

Draft –The Coal Mines (Control of Inhalable Dust)

Regulations 2007

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HEALTH AND SAFETY

The Coal Mines (Control of Inhalable Dust) Regulations 2007

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The Secretary of State makes the following Regulations in exercise of the powers conferred upon him by sections 15(1), (2), (3)(a) and (b), (4), 5(b) and 6(b) and 82(3)(a) of, and paragraphs 1(1), (2) and (4), 4(1), 6, 8, 9, 11, 13(1) and (3), 14, 15, 16, 18(a) and 20 of Schedule 3 to, the Health and Safety at Work etc. Act 1974(a) (“the 1974 Act”). In doing so, he gives effect without modification 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 Commission of consultation in accordance with section 50(3) of that Act.

Citation and Commencement

1. These Regulations may be cited as the Coal Mines (Control of Inhalable Dust) Regulations 2007 and shall come into force on 1st October 2007.

(a) 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.

Interpretation

2. In these Regulations—

“the 1954 Act” means the Mines and Quarries Act 1954(a);

“approved” means approved for the time being in writing;

“control measure” means a measure taken to reduce exposure to inhalable dust (including the provision of systems of work and supervision and the provision and use of engineering controls and respiratory protective equipment);

“covered accommodation” means the covered accommodation provided in pursuance of regulation 36(1) of the Management and Administration of Safety and Health at Mines Regulations 1993(b);

“doctor” means a registered medical practitioner competent in occupational health;

“employer” includes the owner if he employs persons at work at the mine;

“the Executive” means the Health and Safety Executive;

“exposure control limit for respirable dust” means the exposure control limit approved from time to time by the Health and Safety Commission for respirable dust in relation to the specified reference period when calculated by a method approved by the Health and Safety Commission;

“exposure control limit for quartz” means the exposure control limit approved from time to time by the Health and Safety Commission for quartz in relation to the specified reference period when calculated by a method approved by the Health and Safety Commission;

“hazard”, in relation to inhalable dust, means the intrinsic property of that substance which has the potential to cause harm to the health of a person by inhalation, and “hazardous” shall be construed accordingly;

“health surveillance” means assessment of the state of health of an employee, as related to exposure to inhalable dust;

“inhalable dust” means airborne material which is capable of entering the nose and mouth during breathing, as defined by BS EN 481 1993;

“manager” means in relation to a mine, or part thereof, the person who is appointed under regulation 8 of the 1993 Regulations as the manager of that mine;

“medical examination” includes any laboratory tests and X-rays that a doctor may require;

“mine” means any mine within the meaning of section 180 of the 1954 Act;

“owner” means any owner within the meaning of section 181 of the 1954 Act;

“quartz content” means, in relation to a sample of air, such portion of the respirable dust content of that sample as is attributable to respirable dust consisting of crystalline silica;

“relevant operations” means work which produces inhalable dust;

“respirable dust” means airborne material which is capable of penetrating to the gas exchange area of the lung, as defined by BS EN 481 1993;

“respirable dust content” means, in relation to a sample of air, the average weight in milligrammes of the respirable dust found to be present in each cubic metre of the air sampled;

“respiratory protective equipment” means all such equipment which is intended to be worn or held by a person at work and which protects that person against risks to his health from inhalation of harmful substances, and any addition or accessory designed to meet that objective;

(a) 1954 c. 70; extended by the Mines and Quarries (Tips) Act 1969 (c. 10); relevant amending instruments are S.I. 1974/2013, 1993/1897, 1996/2001 and 1999/2024.

(b) S.I. 1993/1897, to which there are amendments not relevant to these Regulations.

“risk”, in relation to the exposure of a person at work to inhalable dust, means the likelihood that the potential for harm to the health of a person will be attained under the conditions of use and exposure, and also the extent of that harm;

“the risk assessment” means the assessment of risk required by regulation 4(1)(a);

“tourist mine” means a mine the principal activity of which is to demonstrate the mine or the workings of the mine to persons not at work at the mine; rather than the getting of minerals or the products of minerals;

“working day” does not include a Saturday, Sunday or day of public or colliery holiday.

