

2010 No. 2984

MERCHANT SHIPPING

**The Merchant Shipping and Fishing Vessels (Health and Safety
at Work) (Asbestos) Regulations 2010**

<i>Made</i> - - - -	<i>14th December 2010</i>
<i>Laid before Parliament</i>	<i>17th December 2010</i>
<i>Coming into force</i> - -	<i>10th January 2011</i>

CONTENTS

**PART 1
GENERAL**

1. Citation and commencement
2. Interpretation
3. Meaning of “worker”
4. Application

**PART 2
DUTIES OF EMPLOYERS AND OTHERS**

5. Assessment of risks
6. Notification of work relating to asbestos
7. Prohibition of certain activities relating to asbestos
8. Prevention and reduction of exposure
9. Measurement of air quality
10. Exposure to asbestos
11. Maintenance and demolition of ships
12. Plans of work
13. Training
14. Access to risk areas
15. Hygiene and individual protection
16. Information for workers
17. Health records and medical surveillance
18. Register of workers and notification of cases
19. Consultation with and participation of workers
20. Persons upon whom duties are imposed

PART 3 ENFORCEMENT

21. Offences and penalties
22. Offences by bodies corporate
23. Onus of proving what is reasonably practicable
24. Detention of a United Kingdom ship
25. Inspection and other measures in respect of ships registered outside the United Kingdom
26. Application of powers of inspectors in relation to Government ships
27. Enforcement of detention
28. Right of appeal and compensation
29. Prohibition on charging of workers

SCHEDULE — Recommendations for the clinical assessment of workers

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and by section 85(1), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995(b).

The Secretary of State is a Minister designated(c) for the purpose of section 2(2) of the European Communities Act 1972 in relation to measures relating to the safety of ships, and the health and safety of persons on them.

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

PART 1 GENERAL

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 and they come into force on 10th January 2011.

-
- (a) 1972 c.68. By virtue of the amendment of section 1(2) of the European Communities Act 1972 by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073) and the Protocol adjusting the Agreement signed at Brussels on 17th March 1993 (Cm 2183). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of the European Union (Amendment) Act 2008 (c.7). 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of the European Union (Amendment) Act 2008 (c.7).
- (b) 1995 c.21; subsections (1) and (3) of section 85 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8 and Schedule 7 Part I, and sections 85 and 86 of the Merchant Shipping Act 1995 apply in relation to hovercraft as they apply in relation to ships, by virtue of article 4 of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350) and section 17(2)(a) of the Interpretation Act 1978 (c.30).
- (c) S.I. 1993/595.

Interpretation

2.—(1) In these Regulations—

“the 1997 WHO recommended method” means the method of determining airborne fibre concentrations recommended in the document “Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)” published by the World Health Organization, Geneva, 1997 (ISBN 92 4 154496 1), or any other method giving equivalent results which is approved by the Maritime and Coastguard Agency or the Health and Safety Executive;

“the Act” means the Merchant Shipping Act 1995;

“the area of activity” means the area where activity likely to involve a risk of exposure to asbestos is carried out;

“asbestos” means the following fibrous silicates, and any materials or products consisting of or containing these fibrous silicates—

asbestos actinolite, CAS No 77536–66–4,

asbestos grunerite (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, and

asbestos tremolite, CAS No 77536–68–6;

“CAS No” means the number in the Registry of the Chemical Abstracts Service (CAS)(a);

“contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;

“demolition” means ship-breaking or ship-recycling;

“employer” means a person by whom a worker is employed on a ship under a contract of employment;

“General Duties Regulations” means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997(b);

“Government ship” has the meaning given in section 308(4) of the Act;

“health and safety” includes the occupational health and safety of persons whilst on board a ship and whilst boarding or leaving the ship;

“health surveillance” means the assessment of the state of health of a individual worker related to exposure to asbestos, which is intended to prevent, and to provide early diagnosis of, any disorder linked with exposure to asbestos;

“ISO 17020” and “ISO 17025” mean, respectively, European Standard EN ISO/IEC 17020, “General criteria for the operation of various types of bodies performing inspection” and European Standard EN ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories” issued by the Comité Européen de Normalisation Electrotechnique (CENELEC), or any version of those documents which the Secretary of State considers relevant from time to time and is specified in a Merchant Shipping Notice which contains a statement to that effect;

“limit value” means an airborne concentration of asbestos of 0.1 fibres per cm³ as a four hour time-weighted average, averaged over a continuous period of 4 hours;

“maintenance” includes the refitting or repair of a ship;

“Merchant Shipping Notice” means a notice described as such and issued by the MCA;

(a) The Chemical Abstracts Service, a division of the American Chemical Society, maintains the CAS Registry, a database of chemical substances.

