

**DRAFT LETTER TO THE MINISTER**

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**PROPOSED ASBESTOS (PROHIBITIONS) (AMENDMENT) REGULATIONS 2003**

I enclose proposals for Asbestos (Prohibitions) (Amendment) Regulations 2003, which the Health and Safety Commission (HSC) approved on 13 May.

The proposed Regulations will amend the current Asbestos (Prohibitions) Regulations 1992 (as amended 1999), which came into force on 24 November 1999. The main reason for this amendment is to bring United Kingdom regulations into line with the requirements of Section 28 of the Treaty of Rome. The current Regulations are the subject of infraction proceedings, as they constitute a restriction on trade for companies outside the UK. Infraction proceedings are currently suspended as this amendment to the Regulations is progressing.

European Commission Directive 1999/77/EC was adopted in July 1999. This Directive required Member States to ban the placing on the market and use of raw asbestos and products containing asbestos by 1 January 2005. The Asbestos (Prohibitions) Regulations 1992 were amended in 1999 to ban the importation, supply and use of white asbestos (chrysotile), partly to implement Directive 1999/77/EC. At the same time existing prohibitions on the importation of amphibole asbestos (blue, brown and three lesser known forms) were extended to include any product containing such types of asbestos.

The Directive only required that placing on the market and use of asbestos be prohibited. However the UK Regulations extended the ban to include importation. At the request of HM Customs and Excise (HMCE), the enforcing body, the importation ban was extended to cover all products containing asbestos (whether or not it had been intentionally added). HMCE were concerned that they would not be able to enforce a provision that contained the term 'intentionally'. Currently, therefore, the importation ban is absolute, applying irrespective of the amount of asbestos fibre present in the product or the degree of risk it constitutes (if any).

In July 2001 the EC wrote to the DTI following a complaint that the UK legislation contravened European Single Market rules. The European Commission concluded that the effect of the Asbestos (Prohibitions) Regulations was to ban the importation of a product that was allowed to be supplied and used within the UK (if the asbestos impurity had not been intentionally added). This constitutes a restriction on imports

contrary to Article 28 of the Treaty establishing the European Community. Legal advice received by HSE confirmed that the EC view was correct.

The enclosed proposed amendment to the Regulations therefore inserts the words 'intentionally added' into the importation prohibition, which brings it in to line with the ban covering supply and use of asbestos and asbestos products within GB.

A consultation process was undertaken to which there were 29 responses. The majority of respondents agreed that the Regulations should be amended in the short term to prohibit the importation of any product to which asbestos had been intentionally added.

The effect of the amendment in health and safety terms is expected to be minimal. The Health and Safety at Work Act (1974), requires suppliers and importers to produce information on the hazards of any material, to test any substance that could pose a risk and pass on all information down the supply chain. Companies also continue to have duties under the CHIP Regulations (2002) to provide safety data sheets and appropriate labelling for any product containing more than 0.1% by weight of asbestos. In addition, Regulation 10 of the Control of Asbestos at Work Regulations 2002 (CAWR) requires all employers to prevent employee exposure to asbestos so far as is reasonably practicable and then to reduce the exposure to asbestos to the lowest level reasonably practical.

A Regulatory Impact Assessment (RIA) has been compiled of the proposed Asbestos (Prohibitions) (Amendment) Regulations. Although there may be some expenditure by business incurred as a result of raised awareness of possible asbestos impurities in goods, there is no direct cost due to this amendment to the Regulations as all requirements on companies are as a result of existing legislation such as those mentioned above.

The RIA also considered that there are no significant benefits to business. There is a slight relaxation of current regulations and a wider range of products could theoretically be available, but it is highly unlikely that an end user would switch to a product known to contain a higher level of asbestos. There is no market for these products, and hence limited scope for benefits from improved competition. No significant practical change is expected in the types or quantities of products being brought into the country and therefore there will be little impact on the cost of enforcement.

HSE intends to initiate a press campaign, targeting the relevant trade media, outlining the following messages:

- i) Some quarried or mined minerals contain small amounts of asbestos as a natural impurity from some sources. (A list of the main minerals identified will be included, together with their most common uses)
- ii) The possible presence of asbestos only gives cause for concern if the processes involved have the potential to release fibres (i.e. higher energy uses)
- iii) If both apply, then the user should discuss with their suppliers whether the materials have been tested for asbestos impurities and the results of those tests.

HSE also proposes to look into a *de minimis* limit. This would ban the importation, supply and use of materials containing over a certain amount of asbestos. Consultation will also be necessary to ensure any changes are reasonably practicable. This issue is a complex one, requiring both the development of a suitable testing method to measure the level of asbestos present in a bulk mineral load, and the determination of an appropriate legal maximum amount of impurity. Initial research has been done on a testing method. However, considerable further work is needed before HSE will be in a position to develop proposals to introduce such a limit.

A submission was made on this issue to your predecessor. He supported the development of a *de minimis* level but understood that HSE could not move to this immediately.

I would welcome your approval to the Asbestos (Prohibitions) (Amendment) Regulations 2003. Subject to your agreement, HSC would wish for the Regulations to be laid before Parliament by the end of June 2003 in order to bring them into force as per the commitment given to the EC Infraction Chefs.

Bill Callaghan  
Chair, HSC