

S.I. No. 248/2011 — Chemicals (Asbestos Articles) Regulations 2011.

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 3rd June, 2011.

I, RICHARD BRUTON, Minister for Enterprise, Trade and Innovation, in exercise of the powers conferred on me by section 5 (as amended by section 3 of the Chemicals (Amendment) Act 2010 (No. 32 of 2010)) of the Chemicals Act 2008 (No. 13 of 2008) (as adapted by the Enterprise, Trade and Employment (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 185 of 2010)) and for the purpose of giving further effect to Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006¹, as amended by Commission Regulation (EC) No. 552/2009 of 22 June 2009², with the consent of the Minister for Agriculture, Fisheries and Food, the Minister for the Environment, Community and Local Government and the Minister for Finance, hereby make the following Regulations:-

Citation

1. These Regulations may be cited as the Chemicals (Asbestos Articles) Regulations 2011.

Interpretation

2. (1) In these Regulations—

“Act” means the Chemicals Act 2008 (No. 13 of 2008), as amended by the Chemicals (Amendment) Act 2010 (No. 32 of 2010);

“appeal” means an appeal under Regulation 10;

“applicant” means any person who applies for a certificate under Regulation 5;

“article” means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition, as provided for in Article 3(3) of the REACH Regulation;

“asbestos-containing article” means any article in its entirety containing any of the asbestos fibres listed below—

(a) Crocidolite [CAS No. 12001-28-4],

(b) Amosite [CAS No. 12172-73-5],

(c) Anthophyllite [CAS No. 77536-67-5],

(d) Actinolite [CAS No. 77536-66-4],

(e) Tremolite [CAS No. 77536-68-6], or

(f) Chrysotile [CAS No. 12001-29-5 and CAS No. 132207-32-0];

“CAS No.” means the Chemical Abstract Service number assigned to a substance;

“certificate” means an asbestos article exemption certificate issued under Regulation 4;

“certificate application” means an application to an exempting authority for a certificate under Regulation 5;

“exempting authority” means the Health and Safety Authority;

“Exposure to Asbestos Regulations” means the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 and 2010;

“parties to the appeal” means—

- (a) the person(s) appealing under Regulation 10(2),
- (b) the exempting authority which made the decision the subject of the appeal, and
- (c) any other party who took part in the process leading to the decision under appeal.

“person” means any natural or legal person who is acting, whether inside or outside of a trade, business or profession, for the purposes of this Regulation;

“placing on the market” means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed as placed on the market, as provided for in Article 3(12) of the REACH Regulation;

“REACH Regulation” means Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006¹, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and establishing a European Chemicals Agency, as amended;

(2) In these Regulations—

- (a) 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 is intended, and
- (b) a reference to a paragraph or a subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Application

3. (1) A person shall not place on the market asbestos-containing articles, which were installed or in service before 1 January 2005, unless—

- (a) a certificate is granted by the exempting authority, pursuant to Regulation 4, and
- (b) the conditions specified in the certificate are complied with.

(2) Without prejudice to the Exposure to Asbestos Regulations, these Regulations shall not apply to any person who places on the market the following asbestos-containing articles, which were installed or in service before 1 January 2005—

- (a) articles transferred to specialists for asbestos removal and disposal,

(b) articles transferred to specialists to render as safe, and

(c) articles sent as samples for analysis.

Asbestos article exemption certificate

4. (1) The exempting authority may issue a certificate to exempt an asbestos-containing article, or category of such articles, from the prohibition on the placing on the market of asbestos-containing articles provided for by Article 67 of, and Annex XVII to, the REACH Regulation.

(2) A certificate—

(a) shall include conditions appropriate to the circumstances of the case which seek to ensure a high level of protection of human health;

(b) may be subject to a limit of time;

(c) may be varied or revoked by a notice in accordance with Regulation 9(5).

