

STATUTORY INSTRUMENTS

S. I. No. 386 of 2006

Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006

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(PRN. A6/1235)

Price: € 3.81

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**SAFETY, HEALTH AND WELFARE AT WORK (EXPOSURE TO
ASBESTOS) REGULATIONS 2006**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation
2. Interpretation
3. Application
4. Duty of employer to non-employee workers
5. General duties of employer
6. Exposure limit value
7. Identification of the presence of asbestos
8. Determination and assessment of risk
9. General measures relating to exposure to asbestos
10. Measurement of asbestos in the air
11. Notification requirements
12. Presumed asbestos-containing materials
13. Measures to be taken if the exposure limit value is exceeded (Unforeseeable)
14. Measures to be taken if the exposure limit value is exceeded (Foreseeable)
15. Plan of Work
16. Ability to perform asbestos work
17. Training and information
18. Provision and cleaning of protective clothing
19. Responsible medical practitioner
20. Assessment of the health of employees
21. Medical records relating to health assessments
22. Review of the determination of the health assessment
23. Disclosure of information contained in health assessments
24. Asbestosis and Mesothelioma Register
25. Occupational health register
26. Prohibitions
27. Revocations

Schedule 1
Meaning of Asbestos

Schedule 2
Measures to be Taken to Ensure the Safety and Health of Employees

Schedule 3
Particulars to be Notified to the Health and Safety Authority

Schedule 4

Evidence of Ability to Perform Asbestos Work

(Indicative, non-exhaustive list of information to be provided for the purposes of Regulation 16, as appropriate and applicable to the intended work)

Schedule 5

Information to be included in Individual Medical Records and Practical Recommendations for the Clinical Assessment of Employees for the purposes of Regulation 20

Schedule 6

Occupational Health Register

S.I. No. 386 of 2006

SAFETY, HEALTH AND WELFARE AT WORK (EXPOSURE TO ASBESTOS) REGULATIONS 2006

I, Tony Killeen, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of powers conferred on me by section 58 of the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2005 (S.I. No. 316 of 2005), and for the purpose of giving further effect to Council Directive 83/477/EEC of 19 September 1983¹ on the protection of workers from the risks related to exposure to asbestos at work, as amended by Council Directive 91/382/EEC of 25 June 1991² amending Directive 83/477/EEC and as amended by Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003³ amending Directive 83/477/EEC and for the purpose of giving further effect to Council Directive 87/217/EEC of 19 March 1987⁴ on the prevention and reduction of environmental pollution by asbestos, after consultation with the Health and Safety Authority, hereby make the following Regulations:

Citation

1. These Regulations may be cited as the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006.

Interpretation

2. (1) In these Regulations –

“Act” means the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);

“asbestos” means the fibrous silicates referred to in Article 2 of the Directive and which are set out in Schedule 1;

“Authority” means the Health and Safety Authority;

“Directive” means Council Directive 83/477/EEC of 19 September 1983¹, as amended by -

(a) Council Directive 91/382/EEC of 25 June 1991², and

(b) Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003³;

¹ O.J. No. L 263, 24.9.1983, p. 25

² O.J. No. L 206, 29.7.1991, p. 16

³ O.J. No. L 97, 15.4.2003, p. 48

⁴ O.J. No. L 85, 28.3.1987, p. 40

“exposure limit value” means the level of daily exposure above which no employee shall be exposed;

“health assessment” has the meaning assigned to it by Regulation 20;

“medical examination” means any laboratory tests and X-rays of the chest that a relevant responsible medical practitioner may require in accordance with Regulation 20(4);

“occupational health register” has the meaning assigned to it by Regulation 25;

“responsible medical practitioner” means the registered medical practitioner employed, or otherwise engaged, by an employer to be responsible for health assessments of employees under these Regulations;

“risk assessment” means the assessment of risk required under Regulation 8;

“WHO method of 1997” means the publication “Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method), WHO (World Health Organisation), Geneva 1997”.

(2) In these Regulations a reference to a paragraph or subparagraph is to a paragraph or subparagraph in the Regulation in which the reference occurs, unless it is indicated that reference to some other Regulation is intended, and a reference to a Regulation or a Schedule is to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other Regulation or Schedule is intended.

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as in the Directive.

Application

3. These Regulations apply to activities in which employees are or are likely to be exposed to dust arising from either or both asbestos and materials containing asbestos during their work and, accordingly, no person shall be employed in such activities in contravention of these Regulations.

Duty of employer to non-employee workers

4. Where duties, however expressed, are placed by these Regulations on an employer in respect of any of his or her employees at a place of work he or she shall be under a like duty in respect of every other person at work at that place of work who is or may be exposed at that place to dust containing asbestos as defined in Regulation 2(1), except that the duties under Regulation 16 (except where those persons are on the premises where the work is being carried out) and Regulations 18 to 23 shall not apply to persons who are not his or her employees.

