

Statutory Instrument 2004 No. 3386

The Control of Substances Hazardous to Health (Amendment) Regulations 2004

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STATUTORY INSTRUMENTS

2004 No. 3386

HEALTH AND SAFETY

The Control of Substances Hazardous to Health (Amendment) Regulations 2004

Made

20th December 2004

Laid before Parliament

23rd December 2004

Coming into force

*All regulations except
regulations 2(a), (c) to (f) and
(h), and 4(b)*

17th January 2005

*Regulations 2(a), (c) to (f)
and (h), and 4(b)*

6th April 2005

The Secretary of State, in the exercise of the powers conferred on him by sections 15(1), (2), (4), (5)(b) and (6)(b), 52(2) and (3), and 82(3) of, and paragraphs 1(1) and (4), 8, 9, 11, 14, 15(1), 16 and 20 of Schedule 3 to the Health and Safety at Work etc. Act 1974^[1] ("the 1974 Act") and of all other powers enabling him in that behalf, for the purpose of giving effect without modifications to proposals submitted to him by the Health and Safety Commission under section 11(2)(d) of the 1974 Act after the carrying out by the said Commission of consultations in accordance with section 50(3) of that Act, hereby makes the following Regulations:

Citation and Commencement

1. These Regulations may be cited as the Control of Substances Hazardous to Health (Amendment) Regulations 2004 and shall come into force on 17th January 2005, except for regulations 2(a), (c) to (f) and (h), and 4(b), which shall come into force on 6th April 2005.

Amendments of the Control of Substances Hazardous to Health Regulations 2002

2. In the Control of Substances Hazardous to Health Regulations 2002^[2] -

(a) in regulation 2(1) -

(i) delete the definition of "maximum exposure limit";

(ii) delete the definition of "occupational exposure standard";

(iii) after the definition of "risk assessment" add the following definition -

" "risk phrase" has the meaning assigned to it in regulation 2(1) of the CHIP Regulations;"

(iv) in the definition of "substance hazardous to health" in subparagraph (b), for the words "a maximum exposure limit or an occupational exposure standard" substitute the words "a workplace exposure limit";

(v) after the definition of "workplace" add the following definition -

" "workplace exposure limit" for a substance hazardous to health means the exposure limit approved by the Health and Safety Commission for that substance in relation to the specified reference period when calculated by a method approved by the Health and Safety Commission, as contained in HSE publication "EH/40 Workplace Exposure Limits 2005" as updated from time to time.";

(b) in regulation 3, for paragraph (3) substitute the following paragraph -

" (3) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which -

(a) are carried out solely by the crew under the direction of the master; and

(b) are not liable to expose persons other than the master and crew to a risk to their health and safety,

and for the purposes of this paragraph "ship" includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy.";

(c) in regulation 6(2) sub-paragraph (f), for the words "occupational exposure standard, maximum exposure limit" substitute the words "workplace exposure limit";

(d) in regulation 7 -

(i) for paragraph (7) substitute the following paragraph -

" (7) Without prejudice to the generality of paragraph (1), where there is exposure to a substance hazardous to health, control of that exposure shall only be treated as adequate if -

(a) the principles of good practice for the control of exposure to substances hazardous to health set out in Schedule 2A are applied;

(b) any workplace exposure limit approved for that substance is not exceeded; and

(c) for a substance -

(i) which carries the risk phrase R45, R46 or R49, or for a substance or process which is listed in Schedule 1; or

(ii) which carries the risk phrase R42 or R42/43, or which is listed in section C of HSE publication "Asthmagen? Critical assessments of the evidence for agents implicated in occupational asthma"[3] as updated from time to time, or any other substance which the risk assessment has shown to be a potential cause of occupational asthma,

exposure is reduced to as low a level as is reasonably practicable.";

and

(ii) delete paragraph (8);

(e) in regulation 9, for paragraph (1) substitute the following paragraph -

" (1) Every employer who provides any control measure to meet the requirements of regulation 7 shall ensure that -

(a) in the case of plant and equipment, including engineering controls and personal protective equipment, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and

(b) in the case of the provision of systems of work and supervision and of any other measure, it is reviewed at suitable intervals and revised if necessary.";

(f) in regulation 12(2) -

(i) in sub-paragraph (a)(ii) for the words "occupational exposure standard, maximum exposure limit" substitute the words "workplace exposure limit";

(ii) in sub-paragraph (d) for the words "maximum exposure limit", in each place where they occur, substitute the words "workplace exposure limit";

(g) to the end of Schedule 2 add -

(i) in column 1 the entry -

" **13.** Cement and cement-containing preparations which contain, when hydrated, more than 0.0002% soluble chromium (VI) of the total dry weight of the cement."; and

(ii) to correspond with it in column 2 the entry -

" Supply and use for all purposes except for controlled, closed and totally automated processes in which cement and cement-containing preparations are handled solely by machines and in which there is no possibility of contact with the skin.", and

(h) after Schedule 2 insert the Schedule contained in the Schedule to these Regulations.

Amendment of the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002

3. In the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002^[4] for paragraph 11 of Schedule 5 Part II B substitute the following paragraph -

" 11. - (1) The packaging of any cement or cement preparation which would contain, when hydrated, more than 0.0002% soluble chromium (VI) of the total dry weight of the cement but for the use of reducing agents shall be marked with information on the packing date, and on the storage conditions and the storage period appropriate to maintaining the activity of the reducing agent and to preventing the content of soluble chromium (VI) from exceeding 0.0002% of the total dry weight of the cement, unless it is supplied or used for controlled, closed and totally automated processes in which cement and cement-containing preparations are handled solely by machines and in which there is no possibility of contact with the skin.