(b) S.I. 1997/2962, amended by S.I. 1998/2411 and 2001/54.

“personal protective equipment” means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to health, and any addition or accessory designed to meet that objective;

“ship” includes hovercraft;

“site clearance certificate for reoccupation” means a certificate issued to confirm that a ship or part of a ship where work with asbestos has been carried out has been thoroughly cleaned upon completion of that work;

“surveyor of ships” has the meaning given by section 256(9) of the Act;

“United Kingdom ship” means a ship which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act, or
- (b) a Government ship, or
- (c) a hovercraft registered under the Hovercraft Act 1968(a); and

“United Kingdom waters” means the sea or other waters within the seaward limits of the territorial sea of the United Kingdom.

(2) Subject to paragraph (1) and regulation 3, words and expressions used in these Regulations have the same meaning as in Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC)(b).

(3) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of that hovercraft.

Meaning of “worker”

3.—(1) In these Regulations “worker” means any person employed under a contract of employment, including a trainee or apprentice, other than a person who is training in a vessel which is being used—

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship, or
- (b) to provide instruction in navigation and seamanship for yachtsmen,

and which is operating under a relevant code.

(2) In paragraph (1) “relevant code” means—

- (a) the Large Commercial Yacht Code as set out in Merchant Shipping Notice No. 1792(M), issued by the Maritime and Coastguard Agency, an executive agency of the Department for Transport,
- (b) the Code of Practice for the Safety of Small Commercial Sailing Vessels(c),
- (c) the Code of Practice for the Safety of Small Commercial Motor Vessels(d), or
- (d) the Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point(e).

(3) In paragraph (2) each reference to a Code includes a reference to any document containing an amendment or replacement of that Code which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice which contains a statement to that effect.

(a) 1968 c.59.

(b) O.J. L No. 263, 24.09.1983, p.25.

(c) Published by the Stationery Office in 1993 (ISBN 0-11-551184-9).

(d) Published by the Stationery Office in 1993 (ISBN 0-11-551185-7).

(e) Published by the Stationery Office in 1999 (ISBN 9-11-551812-6).

Application

4.—(1) Without prejudice to regulation 5 (general duties) of the General Duties Regulations, and subject to paragraphs (2) to (5), these Regulations apply in relation to activities in which workers on a United Kingdom ship are or may be exposed to asbestos during their work.

(2) Where—

- (a) a ship is being used in the course of public service activities or activities for the purposes of the civil protection services, and
- (b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations,

that provision does not apply in relation to that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to a ship because of paragraph (2) there is in relation to that ship a duty on the employer to ensure, so far as is reasonably practicable, the health and safety of workers who are or may be exposed to asbestos during their work.

(4) These Regulations do not apply to activities of a worker which are covered by the Control of Asbestos Regulations 2006(a) or the Control of Asbestos Regulations (Northern Ireland) 2007(b).

(5) This regulation (other than paragraph (1)) and regulations 25 and 27 apply in relation to activities on ships other than United Kingdom ships, which are for the time being in United Kingdom waters, during which workers are or may be exposed to asbestos in the course of their work.

(6) In paragraph (2)—

- (a) “civil protection services” includes the fire and rescue and ambulance services and search and rescue services provided by any other person, and
- (b) “public service activities” includes the activities of the armed forces, HM Coastguard, HM Revenue and Customs, immigration officers, police, prison officers and the security and intelligence services.

(7) The General Duties Regulations continue to apply to activities to which these Regulations apply, without prejudice to any more stringent or specific provisions contained in these Regulations.

(8) Regulations 6 and 17 and paragraphs (1) to (3) of regulation 18 do not apply where—

- (a) worker exposure to asbestos is sporadic and of low intensity,
- (b) it is clear from the results of the risk assessment required in accordance with Regulation 5 that the limit value will not be exceeded in the air of the area of activity, and
- (c) work involves—
 - (i) short, non-continuous maintenance activities;
 - (ii) removal of 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.