General duties of employer

5. It shall be the duty of every employer –

- (a) to assess the risk to any employee's health or safety resulting from any activity from which an employee is or may be exposed in their place of work to dust arising from either, or both, asbestos and materials containing asbestos, and for that purpose to determine the nature and degree of any employee's exposure to dust arising from asbestos or materials containing asbestos, and to lay down the necessary measures to be taken to ensure the safety and health of employees taking account of the provisions laid down in Schedule 2,
- (b) where an employee's exposure is sporadic and of low intensity, and when it is clear from the results of the risk assessment referred to in paragraph (a) that the exposure limit value for asbestos in the air of the working area will not be exceeded, Regulations 11, 20 and 21 shall not apply where work involves:
 - (i) short, non-continuous maintenance activities in which only non-friable materials are handled;
 - (ii) removal without deterioration of non-degraded materials in which the asbestos fibres are firmly linked in a matrix;
 - (iii) encapsulation or sealing of asbestos-containing materials which are in good condition; or
 - (iv) air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos.

Exposure limit value

6. Every employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.1 fibres per cm³ as an eight-hour time-weighted average (TWA).

Identification of the presence of asbestos

7. An employer shall not undertake any work which would expose or would be liable to expose an employee to dust arising from either or both asbestos or materials containing asbestos at any premises unless he or she has either –

- (a) carried out a risk assessment as to whether asbestos or materials containing asbestos is present or is liable to be present in those premises; or
- (b) if there is doubt as to whether asbestos or materials containing asbestos is present in those premises he or she shall –

- (i) assume that asbestos or materials containing asbestos is present, and
- (ii) comply with the provisions of these Regulations as appropriate.

Determination and assessment of risk

8. (1) Without prejudice to section 19 of the Act and Regulation 5, where employees are or would be liable to exposure to dust from either or both asbestos or materials containing asbestos, an employer shall not permit an employee to carry out any activity which would or would be liable to cause such exposure unless he or she has made an assessment of the risk arising from such exposure.

(2) In carrying out the risk assessment referred to in paragraph (1), an employer shall—

- (a) identify the type of asbestos or materials containing asbestos;
- (b) identify the condition of the asbestos or materials containing asbestos;
- (c) make 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 prevent or minimise the exposure and to comply with the requirements of these Regulations;
- (d) record the significant findings of that risk assessment as soon as is practicable after the risk assessment is made;
- (e) for the purpose of these Regulations record and retain every risk assessment in a permanent form, and
- (f) implement the steps referred to in subparagraph (c).

(3) Without prejudice to the generality of paragraphs (1) and (2), the risk assessment shall –

- (a) determine the nature and degree of exposure which may occur during the course of the work;
- (b) consider the effects of control measures which have been or will be taken to prevent or reduce exposure to asbestos;
- (c) consider the results of monitoring of exposure in accordance with Regulation 10;
- (d) set out the steps to be taken to prevent exposure or reduce it to the lowest level reasonably practicable;
- (e) consider the results of relevant medical surveillance; and

- (f) include such additional information as the employer may need in order to complete the risk assessment in accordance with these Regulations.
- (4) The risk assessment shall be reviewed regularly and forthwith where –
- (a) there is reason to believe that the assessment is incorrect;
 - (b) there is reason to suspect that the existing risk assessment is no longer valid;
 - (c) there is a change of a material nature in the activity to which this risk assessment relates, or
 - (d) the results of any monitoring carried out in accordance with Regulation 10 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 and recorded and any necessary measures implemented.

(5) An employer in preparing a risk assessment under this Regulation shall consult with the employees concerned or their representatives, or both, in respect of the risk assessment.

(6) Notwithstanding paragraph (1), where the activity to which that paragraph relates is being carried out at, or is begun within the period of 14 days after, the commencement of these Regulations and will continue beyond that period, it shall be sufficient for the employer to make an assessment of the exposure within that period where the assessment determines the nature, degree and duration to which the employee is being or is likely to be exposed.

General measures relating to exposure to asbestos

9. (1) For all activities referred to in Regulation 3 (but subject to Regulation 5(b)) where there is or is likely to be an exposure of employees at the place of work to dust arising from either or both asbestos or materials containing asbestos, the employer concerned shall reduce such exposure to a minimum and in any case below the exposure limit value laid down in Regulation 6, in particular through the measures laid down in paragraph (2).

(2) For the purposes of paragraph (1) an employer shall -

- (a) limit, to the lowest possible number, the number of employees exposed or likely to be exposed to dust arising from either or both asbestos or materials containing asbestos;
- (b) ensure that work processes and systems of work are designed so as not to produce asbestos dust or, if that proves impossible, to avoid the release of asbestos dust into the air;

- (c) ensure that all premises and equipment involved in the treatment of asbestos are capable of being regularly and effectively cleaned and maintained;
- (d) ensure that asbestos or dust-generating asbestos-containing material is stored and transported in suitable sealed packing;
- (e) ensure that waste is collected and removed from the place of work as soon as possible in suitable sealed packing with labels clearly indicating that it contains asbestos (other than in respect of mining activities carried on at that place).