(2) The packaging of any cement or cement preparation containing more than 0.0002% soluble chromium (VI) of the total dry weight of the cement shall bear the inscription:

" Contains chromium (VI). May produce an allergic reaction.",

unless the preparation is already classified and labelled as a sensitiser with phrase R43."

Amendments of the Control of Lead at Work Regulations 2002

4. In the Control of Lead at Work Regulations 2002[5] -

(a) in regulation 3, for paragraph (3) substitute the following paragraph -

" (3) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which -

(a) are carried out solely by the crew under the direction of the master; and

(b) are not liable to expose persons other than the master and crew to a risk to their health and safety,

and for the purposes of this paragraph "ship" includes every description of vessel used in navigation, other than a ship forming part of Her Majesty's Navy."; and

(b) in regulation 8, for paragraph (1) substitute the following paragraph -

" (1) Every employer who provides any control measure to meet the requirements of regulation 6 shall ensure that -

(a) in the case of plant and equipment, including engineering controls and personal protective equipment, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and

(b) in the case of the provision of systems of work and supervision and any other measure, it is reviewed at suitable intervals and revised if necessary."

Signed by authority of the Secretary of State

Jane Kennedy
Minister of State Department for Work and Pensions

20th December 2004

SCHEDULE

Regulation 2(h)

" SCHEDULE 2A

Regulation 7(7)

PRINCIPLES OF GOOD PRACTICE FOR THE CONTROL OF EXPOSURE TO SUBSTANCES HAZARDOUS TO HEALTH

- (a) Design and operate processes and activities to minimise emission, release and spread of substances hazardous to health.
- (b) Take into account all relevant routes of exposure- inhalation, skin absorption and ingestion- when developing control measures.
- (c) Control exposure by measures that are proportionate to the health risk
- (d) Choose the most effective and reliable control options which minimise the escape and spread of substances hazardous to health.
- (e) Where adequate control of exposure cannot be achieved by other means, provide, in combination with other control measures, suitable personal protective equipment.
- (f) Check and review regularly all elements of control measures for their continuing effectiveness.
- (g) Inform and train all employees on the hazards and risks from the substances with which they work and the use of control measures developed to minimise the risks.
- (h) Ensure that the introduction of control measures does not

increase the overall risk to health and safety."

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Control of Substances Hazardous to Health Regulations 2002 (S.I. 2002/2677) ("the COSHH Regulations"), the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002 (S.I. 2002/1689) ("the CHIP Regulations"), and the Control of Lead at Work Regulations 2002 (S.I. 2002/2676) ("the CLAW Regulations").

2. The Regulations implement as respects Great Britain the provisions concerning chromium VI in cement contained in Directive 2003/53/EC of the European Parliament and of the Council (OJ No. L178, 17.7.2003, p.24) amending for the 26th time Council Directive 76/769/EEC by amending the COSHH Regulations to prohibit the supply and use of cement and cement containing preparations containing when hydrated more than 0.0002% soluble chromium VI of the dry weight of the cement except in certain fully automated and enclosed processes (regulation 2(g)), and by amending the CHIP Regulations by adding a requirement to mark the packaging of cement whose chromium VI content would exceed that limit but for the use of reducing agents with information on how long and in which conditions those agents will remain effective (regulation 3).

3. The Regulations further amend the COSHH Regulations by -

(a) excluding defined shipboard activities of ships' crews from their operation, except for Navy ships (regulation 2(b));

(b) replacing regulation 7(7) and (8) by substituting new requirements to observe principles of good practice for the control of exposure to substances hazardous to health introduced by Schedule 2A, to ensure that workplace exposure limits are not exceeded, and to ensure in respect of carcinogens and asthmagens that exposure is reduced to as low a level as is reasonably practicable (regulation 2(d)(i) and (h));

(c) introducing a single new workplace exposure limit for substances hazardous to health which replaces occupational exposure standards and maximum exposure limits (regulation 2(a),(c),(d) and (f)); and

(d) introducing a duty to review control measures other than the provision of plant and equipment, including systems of work and supervision, at suitable intervals (regulation 2(e)).

4. The Regulations amend the CLAW Regulations by excluding defined shipboard activities of ships' crews, except for Navy ships, from their operation (regulation 4(a)), and by introducing a duty to review control measures other than the provision of plant and equipment, including systems of work and supervision, at suitable intervals (regulation 4(b)).

5. Copies of the publications mentioned in the Regulations as follows -

(a) HSE publication "EH40/2005, Workplace Exposure Limits 2005", which contains the list of workplace exposure limits which the Health and Safety Commission has approved; and

(b) "Asthmagen? Critical assessments of the evidence for agents implicated in occupational asthma", HSE Books 1997 ISBN 0 7176 1465 4,

are obtainable from HSE Books, PO Box 1999 Sudbury, Suffolk CO10 2WA.

6. A copy of the regulatory impact assessment prepared in respect of these Regulations can be obtained from the Health and Safety Executive, Economic Advisers Unit, Rose Court, 2 Southwark Bridge, London, SE1 9HS. A copy of this document has been placed in the library of each House of Parliament.

Notes:

[1] 1974 c.37; sections 11(2), 15(1) and 50(3) were amended by the Employment Protection Act 1975 (c.71), Schedule 15, paragraphs 4, 6 and 16(3) respectively.[back](#)

[2] S.I. 2002/2677, as amended by S.I. 2003/978.[back](#)

[3] HSE Books 1997 ISBN 0 7176 1465 4.[back](#)

[4] S.I. 2002/1689, as amended by S.I. 2004/568.[back](#)

[5] S.I. 2002/2676.[back](#)

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