Application

3.—(1) Subject to paragraph (2), these Regulations shall have effect with a view to protecting persons at work below ground in coal mines against a risk to their health arising from exposure to inhalable dust of mineral origin.

(2) These Regulations shall not apply to a tourist mine.

Assessment of the risk to health created by work involving exposure to inhalable dust

4.—(1) No manager shall permit work to be carried out which is liable to expose persons to inhalable dust until—

(a) he, or a person appointed by him with competence in underground mining practice and sampling techniques, has made a suitable and sufficient assessment of—

(i) the risk created by that work to the health of those persons; and

(ii) the steps that need to be taken to meet the requirements of these Regulations; and

(b) the steps referred to in sub-paragraph (a)(ii) have been implemented.

(2) The risk assessment shall include consideration of —

(a) the hazardous properties of inhalable dust likely to occur in the mine;

(b) the level, type and duration of exposure;

(c) the circumstances of the work, including changes in the nature of the work from one shift to the next and differing shift lengths;

(d) activities where there is the potential for a high level of exposure;

(e) the relevant exposure control limits;

(f) the effect of preventive and control measures which have been or will be taken in accordance with regulation 5;

(g) the results of relevant health surveillance;

(h) the results of any relevant sampling of exposure; and

(i) such additional information as the manager may need in order to complete the risk assessment.

(3) The risk assessment shall be reviewed regularly, and forthwith if—

(a) there is reason to suspect that the risk assessment is no longer valid;

(b) there has been a significant change in the work to which the risk assessment relates; or

(c) the results of any sampling carried out in accordance with regulation 8 show it to be necessary,

and where, as a result of the review, changes to the risk assessment are required, those changes shall be made.

(4) The manager shall ensure that—

(a) the significant findings of the risk assessment; and

(b) the steps referred to in paragraph (1)(a)(ii),

are recorded.

(5) Within one month of the commencement of work, the manager shall ensure that the results of the risk assessment have been validated by the taking and subsequent evaluation of suitable and sufficient air samples.

Prevention or control of exposure to inhalable dust

5.—(1) Without prejudice to the requirements of regulation 10, the manager shall ensure that the exposure of persons at work to inhalable dust is either prevented or, where this is not reasonably practicable, reduced to as low a level as is reasonably practicable.

(2) Where it is not reasonably practicable to prevent the exposure of persons at work to inhalable dust, and having regard to the risk assessment, the manager shall comply with his duty under paragraph (1) to reduce that exposure to as low a level as is reasonably practicable by the application of the following measures, in order of priority—

- (a) the design and use of appropriate work processes, systems and engineering controls and the provision and use of suitable work equipment and materials;
- (b) the control of exposure at source, including adequate local ventilation systems and appropriate organizational measures;
- (c) the control of the working environment, including general ventilation; and
- (d) the provision of suitable respiratory protective equipment in addition to the measures required by sub-paragraphs (a), (b) and (c).

(3) The measures referred to in paragraph (2) shall be recorded in the form of a suitable and sufficient scheme to reduce exposure to inhalable dust and shall include—

- (a) the adoption of suitable maintenance procedures; and
- (b) reducing to the minimum for the work concerned—
 - (i) the level and duration of exposure, and
 - (ii) the number of persons subject to exposure.

(4) As soon as is practicable, the manager shall provide the Executive with a copy of the scheme required by paragraph (3) and, thereafter, any significant revision to that scheme.

(5) Respiratory protective equipment provided by an employer in accordance with this regulation shall be suitable for the purpose and shall—

- (a) comply with any provision in the Personal Protective Equipment Regulations 2002(a); or
- (b) where no provision referred to in sub-paragraph (a) applies, be of a type approved or shall conform to a standard approved, in either case, by the Executive.