(3) Notwithstanding the provisions of paragraphs (1) and (2), and subject to Regulation 5(b), where employees are or may be exposed in the course of their work to dust arising from asbestos or materials containing asbestos, employers shall implement the measures identified at Schedule 2 and other appropriate measures to –

- (a) ensure the clear demarcation and indication by adequate warning signs of the areas in which such activities take place;
- (b) ensure that suitable and appropriate protective clothing is worn by employees who are in the area to which subparagraph (a) relates;
- (c) ensure that any area to which subparagraph (a) relates is not accessible to employees other than those who, by reason of their work duties, are required to enter such an area;
- (d) ensure that no employee shall smoke in any area to which subparagraph (a) relates;
- (e) ensure that, where exposure cannot reasonably be reduced by other means, employees are provided with appropriate individual respiratory protective equipment and ensure that it is worn by those employees.

(4) Nothing in paragraph 2(e) shall be construed as restricting the Waste Management (Movement of Hazardous Waste) Regulations 1998 (SI 147 of 1998) in their application to the disposal of asbestos dust and fibres in relation to mining activities.

Measurement of asbestos in the air

10. (1) Where an initial assessment under Regulation 8 determines that the amount of asbestos fibres in the air at a place of work is equal to or greater than the exposure limit value, the measurement of asbestos in the air at the place of work shall be carried out regularly.

(2) For the purposes of measuring asbestos in the air –

- (a) sampling shall be representative of the personal exposure of the employee to dust arising from asbestos or materials containing asbestos;

- (b) sampling shall be carried out by a competent person after the employer has consulted with the employees concerned or their representatives, or both, in regard to sampling at the place of work;
- (c) when samples are taken they shall be subsequently analysed by a competent person, in accordance with the recommended method as outlined in subparagraph (e) and Schedule 2, in laboratories equipped for fibre counting;
- (d) the duration of sampling shall be such that representative exposure can be established for an eight-hour reference period (one shift) by means of measurements or time-weighted calculations;
- (e) fibre counting shall be carried out wherever possible by PCM (phase-contrast microscope) in accordance with the 1997 WHO (World Health Organisation) recommended method or any other method giving equivalent results.

(3) For the purpose of measuring asbestos in the air, as referred to in paragraph (1), only fibres with a length of more than 5 micrometres and a breadth of less than 3 micrometres and a length/breadth ratio greater than 3:1 shall be taken into consideration.

Notification requirements

11. (1) Subject to Regulation 5(b), an employer shall not carry on an activity which would expose or would be liable to expose an employee to dust arising from asbestos or materials containing asbestos unless he or she has prepared a written notification comprising details of matters specified in Schedule 3 and has submitted it to the Authority so that it is received by the Authority not less than 14 days before commencing the activity, or before such shorter period as the Authority, at its discretion, may agree in writing.

(2) Where an employer has notified work in accordance with paragraph (1) and there is a material change in the nature of that work which might affect the particulars so notified (including the cessation of the work), the employer shall notify the Authority in writing of that change.

(3) For the purposes of paragraph (2), an employer shall submit a new notification in writing to the Authority taking account of such changes as are referred to in that paragraph and include the reasons for the new notification.

(4) Notwithstanding paragraph (1), where an activity to which that paragraph relates is being carried out at, or is begun within the period of 14 days after the commencement of these Regulations and will continue beyond that period, it shall be sufficient for the employer to prepare a written notification which shall include particulars of matters specified in Schedule 3 and to submit it to the Authority within that period.

(5) An employer shall keep a copy of every notification submitted to the Authority under this Regulation and of every other document to which paragraphs (2) and (3) relate and shall permit, at any reasonable time, access by –

- (a) any employee to any such notification or other document which concerns that employee's place of work and the work activity, and
- (b) any employee's representative to any such notification or other document which concerns any place of work or work activities of employees who are represented by that employee's representative.

Presumed asbestos-containing materials

12. (1) Employers shall take all necessary steps to identify presumed asbestos-containing materials at a premises or place of work before commencing demolition, removal or maintenance work at that premises or place of work.

(2) As appropriate, employers shall obtain information, relating to the identification of presumed asbestos-containing materials, from the owners of such premises or places of work.

(3) If there is any doubt about the presence of asbestos in a material or construction then the applicable provisions of these Regulations shall be complied with.

Measures to be taken if the exposure limit value is exceeded (Unforeseeable)

13. (1) Where employees are exposed in the course of their work to dust arising from asbestos or materials containing asbestos which results in the exposure limit value being exceeded, the employer shall identify the reasons for the limit being exceeded and shall implement appropriate measures to remedy the situation as soon as possible.

(2) Employers shall ensure that work is not continued in the affected area until adequate measures have been taken for the protection of the employees concerned.