(9) For the purposes of paragraph (8)(a), exposure to asbestos will not 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.

(a) S.I. 2006/2739.

(b) S.R. 2007 No. 31.

PART 2

DUTIES OF EMPLOYERS AND OTHERS

Assessment of risks

5. In the case of any activity likely to involve a risk of exposure to asbestos, the employer must—

- (a) in carrying out the risk assessment required by regulation 7 (risk assessment) of the General Duties Regulations—
 - (i) determine the nature, degree and duration of the workers' exposure in order to make it possible to assess any risk to the workers' health or safety and to lay down the measures to be taken,
 - (ii) in assessing the risk of such exposure, take account of all routes of exposure, and
 - (iii) give particular attention to any effects concerning the health and safety of workers at particular risk and take account of the desirability of not employing such workers in areas where they may come into contact with asbestos, and
- (b) review the assessment regularly and in any event where there is reason to believe that it is incorrect or when any change occurs in the conditions which may affect workers' exposure.

Notification of work relating to asbestos

6.—(1) An employer whose workers are to undertake activities in which they are or may be exposed to asbestos must notify the Secretary of State in writing of the matters listed in paragraph (3)—

- (a) if reasonably practicable, not less than 14 days before the work commences,
- (b) otherwise, as soon as is reasonably practicable and in any event before the work commences.

(2) An employer whose workers are to undertake or are undertaking activities in which they are, or are likely to be, exposed to asbestos must notify the Secretary of State in writing of the matters listed in paragraph (3) immediately on becoming aware that a change in working conditions is likely to result in a significant increase in exposure to asbestos.

(3) The matters which must be notified under paragraphs (1) and (2) are—

- (a) the location of the area of activity,
- (b) the type and quantities of asbestos used or handled,
- (c) the activities and processes involved,
- (d) the number of workers involved,
- (e) the starting date and duration of the work,
- (f) measures taken to limit the exposure of workers to asbestos, and
- (g) if the work consists of demolition or the removal of asbestos from a ship—
 - (i) evidence of the employer's ability in that field of work, and
 - (ii) the plan of work drawn up in accordance with regulation 12.

(4) The employer must give workers and their representatives access to any documents notified to the Secretary of State which concern their own undertaking or establishment.

Prohibition of certain activities relating to asbestos

7. The employer must ensure, so far as is reasonably practicable, that workers do not undertake, and workers must not undertake, the following—

- (a) the application of asbestos by means of the spraying process,
- (b) working procedures that involve using low-density (less than 1 gram per cm³) insulating or soundproofing materials which contain asbestos, and
- (c) activities which expose workers to asbestos during—
 - (i) the extraction of asbestos,
 - (ii) the manufacture or processing of asbestos products, or
 - (iii) the manufacture or processing of products containing intentionally added asbestos, other than the treatment or disposal of products resulting from demolition or asbestos removal.

Prevention and reduction of exposure

8.—(1) The employer must reduce to a minimum the exposure of workers to asbestos, and in any case must ensure that no worker is exposed to asbestos in excess of the limit value.

(2) In order to achieve the requirements of paragraph (1), the employer must in particular—

- (a) limit to the lowest possible figure the number of workers exposed or likely to be exposed to asbestos, consistent with safe working,
- (b) design work processes so as not to produce asbestos fibres or, if that proves impossible, to avoid or minimise the release of asbestos fibres into the air,
- (c) ensure that all—
 - (i) areas of activity, and
 - (ii) equipment involved
 are capable of being regularly and effectively cleaned and maintained and are so cleaned and maintained,
- (d) store and transport all asbestos in suitable sealed packing, and
- (e) collect and remove waste from the area of activity as soon as possible and store it in suitable sealed secure packing with labels indicating that it contains asbestos.

Measurement of air quality

9.—(1) Having regard to the results of the initial assessment of risk in accordance with regulation 5, in order to ensure that the limit value is not exceeded, the employer must measure regularly the airborne concentration of asbestos fibres in the area of activity.

(2) The employer must ensure that sampling carried out in accordance with paragraph (1)—

- (a) is representative of the exposure of the workers to asbestos,
- (b) is carried out after consultation with the workers or their representatives,
- (c) is carried out by suitably qualified personnel,
- (d) has a duration such that representative exposure can be established for a continuous four-hour reference period by means of measurements or time-weighted calculations, and
- (e) takes into consideration only fibres with—
 - (i) a length of more than 5 micrometres;
 - (ii) a breadth of less than 3 micrometres, and
 - (iii) a length to breadth ratio greater than 3:1.