(3) The exempting authority shall not issue a certificate unless it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it, whilst having regard to the circumstances of the case and in particular to—

(a) the conditions which it proposes to attach to the certificate, and

(b) any other requirements imposed by or under any enactments which apply to the case.

(4) Where a certificate has been issued, persons placing on the market the article(s) the subject of the certificate shall comply with the conditions of the certificate provided pursuant to paragraph (2).

(5) The exempting authority shall not issue certificates in the case of articles—

(a) containing asbestos used for construction applications, or

(b) where it is reasonably practicable for the asbestos-containing article in its entirety or an integral part of the article to be substituted.

Application for certificate

5. (1) Certificate applications shall be made to the exempting authority and shall contain the information listed in Schedule 1 and be accompanied by any fee levied in accordance with Regulation 13 of these Regulations.

(2) A certificate application must be made at least 6 working weeks before the date the asbestos-containing article is expected to be placed on the market.

(3) On receipt of an application, the exempting authority shall—

(a) stamp each document with the date of its receipt, and

(b) consider whether the application contains the information listed in Schedule 1.

(4) Where the exempting authority considers that the application contains all the information listed in Schedule 1, it shall, as soon as possible, but not later than 2 working weeks after receipt of the application, notify the applicant acknowledging the date of receipt of the valid application and issue a reference number for the certificate being applied for.

(5) Where, following consideration of an application under paragraph (3)(b), the exempting authority considers that any of the information listed in Schedule 1 has not been included in the application, the application shall be deemed invalid.

(6) Where an application is deemed invalid under paragraph (5), the exempting authority shall as soon as possible, but not later than 2 working weeks after receipt of the application—

(a) by notice in writing—

(i) acknowledge receipt of the invalid application,

(ii) inform the applicant that the application is invalid and cannot be considered by the exempting authority, and

(iii) indicate which information listed in Schedule 1 has not been included in the application;

(b) return to the applicant the certificate application, including application fee and particulars; and

(c) enter details of the invalid application in the register provided for under Regulation 11.

Requirement to submit further information

6. (1) Where the exempting authority acknowledges receipt of a certificate application in accordance with Regulation 5(4) it may, by notice in writing, within 4 working weeks of receipt of the application, require the applicant—

(a) to submit any further information which the exempting authority considers necessary to enable it to process the application, and/or

(b) to produce any evidence which the exempting authority may reasonably require to verify any particulars or information given in, or in relation to, the application or as may be reasonably necessary to clarify the matters dealt with in the applicant's application,

within a specified timeframe set by the exempting authority.

(2) Where a requirement to submit further information under paragraph (1) is not complied with, within the time frame specified in the request, the exempting authority shall refuse the certificate application and the procedure under Regulation 8 shall apply.

Period for determination of certificate application

7. (1) The exempting authority shall make a decision on whether or not to grant a certificate within 6 working weeks from the date of receipt of a valid application. Where further information is requested under Regulation 6, the exempting authority shall make its decision within 4 working weeks of receipt of the requested information.

(2) Where the exempting authority is not in a position to make a decision within a time period specified in paragraph (1), it shall notify the applicant of same and of the date by which a decision will be made by it. This date shall not be later than a period of 2 weeks from the original date of the due decision.

(3) Where the exempting authority fails to make a decision within a time period specified in paragraph (1) or (2), the certificate application shall be deemed to have been refused in accordance with Regulation 8.

Decision to grant or refuse certificate

8. (1) On the basis of its processing of a certificate application made in accordance with Regulations 5 and 6, the exempting authority may decide to—

(a) grant with conditions, or

(b) refuse to grant

the certificate.

(2) The exempting authority shall notify the applicant in writing of its decision to grant or refuse the certificate application.

(3) The notification of the decision of the exempting authority shall include—

(a) the date of the decision;

(b) in the case of a decision to grant a certificate, any relevant conditions and/or any time limit attached to the certificate;

(c) in the case of a decision to refuse a certificate, the reasons for refusal; and

(d) details on how to appeal against the decision made in accordance with paragraph (1) pursuant to Regulation 10.