(3) Subject to paragraph (1), in order to check the effectiveness of the measures taken an employer shall have carried out a further determination of the asbestos-in-air concentrations immediately.

(4) Where exposure cannot be reduced by other means and where compliance with the limit value makes necessary the wearing of individual protective breathing equipment, this may not be permanent and shall be kept to the strict minimum necessary for each employee.

(5) During periods of work which require the use of individual respiratory protective equipment to be worn by employees the employer shall make provision for breaks appropriate to the physical and climatological conditions, in consultation with the employees concerned or their representative at the place of work, or both.

Measures to be taken if the exposure limit value is exceeded (Foreseeable)

14. (1) Where at any place it is foreseeable that, as a result of certain activities such as demolition, removal, repairing and maintenance, the concentration of asbestos in the air will be in excess of the exposure limit value, despite the use of technical preventive measures for limiting asbestos in air concentrations, the employer shall, before the activity is carried out, determine and implement the measures which are necessary to ensure protection of the employees from such asbestos in the air while they are engaged in such activities and, in particular, shall –

- (a) issue those employees with suitable respiratory and other personal protective equipment, which must be worn;
- (b) put up and maintain legible warning signs in and near the relevant areas indicating the areas where it is foreseeable that the exposure limit value will be exceeded;
- (c) ensure that the spread of dust arising from asbestos or materials containing asbestos outside the premises or site of work activity is prevented, and
- (d) inform every employee of his or her obligations under paragraph (2).

(2) Any employee to whom paragraph (1) applies shall comply with any relevant measure determined and implemented under paragraph (1)(d).

(3) An employer to whom paragraph (1) applies shall, before carrying out the activity concerned, consult with the employees concerned or their representative, or both, in respect of the measures to which that paragraph will relate.

Plan of work

15. (1) Where any demolition or other work involves removing either or both asbestos and asbestos containing products from any building, other structure, plant, installation or ship, whether or not such removal involves total demolition of the structure, such work shall not commence until a suitable plan of work is drawn up in writing outlining how that work is to be carried out.

(2) Subject to the other provisions of these Regulations, the plan of work referred to in paragraph (1) shall specify the measures necessary to ensure the safety and health of employees at the place where that work is to be carried out.

(3) The plan of work referred to in paragraph (1) shall specify -

- (a) that asbestos or asbestos-containing products, or both, are to be removed so far as is reasonably practicable before demolition techniques are applied or major refurbishment of a premises commences, except where this would cause a greater risk to employees than if the asbestos or asbestos-containing products, or both, had been left in place;

- (b) that personal protective equipment referred to in Regulation 14(1)(a) shall be provided to the employees concerned;
- (c) information to include -
 - (i) the nature and probable duration of the work,
 - (ii) the location of the place where the work is carried out,
 - (iii) the methods applied where the work involves the handling of asbestos or of materials containing asbestos, and
 - (iv) the characteristics of the equipment used for -
 - (A) protection and decontamination of the employees carrying out the work, and
 - (B) protection of other persons present on or near the worksite.

(4) The plan of work referred to in paragraph (1) shall include information on all the necessary preventive measures to be taken to ensure that the demolition of buildings, structures and installations containing asbestos or materials containing asbestos, or both, and the removal therefrom of asbestos or materials containing asbestos fibres or dust do not cause significant asbestos environmental pollution.

(5) Every plan of work made in accordance with this Regulation shall be complied with.

(6) Where a plan of work is required pursuant to paragraph (1), a copy of the said plan shall be provided to the Authority not less than fourteen days before the commencement of the work to which the plan relates and shall be made available, on request, to an inspector or, as the case may be, to an authorised person within the meaning of –

- (i) the Air Pollution Act, 1987 (No. 6 of 1987) , or
- (ii) the Waste Management Acts 1996 – 2005.

(7) When asbestos demolition or removal work has been completed the employer who has carried out such work shall obtain a written verification regarding the absence of asbestos exposure risks in the place of work otherwise known as “*site clearance for reoccupation*”.

(8) For the purposes of paragraph (7) an employer shall have a competent person assess whether the premises or part of the premises where the work with asbestos has been carried out has been thoroughly cleaned upon completion of that work and is suitable for reoccupation.

(9) For the purposes of this Regulation an employer shall ensure -

- (a) that site clearance includes both visual observance and air monitoring,
- (b) that site clearance is performed by a competent independent analyst, and
- (c) receipt of a site clearance certificate in writing before reoccupation or continuation of other works at the site or premises.

(10) A clearance certificate shall be made available, on request, to an inspector.

Ability to perform asbestos work

16. (1) A person shall, before carrying out work which includes asbestos demolition or removal, provide evidence of their ability to perform such work to the person for whom the work is being carried out and, on request, to an inspector.

(2) Taking account of the provisions of section 2(2) of the Act, the evidence referred to in paragraph (1) shall include the information specified in Schedule 4 as appropriate and applicable to the intended work.

