



The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 as amended by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) (Amendment) Regulations 2013

Notice to all Ship, Yacht and Fishing Vessel Owners, Operators and Managers and other employers of seafarers; Masters, Officers and Seafarers on Merchant Ships, Hovercraft and Yachts; and Skippers and Crew of Fishing Vessels, Small Commercially Operated Vessels and Yachts with paid crew whether operating at sea or on inland waters

This notice should be read in conjunction with Marine Guidance Note MGN 429 (M+F) which provided guidance on the requirements of the Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Asbestos) Regulations 2010 (SI 2010/2984) as originally introduced.

Summary

This Marine Guidance Note provides guidance on changes made to the Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Asbestos) Regulations 2010 as a result of EU concerns regarding the implementation of Directive 83/477/EEC (as amended by Directives 91/382/EEC, 98/24/EC, 2003/18/EC and 2007/30/EC)

1. Introduction

- 1.1 The Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Asbestos) Regulations 2010 (SI 2010/2984) (the “Asbestos 2010 Regulations”) came into force in January 2011. They were intended to implement EC Directive 83/477/EEC (as amended) on the protection of workers from the risks related to exposure to asbestos at work and, in doing so they followed the Control of Asbestos Regulations 2006 (“CAR 2006”) for land-based workers, introduced by the Health and Safety Executive (HSE).
- 1.2 This Guidance note explains the changes to the Asbestos 2010 Regulations which are being introduced by the Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Asbestos)(Amendment) Regulations 2013 (SI 2013/1473) (“the 2013 Amendment Regulations”) which come into force on 12 July 2013



2. Background

- 2.1 Subsequent to the introduction of the HSE Regulations applicable to land-based workers, HSE were notified by the European Commission (“the EC”) that in its opinion the UK had failed to correctly implement Directive 83/477/EEC (as amended), by virtue of the omission of the wording referred to in paragraph 1.1 above. Following discussions between the EC and HSE, the EC subsequently issued a “Reasoned Opinion” requiring HSE to amend their Regulations to bring the wording into line with that contained in Article 3(3) (a) and (b) of Directive 83/477/EEC (as amended) or face infraction proceedings.
- 2.2 The UK Government accepted the Reasoned Opinion and HSE subsequently corrected the omission identified by the EC by means of the Control of Asbestos Regulations 2012 (SI 2012/632) (“CAR 2012”), which came into force on 6 April 2012. CAR 2012 revoked and replaced CAR 2006. CAR 2012 also introduced a second CAS (Chemical Abstract Service) number for Chrysotile Asbestos which comes from EC Regulation 1907/2006 on the Registration, Authorisation and Restriction of Chemicals (the “REACH” Regulation)
- 2.3 The Asbestos 2010 Regulations followed HSE by omitting the wording referred to in the EC “Reasoned Opinion”. The purpose of the 2013 Amendment Regulations was to avoid the risk of infraction proceedings by amending the Asbestos 2010 Regulations by inserting the wording originally omitted to bring them in line with the Directive and the related provision in the amended HSE Regulations.

3. Regulatory Changes

- 3.1 As drafted paragraph 3 of Article 3 of Directive 83/477/EEC (as amended) provides that where worker exposure is sporadic and of low intensity, and it is clear from the results of the risk assessment that the exposure limit for asbestos will not be exceeded in the air of the working area, the requirements of Articles 4 (notification), 15 (specific requirements for health surveillance) and 16 (information and register of work) of the Directive may be waived in respect of work involving: -

- “(a) *short, non-continuous maintenance activities in which **only non-friable materials are handled,***
- (b) *removal **without deterioration of non-degraded** materials in which the asbestos fibres are firmly linked in a matrix,*
- (c) *encapsulation or sealing of asbestos-containing materials which are in good condition,*
- (d) *air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos”.*

However, in line with HSE’s CAR 2006 Regulations, the wording shown in bold italics in paragraphs (a) and (b) was omitted from sub-paragraphs (c)(i) and (ii) respectively of paragraph (8) of regulation 4 of the Asbestos 2010 Regulations because they were not defined in the Directive and were therefore considered to be open to varying interpretation.

- 3.2 Following the Reasoned Opinion from the EC it is now necessary to amend sub-paragraphs (c)(i) and (ii) respectively of paragraph (8) of regulation 4 of the Asbestos 2010 Regulations, so they correctly replicate the provisions of paragraph 3 of Article 3 of Directive 83/477/EEC (as amended). This is the purpose of the 2013 Amendment Regulations as to do otherwise would leave the UK at risk of infraction proceedings as



well as resulting in differing standards of protection being applied to seafarers and workers on land.

- 3.3 In addition to the changes referred to above, the 2013 Amendment Regulations also amend regulation 2 (Interpretation) of the Asbestos 2010 Regulations by inserting a second CAS (Chemical Abstract Service) number into the definition of “Chrysotile” asbestos. This is in line with CAR 2012 and means that the term Chrysotile Asbestos will in future apply to substances with the CAS numbers 12001-29-5 or 132207-32-0.
- 3.4 Finally, the 2013 Amendment Regulations bring the Asbestos 2010 Regulations in line with Government policy by inserting a requirement for those Regulations to be reviewed by the Secretary of State no later than five years after the 2013 Amendment Regulations came into force and at five yearly intervals thereafter. The conclusions of such a review must be set out in a report which is to be laid before Parliament.

4. Effect

- 4.1 The primary effect of the changes being introduced by the 2013 Amendment Regulations is that where work involving exposure to asbestos, now including all types of Chrysotile asbestos, is carried out on board ships, regulations 6 (Notification of work relating to asbestos), 17(Health records and medical surveillance) and paragraphs (1) to (3) of regulation 18 (Register of workers and notification of cases) of the Asbestos 2010 Regulations (as amended) must be complied with in full, except:-

(1) where worker exposure is sporadic and of low intensity;

(2) it is clear from the results of the risk assessment required in accordance with regulation 5 of the Asbestos 2010 Regulations that the limit value (defined in regulation 2(1) of those Regulations) will not be exceeded in the air of the area of activity, and

(3) work involves—

- (a) *short, non-continuous maintenance activities **in which only non-friable materials are handled.***
- (b) *removal **without deterioration** of **non-degraded** materials in which the asbestos fibres are firmly linked in a matrix,*
- (c) *encapsulation or sealing of asbestos-containing materials which are in good condition,*
- (d) *air monitoring and control, and the collection of samples to ascertain whether a specific material contains asbestos”.*

For the avoidance of doubt it should be noted that exposure to asbestos will not be considered to be “*sporadic and of low intensity*” if the concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method exceeds or is liable to exceed 0.6 fibres per cm³ in the air measured over a ten minute period or if the limit value is, or is liable to be, exceeded.

- 4.2 It is not anticipated that the changes referred to in the preceding paragraph will have any significant impact on the maritime sector given the long-standing ban on the use of asbestos on ships, except in very exceptional and specialised circumstances



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