(4) The exempting authority may exercise all or any of the powers conferred on it by the Act in deciding to grant with conditions or refuse a certificate application.

Review of grant of certificate

9. (1) The exempting authority may review the decision to grant a certificate if it has reason to believe that the conditions of the certificate, set down in accordance with Regulation 4(2), are no longer being met.

(2) Where, as a result of a review under paragraph (1), the exempting authority forms the intention to revoke the certificate the subject of the review, the exempting authority shall—

(a) in the case of a certificate issued to a person on foot of a certificate application—

(i) give notice of its intention to revoke to the person(s) to whom the certificate was granted, and

(ii) publish a notice of such an intention on its website;

(b) in the case of a general certificate issued in relation to an asbestos-containing article or class of articles, publish a notice of such an intention on its website.

(3) Notices issued or published under paragraph (2) shall specify—

(a) the reference number relating to the relevant certificate in the register provided for under Regulation 11;

(b) the reasons for the proposed revocation; and

(c) that representations relating to the proposed revocation may be made in writing to the exempting authority within 4 working weeks of the date of publication or issue of the notice.

(4) The exempting authority shall make a decision on whether or not to revoke a certificate within 8 working weeks of the date of the notices issued or published under paragraph (2), giving consideration to any representations received in writing pursuant to paragraph (3)(c).

(5) Having made a decision under paragraph (4), the exempting authority shall—

(a) in the case of a certificate issued to a person on foot of a certificate application—

(i) give notice of its decision to the person(s) to whom the certificate was issued and to any person who submitted representations in writing to the authority in relation to the proposed revocation, and

(ii) publish a notice of its decision on its website;

(b) in the case of a general certificate issued in relation to an asbestos-containing article or class of articles, publish a notice of such decision on its website.

(6) The exempting authority may exercise all or any of the powers conferred on it by the Act in reviewing the grant of a certificate and deciding whether or not to revoke it.

(7) Where the exempting authority fails to make a decision within a time period specified in paragraph (4), it shall be deemed to have decided not to revoke the certificate under review.

Appeals

10. (1) The exempting authority shall designate such and so many members of its staff as it considers appropriate to be appeals officers under this Regulation and a member of staff so designated shall be an appeals officer for such period as the exempting authority may determine.

(2) The following persons may appeal to an appeals officer—

(a) in respect of a decision under Regulation 8(1), the applicant in the certificate application the subject of the decision; and

(b) in respect of a decision under Regulation 9(4)—

(i) the person to whom the certificate the subject of the decision was issued, and

(ii) any person who made representations under Regulation 9(3)(c)

(3) An appeal under this Regulation must be brought within 4 working weeks beginning on the date of the decision that is the subject of the appeal.

(4) An appeal shall—

(a) be made in writing,

(b) state the subject matter of the appeal, and

(c) state the grounds of appeal.

(5) The appeals officer shall give copies of appeal documents submitted pursuant to paragraph (4) to each of the other parties to the appeal.

(6) Where an appeal is brought, parties to the appeal shall provide all relevant information or evidence in their possession or procurement for the purpose of determining the appeal, including all documents submitted to the exempting authority in the context of the decision under appeal, and shall comply with any request from the appeals officer for further information.

(7) Where any of the parties to the appeal neglects or refuses to give any document, information or evidence, within such period as may at any time be specified by the appeals officer, the appeal may be decided upon without such document, information or evidence.

(8) Any of the parties to the appeal may, within such period as may at any time be specified by the appeals officer, make in writing such observations on the appeal as he, she or it thinks fit and a copy of such observations shall be given by the appeals officer to each of the other parties to the appeal or, where a number of persons are participating in the appeal jointly, to any one such person.

(9) The appeals officer shall notify each of the parties to an appeal of his or her decision on the appeal within 8 working weeks of the date of the bringing of the appeal, or a further 4 working weeks, if further information is requested in accordance with paragraph (6).