Training and Information

17. (1) Without prejudice to sections 8 and 10 of the Act and having regard to section 21 of the Act, employers shall provide appropriate training and adequate information for all employees who are, or are likely to be, exposed to asbestos-containing dust.

(2) Training referred to in paragraph (1) shall be easily understandable to employees and shall enable employees to acquire the necessary knowledge and skills as regards prevention and safety, in particular with regard to –

- (a) the potential risks to health from exposure to dust arising from asbestos or materials containing asbestos;
- (b) the existence and meaning of the established exposure limit value;
- (c) the operations which could result in asbestos exposure;
- (d) the importance of preventive controls to minimise exposure;
- (e) the control limit and the need for atmospheric monitoring;
- (f) the properties of asbestos and its effects on health, including the synergistic effect of smoking;
- (g) the types and products or materials likely to contain asbestos;

- (h) the hygiene requirements necessary, including the need to refrain from smoking, eating or drinking where there is a risk of exposure to asbestos-containing dust;
- (i) safe work practices, control measures and protective equipment;
- (j) the appropriate role, choice, selection, limitations and proper use of respiratory equipment;
- (k) the special precautions to be taken to avoid or minimise risks associated with exposure to asbestos-containing dust, including the need to wear protective clothing and the need to use protective equipment;
- (l) emergency procedures;
- (m) decontamination procedures;
- (n) waste disposal procedures; and
- (o) medical examination requirements.

(3) The training and information required under 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, and so that the employees are aware of and understand -
 - (i) the significant findings of the risk assessment, and
 - (ii) the results of any air monitoring carried out with an explanation of the findings.

(4) In addition to the measures set down in paragraph (1) and subject to Regulation 5(b), employers shall ensure that -

- (a) the employees concerned or their representative at the place of work, or both, shall have access to the results of the asbestos-in-air measurements, the significance of which shall be explained,
- (b) if the results of the asbestos-in-air measurements show that the exposure limit value is being or has been exceeded at any place of work, the employer concerned shall inform the employees concerned or their representatives, or both, of that fact as quickly as possible and the reason for it and those employees or their representatives at the

place of work, or both, shall be consulted by the employer regarding the measures to be taken to mitigate the situation or, in an emergency situation, shall be informed by the employer of the measures which have so been taken.

(5) Every employer shall keep records of the training given to individual employees.

(6) Records of training as referred in paragraph (5) shall be made available, on request, to an inspector.

(7) Every employer shall take account of any relevant guidelines published by the European Community when providing training for his or her employees engaged in the removal of asbestos or materials containing asbestos.

Provision and cleaning of protective clothing

18. (1) Every employer shall provide adequate and suitable protective clothing for his or her employees who are exposed or are liable to be exposed to asbestos or materials containing asbestos.

(2) Every employer shall ensure that protective clothing provided pursuant to paragraph (1) is either disposed of as asbestos waste or adequately cleaned.

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

(4) Every 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 or disposal) is securely packed, before removal, in a suitable container and adequately labelled as a product containing asbestos whether it is intended for cleaning or for disposal as asbestos waste.

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

Responsible medical practitioner

19. (1) For the purpose of these Regulations a responsible medical practitioner means a registered medical practitioner employed, or otherwise engaged, by an employer to be responsible for health surveillance of employees under these Regulations.

(2) Subject to paragraph (1) a “responsible medical practitioner” means –

(a) where a responsible medical practitioner is continuously employed in a whole time or part time capacity by an employer (including an

employer who is a successor in title to another employer), such responsible medical practitioner for the time being,

- (b) where a responsible medical practitioner is for the time being employed from time to time by an employer for the purposes of these Regulations, such responsible medical practitioner, and
- (c) in any other case, the last person who was the responsible medical practitioner, in respect of the employees concerned, for so long as he continues to be a responsible medical practitioner.

Assessment of the health of employees

20. (1) Without prejudice to the provisions of section 22 of the Act and subject to Regulation 5(b), where employees are engaged in activities at a place of work where they are or may be exposed in the course of their work to dust arising from asbestos or materials containing asbestos, the employer concerned shall ensure that -

- (a) arrangements are made to enable any employee to avail of an assessment of his or her health, in accordance with paragraphs (2)(a) or (2)(b), as appropriate, and
- (b) the assessment referred to in subparagraph (a) (in these Regulations referred to as a “health assessment”) shall be performed by a responsible medical practitioner.

(2) An assessment of health shall be made –

- (a) prior to the exposure to dust arising from asbestos or materials containing asbestos at the place of work and such assessment shall include a specific examination of the chest;
- (b) where exposure or possible exposure (with or without interruption) of an employee continues over a period of time at the place of work, at least once in every period of 3 years or such shorter period as a responsible medical practitioner may determine.