(3) The employer must ensure that samples taken are analysed in laboratories equipped for fibre counting, which must be carried out wherever possible in accordance with the 1997 WHO recommended method.

Exposure to asbestos

10.—(1) Where the limit value is exceeded the employer must—

- (a) identify the reasons for this and take appropriate measures to remedy the situation as soon as possible, and
- (b) prevent work from continuing in the affected area until adequate measures have been taken for the protection of the workers concerned.

(2) In order to check the effectiveness of the measures mentioned in paragraph (1)(a), the employer must immediately carry out a further determination of the airborne concentration of asbestos fibres.

(3) Where exposure cannot be reduced by other means and where compliance with the limit value makes necessary the wearing of individual protective breathing equipment, the employer—

- (a) may not require a worker to carry out work requiring the wearing of such equipment on a permanent basis; and
- (b) must keep work requiring the wearing of such equipment to the strict minimum necessary for each worker.

(4) Where in the case of activities such as demolition, repair, maintenance and the removal of asbestos it is foreseeable that the limit value will be exceeded, despite the use of technical preventative measures for limiting the airborne concentration of asbestos fibres, the employer must determine the measures necessary to ensure protection of workers engaged in those activities, and in particular must—

- (a) issue suitable respiratory and other personal protective equipment to workers and ensure that it is worn,
- (b) put up warning signs indicating that it is foreseeable that the limit value will be exceeded, and
- (c) prevent asbestos from spreading outside the area of activity.

(5) During periods of work which require the use of individual protective breathing equipment, the employer must, in consultation with the workers or their representatives, make provision for breaks appropriate to the physical and climatological conditions.

Maintenance and demolition of ships

11.—(1) Before beginning any maintenance to or demolition of a ship, the employer must take all necessary steps to identify any asbestos present or presumed to be present, if appropriate by—

- (a) obtaining information from the owner of the ship or any other person or body who has such information; or
- (b) by taking samples of materials for analysis, provided that such sampling is carried out—
 - (i) after consultation with the workers or their representatives; and
 - (ii) by suitably qualified personnel.

(2) If the employer is in any doubt about the presence of asbestos in the ship or in any material or product present in the ship, the employer must comply with the relevant provisions of these Regulations as though asbestos were present.

Plans of work

12.—(1) Before work is started on demolition of a ship or removal of asbestos from a ship, the employer must draw up a written plan of work which prescribes the measures necessary to ensure the safety and health of workers at the area of activity and that of other workers nearby, and in particular specifies that—

- (a) any asbestos is to be removed before demolition techniques are commenced, except where this would cause a greater risk to workers than if the asbestos had been left in place,

- (b) the respiratory and other personal protective equipment referred to in regulation 10(4)(a) is to be provided where necessary, and
- (c) when the demolition or removal has been completed, the absence of asbestos exposure risks in the area of activity is to be verified by means of the production of a site clearance certificate for reoccupation.

(2) The employer, before requesting a person to assess whether the ship or the area of activity has been thoroughly cleaned upon completion of that work and is suitable for reoccupation such that a site clearance certificate for reoccupation can be issued, must first ensure that that person is accredited by an appropriate body as competent to perform work in compliance with the paragraphs of ISO 17020 and ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items and reporting results.

(3) The employer must ensure, so far as is reasonably practicable, that the work to which the plan of work relates is carried out in accordance with that plan and any subsequent written changes to it.

Training

13.—(1) The employer must provide appropriate training at regular intervals for all workers who are, or who are likely to be, exposed to asbestos.

(2) The content of the training must be easy for workers to understand and must enable them to acquire the necessary knowledge and skills in terms of prevention and safety, particularly as regards—

- (a) the properties of asbestos and its effects on health, including when combined with smoking,
- (b) the types of products or materials likely to contain asbestos,
- (c) the operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure,
- (d) safe work practices, controls and personal protective equipment,
- (e) the appropriate role, choice, selection, limitations and proper use of respiratory equipment,
- (f) emergency procedures,
- (g) decontamination procedures,
- (h) waste disposal, and
- (i) medical examination requirements.