(10) Where an appeals officer fails to notify the parties to an appeal of his or her decision on an appeal within a time period specified in paragraph (9), the appeal shall be deemed to have been dismissed and a new appeal of the decision, on the same or other grounds, may be brought in accordance with this Regulation.

Register

11. A register is required to be established and kept by the exempting authority. This register shall contain the particulars specified in Schedule 2 and shall be made available to the public.

Offences

12. The following provisions are declared to be penal provisions for the purposes of section 29(4) of the Act—

(a) Regulation 3(1), and

(b) Regulation 4(4).

Fees

13. The exempting authority may, in accordance with the provisions of section 10 of the Act, levy a fee in respect of the performance of any of its functions under these Regulations.

Regulation 5

Schedule 1

Certificate application information requirements

Information required pursuant to Regulation 5—

(a) the name, address, telephone number and e-mail address, if any, of the applicant and of the person, if any, acting on behalf of the applicant;

(b) the names of the company directors and the address and registration number of the company, where an applicant referred to in point (a) is a company registered under the Companies Acts 1963 to 2009;

(c) the location, townland or postal address in which the article is currently located;

(d) a description of the category of business/activity;

(e) a description of the article and its use for which the certificate is being sought;

(f) presumed/confirmed asbestos content and fibre type;

(g) photographic evidence of the article for which the certificate is being sought;

(h) a justification as to why it is necessary to place the asbestos-containing article on the market;

(i) an explanation as to why it is not reasonably practicable to substitute the asbestos-containing component of the article;

(j) description of measures that will be taken to ensure a high level of protection of human health.

Regulation 11

Schedule 2

Register

Particulars required pursuant to Regulation 11

(a) Reference number;

(b) Name and address of applicant;

(c) Date of application;

(d) Date of decision of exempting authority;

(e) Exempting authority's decision.

The Minister for Agriculture, Fisheries and Food consents to the making of the foregoing Regulations.

DAVID BEEHAN,

Chief Inspector, Department of Agriculture, Fisheries and Food.

[A person authorised by the Minister to authenticate his Official Seal in accordance with Section 15 (1) of the Ministers and Secretaries Act 1924]. 31 May 2011.

The Minister for the Environment, Community and Local Government consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for the Environment, Community and Local Government,

31 May 2011.

PHILIP HOGAN,

Minister for the Environment, Community and Local Government.

The Minister for Finance consents to the making of the foregoing Regulations.

GIVEN under the Official Seal of the Minister for Finance,

31 May 2011.

MICHAEL NOONAN,

Minister for Finance.

GIVEN under my Official Seal, the Minister for Enterprise, Trade and Employment,

31 May 2011.

RICHARD BRUTON,

Minister for Enterprise, Trade and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

The purpose of these Regulations is to give effect to provisions laid down in relation to asbestos in entry number 6 Annex XVII to the Regulation (EC) No. 1907/2006 of the European Parliament and of the Council 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), as substituted by Commission Regulation (EC) No. 552/2009 of 22 June 2009.

The Regulations specify how the Health and Safety Authority (HSA) may issue a certificate to exempt an asbestos-containing article, or category of such articles, from the prohibition on the placing on the market of an asbestos-containing article provided for by Article 67 and Annex XVII of the REACH Regulation. The Regulations set down the procedures for applying for an exemption certificate and the process by which the HSA will make its decision to grant or refuse such a certificate application. There is also a procedure whereby the HSA can revoke any decision to grant an exemption certificate and an appeals procedure whereby decisions of the HSA under these Regulations can be appealed to an appeals officer.

The powers available to inspectors in the enforcement of these Regulations are contained in Section 12 of the Chemicals Act 2008 .

1 OJ No. L 396, 30.12.2006, p. 1.

2 OJ No. L 164, 26.6.2009, p. 7.

1 OJ No. L 396, 30.12.2006, p. 1.

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