(3) Every employer to whom paragraphs (1) and (2) apply shall –

- (a) ensure that arrangements are made to enable an adequate and suitable health assessment by a responsible medical practitioner of the health of every employee concerned;
- (b) give sufficient notice of those arrangements to the employees concerned so as to enable them to comply with paragraph (3) (a), and
- (c) provide facilities to the responsible medical practitioner so as to enable him or her to become familiar with the exposure conditions for each employee at the relevant place of work.

(4) Every employee at a place of work to whom paragraphs (1) and (2) apply shall –

- (a) give such information to the responsible medical practitioner concerned about his or her medical history as that doctor may require to enable an assessment to be made for the purposes of paragraph (5), and
- (b) undergo such tests as the responsible medical practitioner concerned considers necessary to enable an assessment to be made for the purposes of paragraph (5) taking account of the provisions of Schedule 5.

(5) A health assessment in respect of each employee shall be made by the responsible medical practitioner concerned, after medical interview and medical examination of the employee (which examination may include specific examination of the chest as required by the responsible medical practitioner, in accordance with the principles and practices of occupational medicine), and such tests as he or she may require of that employee, have been carried out taking account of the provisions of Schedule 5.

(6) After the making of a health assessment of an employee, the responsible medical practitioner concerned shall –

- (a) where appropriate, advise on or determine any individual protective or preventive measures to be taken, which may include the withdrawal of the employee from all exposure to asbestos, and
- (b) certify, by causing an entry to be made in the occupational health register, whether the employee is fit, unfit, or fit with certain restrictions for exposure to a concentration of asbestos fibres in the air equal to or in excess of the exposure limit value.

(7) Following a health assessment, the responsible medical practitioner with responsibility for the health surveillance of employees may indicate that health surveillance shall continue after the end of exposure for as long as he or she considers it necessary to safeguard the health of the employee concerned.

Medical records relating to health assessments

21. (1) Individual medical records in respect of assessments by a responsible medical practitioner of the health of employees shall be maintained by the appropriate responsible medical practitioner and each individual medical record shall include the information specified in Schedule 5.

(2) The medical records of each employee or copies thereof shall be maintained by the appropriate responsible medical practitioner for 40 years after the last assessment recorded in those records for the purposes of these Regulations.

(3) When, for the purposes of this Regulation, it is necessary at any time to transfer existing medical records to a person who has become the appropriate responsible medical practitioner, they shall be transferred by the person who had been the last

appropriate responsible medical practitioner for those records or, where the circumstances require, by his or her personal representatives.

(4) In the case of any dispute or difficulty arising in respect of the manner in which medical records to which this Regulation relates are maintained or transferred, the Authority shall decide thereon and its decision shall have effect accordingly.

Review of the determination of the health assessment

22. (1) Where an employee or his or her employer is aggrieved by a determination made by a responsible medical practitioner concerned under Regulation 20(6) following an assessment, either may apply within 28 days of such determination to the Authority to have the assessment and determination reviewed.

(2) Where the Authority, on an application under paragraph (1), agrees to a review, the assessment and determination shall be reviewed by a person designated by it under section 63 of the Act.

(3) A review under this Regulation shall be in such form as the person designated under section 63 of the Act considers appropriate in the circumstances.

Disclosure of information contained in health assessments

23. (1) Upon reasonable notice being given by an employee to the responsible medical practitioner concerned, access shall be given to him or her to the information contained in his or her medical record which is maintained for the purpose of these Regulations.

(2) Where an employee's health has, in accordance with these Regulations, been assessed at any time after the end of exposure to asbestos, the responsible medical practitioner concerned shall give information and advice regarding that assessment to him or her.

(3) In this Regulation "employee" includes a former employee of the employer concerned.

Asbestosis and Mesothelioma Register

24. (1) The Authority shall establish and cause to be maintained a register, to be known as the "Asbestosis and Mesothelioma Register", of diseases which have been reported to the Authority in accordance with paragraph (2).

(2) Where a registered medical practitioner becomes aware of a case of asbestosis or mesothelioma, he or she shall report that fact to the Authority in writing and it shall be the duty of a person designated by the Authority under section 63 of the Act to accept the report on behalf of the Authority and record an entry in the Register accordingly.

Occupational Health Register

25. (1) Subject to Regulation 5(b), where activities are carried out in which employees are or may be exposed in the course of their work to dust arising from asbestos or materials containing asbestos or a health assessment has been made under Regulation 20, it shall be the duty of every employer to whom these Regulations relate to keep and thereafter to maintain a register to be known and in these Regulations referred to as the “occupational health register” which contains, in respect of each employee who is or may be exposed in the course of his or her work to dust arising from asbestos or materials containing asbestos, the information referred to in Schedule 6.

(2) An employer shall allow the responsible medical practitioner concerned access to the occupational health register at any time.

(3) An employer shall allow an inspector or a person designated by the Authority under section 63 of the Act access to the occupational health register at any time.

(4) Upon reasonable notice being given, an employer shall allow any employee access to the entries in the occupational health register which relate to him or her.