Access to risk areas

14. The employer must take appropriate measures to ensure that the areas of activity—

- (a) are clearly demarcated and indicated by warning signs,
- (b) are not accessible other than to workers who by reason of their work or duties are required to enter them, and
- (c) constitute areas where smoking, eating and drinking is not permitted.

Hygiene and individual protection

15.—(1) The employer must take appropriate measures to ensure that—

- (a) areas are set aside where workers can eat and drink without risking contamination by asbestos,
- (b) separate storage places are provided for working or protective clothing and for non-work clothing,

- (c) workers are provided with appropriate and adequate washing and toilet facilities, including showers in the case of dusty operations,
- (d) personal protective equipment is placed within a well-defined place and is checked and cleaned after each use,
- (e) workers are provided with appropriate working or protective clothing which, subject to paragraph (2), remains within the ship,
- (f) equipment found to be defective is repaired or replaced before further use, and
- (g) any working or protective clothing to be disposed of is treated as asbestos waste.

(2) The employer must ensure that the cleaning of working or protective clothing is carried out either on the ship where that clothing was worn, if the ship is suitably equipped for such cleaning, or in a suitably equipped laundry.

(3) The employer must store and transport working or protective clothing for cleaning packed in suitable sealed and labelled containers.

Information for workers

16.—(1) The employer must take appropriate measures to ensure that workers and their representatives receive adequate information concerning—

- (a) the potential risks to health from exposure to asbestos,
- (b) the existence of the limit value and the need for the atmosphere to be monitored,
- (c) hygiene requirements, including the need to refrain from smoking,
- (d) the precautions to be taken as regards the wearing and use of personal protective equipment, and
- (e) special precautions designed to minimise exposure to asbestos.

(2) The employer must in addition take appropriate measures to ensure that—

- (a) workers and their representatives have access to the results of the measurements of the airborne concentration of asbestos fibres and can be given explanations of the significance of those results, and
- (b) if the results exceed the limit value, the workers concerned and their representatives are informed as quickly as possible of the fact and the reasons for it and are consulted on the measures to be taken or, in an emergency, are informed of the measures which have been taken.

Health records and medical surveillance

17.—(1) The employer must ensure that—

- (a) a health record is maintained, containing particulars of the matters set out in paragraph (2), for each worker who is exposed to asbestos, and
- (b) the health record, or a copy of it, is kept available in a suitable form for at least 40 years from the date of the last entry made in it.

(2) The health record must, as a minimum, contain the following information about the worker—

- (a) the full name, sex, date of birth, permanent address and National Insurance number,
- (b) where relevant, the types of work carried out with asbestos, its location, start and end dates, information relating to the average duration of exposure to asbestos and the personal protective equipment used,
- (c) information, where available, on any previous work undertaken with asbestos, and
- (d) dates of medical examinations and assessments carried out pursuant to these Regulations.

(3) The employer must ensure that each worker who is to undertake activities in which that worker is exposed to asbestos is under adequate health surveillance by a doctor or other medical authority.

(4) The health surveillance required by paragraph (3) must—

- (a) include an assessment of the worker's state of health, including a specific examination of the chest,
- (b) be undertaken, subject to paragraph (5), not more than 3 years prior to the beginning of the worker's exposure or risk of exposure to asbestos at the place of work,
- (c) be undertaken at least once every three years for as long as the worker's exposure or risk of exposure to asbestos continues, and
- (d) have regard to the practical recommendations for the clinical assessment of workers contained in the Schedule to these Regulations.

(5) If the employer knows, or ought reasonably to know, that a worker has been, or has been at risk of being, exposed to asbestos before the coming into force of these Regulations—

- (a) if the worker informs the employer of a previous health assessment which included a specific chest examination, the employer must ensure that the outcome of that health assessment, if available, is reviewed by a doctor or other medical authority immediately after the coming into force of these Regulations, and
- (b) if the worker's state of health has not previously been assessed, including a specific chest examination, or if the results of a previous health assessment referred to in sub-paragraph (a) are not available, the employer must ensure that such an assessment, including a specific chest examination, is undertaken immediately on the coming into force of these Regulations.

