persistent organic pollutants, dangerous substances, preparations and chemicals
- (**g**) Article 13(1A) was substituted by S.I. 1998/2795 (N.I. 18), Article 4
- (**h**) 1954 c. 33 (N.I.), as amended by S.I. 1999/663

## **Amendment of the Control of Asbestos Regulations (Northern Ireland) 2007**

2. In regulation 8 (*Licensing to work with asbestos*) of the Control of Asbestos Regulations (Northern Ireland) 2007(a), after paragraph (5) insert—

“(5A) The Executive shall not vary the terms of a licence under paragraph (4) or revoke a licence under paragraph (5) unless it has followed the procedure set out in Chapter II of the model rules as if—

- (a) the Executive were an enforcement officer; and
- (b) the variation or revocation were an enforcement action,

for the purposes of those rules.

(5B) Any person aggrieved by a decision of the Executive to vary the terms of a licence under paragraph (4) or revoke a licence under paragraph (5) may appeal against that decision to the Tribunal and Chapter I of the model rules shall apply for the purposes of such an appeal as if—

- (a) the Executive were an Authority;
- (b) the Department were the responsible Department; and
- (c) the variation or revocation were an enforcement action,

for the purposes of those rules.

(5C) For the purposes of paragraphs (5A) and (5B), the model rules are those set out in the Schedule to the Deregulation (Model Appeal Provisions) Order (Northern Ireland) 1997(b) and for the purposes of paragraph (5B), the Tribunal is a Tribunal appointed in accordance with Chapter I of those model rules.”

Sealed with the Official Seal of the Department of Enterprise, Trade and Investment on 14th December 2009



*M Bohill*

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

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(a) S.R. 2007 No. 31, as amended by S.I. 2008/2852 and S.R. 2009 No. 238; revoked in part by S.R. 2007 No. 62, S.I. 2008/2852 and S.R. 2009 No. 227

(b) S.R. 1997 No. 269

## EXPLANATORY NOTE

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

1. These Regulations amend the Control of Asbestos Regulations (Northern Ireland) 2007 (S.R. 2007 No. 31) (“the principal Regulations”) which implement as respects Northern Ireland—

- (a) Council Directive 76/769/EEC (“the Marketing and Use Directive”) (OJ No L 262, 27.9.76, p.201), as amended by Council Directives 83/478/EEC (OJ No L 263, 24.9.83 p.33) and 85/467/EEC (OJ No L 269, 11.10.85 p.56), and Commission Directives 91/659/EEC (OJ No L 363, 31.12.91 p.36) and 1999/43/EC (OJ No L 207, 6.8.99 p.18), 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 asbestos;
- (b) Council Directive 83/477/EEC (OJ No L 263, 24.9.83, p.25) as amended by Council Directive 91/382/EEC (OJ No L 206, 29.7.91 p.16) and Directive 2003/18/EC of the European Parliament and of the Council (OJ No L 97, 15.4.03, p.48) on the protection of workers from the risks related to exposure to asbestos at work;
- (c) Council Directive 90/394/EEC (OJ No L 196, 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 (OJ No L131, 5.5.93, p.11) on the protection of the health and safety of workers from the risks related to exposure 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.

2. The Regulations amend regulation 8 of principal Regulations which deals with the licensing of work with asbestos. They make provision for both representations by a person aggrieved before either the variation or revocation of a licence to work with asbestos and for an appeal mechanism against any decision to vary or revoke a licence.

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