(5) Upon reasonable notice being given, an employer shall allow an employee or his or her representative, or both, access to the information in the occupational health register on all employees concerned in such a manner so that the identity of any employee to whom the information relates is not disclosed and, where appropriate, the employer shall also provide such information in a collective form.

(6) An employer shall keep and maintain the occupational health register for least 40 years following the end of exposure.

(7) Where an employer ceases, or is about to cease, business and has a subsisting occupational health register to which paragraph (6) relates, the appropriate person shall –

- (a) inform the Authority of that fact, and
- (b) deposit the occupational health register with such a person as the Authority directs.

(8) Where the occupational health register is deposited with a person in accordance with a direction under paragraph (7)(b), that person shall be deemed to be the employer for the purposes of paragraph (6).

(9) In this Regulation “appropriate person” means, in relation to the occupational health register, and as the circumstances may require, where the employer is a body corporate being wound up, the liquidator and, in any other case, the person who has possession of that register.

Prohibitions

26. Without prejudice to the application of other Community provisions on the marketing and use of asbestos, activities which result in exposure of employees to asbestos fibres during the extraction of asbestos or the manufacture and processing of asbestos products containing intentionally added asbestos shall be prohibited, with the exception of the treatment and disposal of products resulting from demolition and asbestos removal.

Revocations

27. (1) The following are revoked -

- (a) European Communities (Protection of Workers) (Exposure to Asbestos) Regulations 1989 (S.I. No. 34 of 1989),
- (b) European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 1993 (S.I. No. 276 of 1993), and
- (c) European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 2000 (S.I. No. 74 of 2000).

Schedule 1

Regulation 2(1)

Meaning of asbestos

“Asbestos” means the following fibrous silicates:

- Asbestos actinolite, CAS No. 77536-66-4*,
 - Asbestos gruenerite (amosite), CAS No. 12172-73-5*,
 - Asbestos anthophyllite, CAS No. 77536-67-5*,
 - Chrysotile, CAS No. 12001-29-5*,
 - Crocidolite, CAS No. 12001-28-4*,
 - Asbestos tremolite, CAS No. 77536-68-6*.
- * Number in the register of the Chemical Abstract Service (CAS).

Schedule 2

Regulation 5(a)

Measures to be Taken to Ensure the Safety and Health of Employees

Subject to the provisions of Regulation 5(b), the measures set down in this Schedule are to be taken to ensure the safety and health of employees where employees are involved in activities that can cause, or are likely to cause exposure, during the course of their work, to dust arising from asbestos or materials containing asbestos.

- (1) Places in which the above activities take place shall:
 - (a) be clearly demarcated and indicated by warning signs;
 - (b) not be accessible to employees other than those who by reason of their work or duties are required to enter them;
 - (c) constitute areas where there should be no smoking.
- (2) Areas shall be set aside where employees can eat and drink without risking contamination by asbestos dust.
- (3) With respect to all activities considered under this Schedule employers shall provide appropriate and adequate working or protective clothing and personal protective equipment so that –
 - (a) such working or protective clothing and personal protective equipment must be kept within the place of work;
 - (b) such clothing, where not disposable, may be laundered outside of the place of work, subject to those facilities being equipped for this work and having assessed the risk related to such an action, taking account of the transport and packing of items for laundering in suitable containers which are securely closed and labelled properly;
 - (c) separate storage places are provided for working or protective clothing and personal protective equipment and for street clothing;
 - (d) employees are provided with appropriate and adequate washing and toilet facilities, including showers;
 - (e) a well-defined place is provided for the storage of personal protective equipment;
 - (f) personal protective equipment shall be checked and cleaned after each use and before placing in dedicated storage area;
 - (g) appropriate measures shall be taken to repair or replace defective equipment before further use.

Schedule 3

Regulation 11

Particulars to be Notified to the Health and Safety Authority

The particulars which shall be included in a notification to the Health and Safety Authority under Regulation 11(1) and (3) are -

1. Name of notifier.
2. Where an employer is a body corporate, the address and telephone number of its registered office.
3. The name, address and telephone number of the place of work or work site concerned.
4. The start date and expected duration of the work activities.
5. The number of employees involved.
6. The types (e.g. asbestos cement, limpet, thermal insulation, ceiling and floor tiles, asbestos insulation board etc.) and quantities of asbestos likely to be encountered.
7. The location(s) at the work site of the materials containing asbestos likely to be encountered.
8. A brief description of the activities or processes involved.
9. A brief description of the measures to be taken to limit the exposure of employees to asbestos.
10. In the case of work involving removal, repair or encapsulation of lagging, insulation or other materials containing asbestos, a brief description of the manner in which that work is to be done.
11. Under Regulation 11(2) and (3) where there is a change of a material nature in the carrying out of the activity to which the notification relates, the employer shall inform the Authority of that change in writing and submit a new notification for the purposes of these Regulations advising the Authority in writing of the reasons for this new notification.
12. The notification shall be submitted to the Authority so that it is received by the Authority not less than 14 days before commencing the activity to which the notification relates.