(6) Where a worker is assessed in accordance with paragraph (4) or (5)(b), or a health assessment is reviewed in accordance with paragraph (5)(a), the doctor or other medical authority must issue a certificate to the employer and the worker stating—

- (a) that the worker has been so assessed or the previous health assessment has been reviewed, as the case may be, and
- (b) the date of the health assessment or review,

and the employer must keep that certificate or a copy of it for at least four years from the date on which it was issued.

(7) The employer must ensure so far as is reasonably practicable that the doctor or other medical authority referred to in paragraph (6) who carries out a health assessment or review advises on or determines any individual protective or preventive measures to be taken including, where appropriate—

- (a) the withdrawal of the worker concerned from all exposure to asbestos, and
- (b) the continuation of health surveillance after the end of exposure.

(8) The employer must ensure that a worker is given information and advice regarding any health assessment which that worker may undergo following the end of exposure.

(9) If the doctor or other medical authority responsible for the health surveillance of a worker indicates that health surveillance must continue after the end of the worker's exposure, that continuing surveillance must be carried out for as long as the doctor or other medical authority considers necessary to safeguard the health of the person concerned.

(10) The employer must—

- (a) on reasonable notice being given, allow a worker access to that worker's health record referred to in paragraph (1),
- (b) provide the Secretary of State with copies of such health records as the Secretary of State may require, and

- (c) on ceasing to trade, notify the Secretary of State immediately in writing and make available to the Secretary of State all health records kept in accordance with this regulation.

(11) The doctor or other medical authority responsible for the health surveillance of workers under this regulation must, on reasonable request by a worker or employer for a review of the results of health surveillance, undertake that review with a view to determining whether that health surveillance is adequate for the purposes of this regulation.

(12) In this regulation and regulation 18 “doctor or other medical authority” means a person who has suitable qualifications to undertake the requirements of these Regulations.

Register of workers and notification of cases

18.—(1) The employer must enter in a register the names of workers responsible for carrying out activities in which they are, or are at risk of being, exposed to asbestos, indicating the nature and duration of the activity and the exposure to which they have been subjected.

(2) The employer must give access to the register referred to in paragraph (1) to—

- (a) every doctor or other medical authority responsible for health surveillance of workers entered in the register,
- (b) each worker as respects the results in the register which relate to that worker personally, and
- (c) the workers and their representatives as respects anonymous, collective information in the register.

(3) The employer must keep the register referred to in paragraph (1) for at least 40 years from the date of the last entry made in it, and if the undertaking ceases trading must notify the Secretary of State immediately in writing and make the register available to the Secretary of State.

(4) The employer must notify the Secretary of State immediately on becoming aware of any case of—

- (a) asbestosis,
- (b) mesothelioma,
- (c) bronchial carcinoma, or
- (d) gastro-intestinal carcinoma,

which is diagnosed in any worker whose details are listed in the register referred to in paragraph (1), and the Secretary of State must keep any information so notified in a register of recognised cases of asbestosis, mesothelioma, bronchial carcinoma, and gastro-intestinal carcinoma.

Consultation with and participation of workers

19. In consulting with workers in accordance with regulation 20 (consultation with workers) of the General Duties Regulations, an employer must consult workers or their representatives on the control of exposure to asbestos and in particular on—

- (a) the assessment of risk under regulation 5,
- (b) measures taken to prevent or reduce risks arising from exposure to asbestos in accordance with regulation 8,
- (c) measures determined to be necessary to ensure protection of workers in accordance with regulation 10(4),
- (d) the provision of training and information in accordance with regulations 13 and 16, and
- (e) the arrangements for health surveillance in accordance with regulation 17.

Persons upon whom duties are imposed

20.—(1) Where a person on whom a duty is imposed by any of the preceding provisions of these Regulations does not have control of the matter to which that provision relates because responsibility for the operation of the ship falls upon another person, that duty also extends to any other person who has control of that matter.

- (2) It is the duty of every worker performing activities to which these Regulations apply—
- (a) to make full and proper use of all personal protective equipment provided by the employer in pursuance of these Regulations, and
 - (b) to give effect to all instructions and training provided under regulations 13 and 16.

PART 3

ENFORCEMENT

Offences and penalties

21.—(1) A person who fails to comply with regulation 5, 7, 8, 10, 17(1), (3), (5), (6), (7), (8) or (10) or 18(1), (2) or (3) is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both.

(2) A person who fails to comply with regulations 6, 9, 11 to 16 or 19 is guilty of an offence liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) A person who acts in contravention of regulation 29 is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale..

(4) A worker who fails to comply with regulation 20(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) Section 146(1) of the Act (enforcement of fines) applies to any fine imposed for an offence under paragraphs (1) to (3) as if the reference to proceedings against the owner or master of a ship for an offence under Chapter 2 were a reference to proceedings against any person for an offence under those paragraphs.

Offences by bodies corporate

22.—(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with that person's functions of management as if that member were a director of the body corporate.

(3) Where an offence under these Regulations committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of that offence and is liable to be proceeded against and punished accordingly.

Onus of proving what is reasonably practicable

23. In any proceedings under these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it is for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty or requirement.

Detention of a United Kingdom ship

24.—(1) Where a surveyor of ships is satisfied that there is or has been a failure by an employer or other person referred to in regulation 20(1) to comply in relation to any United Kingdom ship with the preceding requirements of these Regulations, that ship is liable to be detained until a surveyor of ships is satisfied that those requirements are complied with.

(2) A surveyor of ships may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard.

(3) A ship must not be delayed or detained unreasonably under this regulation.

(4) Where a ship is detained because in relation to it there has been a failure to comply with the requirements of these Regulations, and that failure has ceased, a person having power to detain the ship must, at the request of the owner or master, immediately release the ship—

- (a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the ship is detained,
- (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question being convicted,
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security, or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the employer or other person having control of the matter in question;
- (d) where the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, if any costs or expenses ordered to be paid by the defendant, and any fine imposed on the defendant, have been paid, or
- (e) the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982(a), and any bond or other financial security ordered by such court or tribunal is posted.

(5) The Secretary of State must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

- (a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, the sum so paid or the amount made available under the security shall be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the employer or other person having control of the matter in question; and
- (b) next in payment of any fine imposed by the court,

(a) Cmnd. 8941.

and any balance shall be repaid to the first-mentioned person.

(7) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if—

- (a) references to the master or owner of the ship were references to the employer or other person having control of the matter in question; and
- (b) references to an offence under section 131 were references to an offence arising from the failure in question.

Inspection and other measures in respect of ships registered outside the United Kingdom

25.—(1) When a ship which is not a United Kingdom ship is in United Kingdom waters, a relevant inspector may inspect that ship to ascertain whether the standards required in relation to United Kingdom ships by these Regulations are met in relation to that ship.

(2) Where a surveyor of ships is satisfied that the standards required in relation to United Kingdom ships by these Regulations are not met in relation to a ship which is not a United Kingdom ship but is in United Kingdom waters, that surveyor of ships may—

- (a) send a report to the government of the State whose flag the ship is entitled to fly, and a copy of it to the Director General of the International Labour Office^(a), and
- (b) where conditions on board are clearly hazardous to health or safety, take such measures as are necessary to ensure those conditions are rectified.

(3) A ship to which paragraph (2)(b) applies is liable to be detained until a surveyor of ships is satisfied that those conditions are rectified.

(4) A surveyor of ships may permit a ship which is liable to be detained under paragraph (3) to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard.

(5) If any of the measures specified in paragraph (2)(b) or (3) are taken, the surveyor of ships must immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(6) A ship must not in the exercise of the power under this regulation be delayed or detained unreasonably.

(7) In paragraph (1) “relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act^(b).

Application of powers of inspectors in relation to Government ships

26. Sections 258 to 266 of the Act^(c) apply to these Regulations as if they were for all purposes made under section 85 (safety and health on ships) of the Act and accordingly those sections apply in relation to Government ships.

Enforcement of detention

27.—(1) Section 284 of the Act ^(d) (enforcing detention of ship) applies where a ship is liable to be detained under these Regulations as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under these Regulations, and
- (b) subsection (7) were omitted.

(a) The International Labour Office is the permanent secretariat of the International Labour Organisation which is an agency of the United Nations.

(b) Section 258(1) was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1 paragraph 4 and Schedule 7 Part I, and modified in relation to a ship in a port in the United Kingdom by S.I. 1995/3128.

(c) These sections provide powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships, for the service of improvement notices and prohibition notices and their reference to arbitration, compensation for invalid prohibition notices and offences.

(d) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1 paragraph 5.