Schedule 4

Regulation 16(2)

Evidence of Ability to Perform Asbestos Work

(Indicative, non-exhaustive list of information to be provided for the purposes of Regulation 16, as appropriate and applicable to the intended work)

1. Training Plan and Policy for employees working with materials containing asbestos.
2. Individual employee training certificates indicating where, when, duration and type of training received and who provided the training.
3. Relevant experience.
4. Safety Statement.
5. Respiratory Protective Equipment face-fit certificate for individual employees.
6. Individual medical certificate for employees.
7. Clearance certificate for Decontamination Unit to be used on-site (as appropriate to work).

Schedule 5

Regulation 20(4) and (5)

Information to be included in Individual Medical Records and Practical Recommendations for the Clinical Assessment of Employees for the purposes of Regulation 20

Part A - Information

1. Name and personal address of the employee concerned.
2. Name of employer concerned and the appropriate address or addresses.
3. Date of birth of the employee.
4. Date of commencement of asbestos exposure (if known).
5. Medical history of employee.
6. Occupational history of employee.
7. The results of asbestos sampling which relates to the employee's exposure.
8. The results of clinical examination and the significance of the results.
9. Details of any action taken by the responsible medical practitioner concerned following the results of a health assessment.

Part B – Clinical Assessment

Current knowledge indicates that exposure to free asbestos fibres can give rise to the following diseases:

- asbestosis,
- mesothelioma,
- bronchial carcinoma,
- gastro-intestinal carcinoma.

The responsible medical practitioner concerned for the health surveillance of employees exposed to asbestos shall be familiar with the exposure conditions or circumstances of each employee.

Health examination of employees should be carried out in accordance with the principles and practices of occupational medicine. It should include at least the following measures –

- (a) keeping records of an employee's medical and occupational history,
- (b) a personal interview,

- (c) a general clinical examination, with particular reference to the chest,
- (d) lung function tests (respiratory flow volumes and rates).

The responsible medical practitioner concerned who is responsible for the health surveillance should decide on further examinations, such as sputum cytology tests or a chest X-ray or a tomodensitometry, in the light of the latest occupational health knowledge available.

Occupational Health Register

The information set out in an occupational health register shall include –

- (a) the name and registered business address of the employer and the address of the place of asbestos exposure (premises or site location);
- (b) a brief description of the work activity involving asbestos including the nature and duration of activity and the exposure to asbestos;
- (c) the name and address of each person to whom either or both air monitoring and a health assessment relates;
- (d) the dates and times of each assessment of the risk of exposure to asbestos and the name of the person who carried out such assessment;
- (e) details of the nature of each assessment of the risk of exposure to asbestos;
- (f) the dates of and results of examinations and tests on any respiratory protective equipment with sufficient information so as to enable the identification of any particular respiratory protective equipment;
- (g) the dates and results of air monitoring including details of –
 - (i) in the case of personal sampling, the name and job description of the persons being monitored,
 - (ii) in the case of static sampling, the location of static samplers,
 - (iii) the length of sampling times in each case, and
 - (iv) the results and the interpretation of the results of such sampling;
- (h) in the case of health assessment, the information required under Regulation 20(6);
- (i) the name of the responsible medical practitioner making the health assessment, and the name and signature of the person duly making the entry in the register.

GIVEN under my hand,
21 July 2006.

TONY KILLEEN
Minister of State at the Department of Enterprise, Trade and Employment.

EXPLANATORY NOTE

The purpose of these Regulations is to transpose for the first time Directive 2003/18/EC of the European Parliament and of the Council of 27th March, 2003, amending Council Directive 83/477/EEC, as previously amended by Council Directive 91/382/EEC on the protection of workers from the risks related to exposure to asbestos at work, both of which Directives are retransposed. The Regulations also retranspose Article 12 of Council Directive 87/217/EEC on the prevention and reduction of environmental pollution by asbestos.

Thus these Regulations revoke and replace the European Communities (Protection of Workers) (Exposure to Asbestos) Regulations 1989 (S.I. No. 34 of 1989), the European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 1993 (S.I. No. 276 of 1993) and the European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 2000 (S.I. No. 74 of 2000).

The Regulations apply to all work activities which expose persons to risks arising from the inhalation of dust from asbestos or materials containing asbestos.

The Regulations aim to protect employees by introducing a single exposure limit value for all work activities where exposure to asbestos dust in the air at a place of work may arise. The Regulations emphasise the need for adequate training. Those involved in demolition and asbestos removal activities must provide evidence of their ability to do this work in a safe way to ensure the protection of their employees.

Parties to whom these Regulations apply should note that other legislation, including the Safety, Health and Welfare at Work (Construction) Regulations, may also apply to the work being undertaken.