(2) Where a ship is liable to be detained under these Regulations, the person detaining the ship must serve on the master of the ship a detention notice which must—

- (a) state that a surveyor of ships is of the opinion that in relation to that ship there is a failure to comply with the requirements of these Regulations,
- (b) specify the matters which, in the opinion of the surveyor of ships, have the effect that in relation to that ship those requirements are not met; and
- (c) require the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the Act.

Right of appeal and compensation

28. Regulations 11 and 12 (right of appeal and compensation) of the Merchant Shipping (Port State Control) Regulations 1995(a) (which, by virtue of regulation 19 of those Regulations, apply in relation to the exercise of powers of detention contained in safety regulations) apply in relation to a detention notice served on a Government ship under these Regulations as if these Regulations were for all purposes made under section 85 of the Act.

Prohibition on charging of workers

29. No charge in respect of anything done or provided in accordance with any requirement of these Regulations may be levied or permitted to be levied on any worker.

Signed on behalf of the Secretary of State for Transport

14th December 2010

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE

Regulation 17(4)

Practical recommendations for the clinical assessment of workers

1. Current knowledge indicates that exposure to free asbestos fibres can give rise to the following diseases—

- (a) asbestosis,
- (b) mesothelioma,
- (c) bronchial carcinoma,
- (d) gastro-intestinal carcinoma.

2. The doctor and/or other medical authority responsible for health surveillance must be familiar with the exposure conditions or circumstances of each worker.

3. Health examination of workers 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 a worker'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).

(a) S.I. 1995/3128, as amended by S.I. 2003/1636 and other amendments not relevant to these Regulations.

4. The doctor and/or other medical authority responsible for 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.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work (second individual Directive within the meaning of Article 8 of Directive 80/1107/EEC) (O.J. L No. 263, 24.09.1983, p.25), as amended by Council Directive 91/382/EEC of 25 June 1991 (O.J. L No. 206, 29.07.1991, p.16), Council Directive 98/24/EC of 7 April 1998 (O.J. L No. 131, 5.5.1998, p. 11), Directive 2003/18/EC of the European Parliament and of the Council of 27 March 2003 (O.J. L No. 97, 15.04.2003, p.48), and Directive 2007/30/EC of the European Parliament and of the Council of 20 June 2007 (O.J. L No. 165, 27.6.2007, p.21).

The Regulations apply to United Kingdom ships, and (as respects *regulations 25 and 27* only) to other ships while in United Kingdom waters. They apply to activities in which workers on ships are or may be exposed to asbestos (*regulation 4*). They impose obligations on employers, workers and other persons who have control of matters to which the Regulations relate (*regulations 4 and 20*).

The Regulations require an assessment of risk before carrying out work relating to asbestos (*regulation 5*) and notification to the Secretary of State (*regulation 6*). Certain activities are prohibited (*regulation 7*); others may take place only where exposure to asbestos is minimised and air quality is measured (*regulations 8 to 10*). Special provision is made in relation to maintenance and demolition of ships (*regulations 11 and 12*) and for access to work areas (*regulation 14*). Provision is made for training, hygiene, information, health surveillance, the maintenance of a register of workers, notification of cases and consultation of workers (*regulations 13 and 15 to 19*). There is provision for enforcement (*regulations 21 to 28*). The charging of workers in respect of anything done or provided in accordance with these Regulations is prohibited (*regulation 29*).

These Regulations are made under the powers in the Merchant Shipping Act 1995 except in respect of their application to Government ships where the power is provided by section 2(2) of the European Communities Act 1972.

Merchant Shipping Notices can be read or downloaded free from the Maritime and Coastguard Agency website (www.mcga.gov.uk). Printed copies can be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex, RM17 9AY (telephone number 01375 484548, fax number 01375 484556 and email <mailto:mnotices@ecgroup.co.uk>).

An impact assessment of the effect of these Regulations on the cost of business has been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG. A copy has been placed in the library of each House of Parliament. A copy of the Transposition Note is also available from the Maritime and Coastguard Agency. These documents are also annexed to the Explanatory Memorandum which is available on the Office of Public Sector Information website (<http://www.opsi.gov.uk>).

© Crown copyright 2010

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

STATUTORY INSTRUMENTS

2010 No. 2984

MERCHANT SHIPPING

The Merchant Shipping and Fishing Vessels (Health and Safety
at Work) (Asbestos) Regulations 2010

£5.75

E8649 12/2010 108649T 19585