Use of control measures etc.

6.—(1) Every manager who provides any control measure, other thing or facility in accordance with the scheme required by regulation 5(3), shall take all reasonable steps to ensure that it is properly used or applied as the case may be.

(2) Every employee shall make full and proper use of any control measure, other thing or facility provided in accordance with the scheme required by regulation 5(3) and, where relevant, shall—

- (a) take all reasonable steps to ensure it is returned after use to any accommodation provided for it; and
- (b) if he discovers a defect therein, report it forthwith to his supervisor.

(a) S.I. 2002/1144, to which there are amendments not relevant to these Regulations.

Maintenance, examination and testing of control measures

7.—(1) Where the manager provides any control measure to meet the requirements of regulation 5, he shall ensure that, where relevant, it is maintained in an efficient state, in efficient working order and in good repair.

(2) Where engineering controls are provided to meet the requirements of regulation 5, the manager shall ensure that thorough examination and testing of those controls is carried out at suitable intervals as part of the scheme required by regulation 5(3).

(3) Where respiratory protective equipment (other than disposable respiratory protective equipment) is provided to meet the requirements of regulation 5, the manager shall ensure that—

- (a) thorough examination and, where appropriate, testing of that equipment is carried out at suitable intervals; and
- (b) a well-defined place is used for storage of that equipment.

(4) The manager shall keep a suitable record of the examinations and tests carried out in accordance with paragraphs (2) and (3) and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary thereof shall be kept available for at least 5 years from the date on which it was made.

Sampling scheme for respirable dust

8.—(1) The manager shall operate a suitable and sufficient sampling scheme designed to measure the levels of respirable dust and quartz to which persons are exposed below ground at the mine.

(2) The sampling scheme required by paragraph (1) shall specify—

- (a) the method by which samples are to be taken;
- (b) the persons who are to be sampled;
- (c) the locations at which samples are to be taken;
- (d) the frequency with which samples are to be taken; and
- (e) the type of sampling instrument which is to be used.

(3) Every sample taken under the sampling scheme required by paragraph (1) shall be so taken as to be representative of the general body of the air in the vicinity of the persons in relation to whom it is taken throughout a working shift below ground.

(4) The manager shall appoint a competent person to supervise the operation of the sampling scheme required by paragraph (1).

Evaluation of samples

9.—(1) The mine owner shall make arrangements to ensure that the respirable dust content and, unless it would be inappropriate, the quartz content of each sample required to be taken by these Regulations is determined at a suitable laboratory.

(2) The mine owner shall make arrangements to ensure that—

- (a) the mine manager is notified of the respirable dust content and, where appropriate, the quartz content of each sample determined in accordance with paragraph (1)—
 - (i) where an exposure control limit is exceeded, immediately, and
 - (ii) in all other cases, within 4 working days of the sample being taken; and
- (b) a record is kept of each such determination.

(3) As soon as is practicable, the mine owner shall provide the Executive with details of the arrangements required by paragraphs (1) and (2) and, thereafter, any significant revision to those arrangements.

(4) The manager shall ensure that a notice specifying every respirable dust content and quartz content notified to him under paragraph (2) is displayed in the covered accommodation for a period of 30 days commencing with the date of notification.

(5) The manager shall ensure that a suitable record of sampling carried out for the purpose of these Regulations is made and maintained and that that record or a suitable summary thereof is kept available for at least 5 years from the date of the last entry made in it.

Action to be taken in the event of excessive dust

10.—(1) Where a manager is notified that a sample determination made as part of the sampling scheme required by regulation 8(1) exceeds the exposure control limit for respirable dust or the exposure control limit for quartz, he shall—

- (a) determine the reason why the relevant exposure control limit was exceeded;
- (b) take any appropriate remedial action; and
- (c) within 15 working days of receipt of that notification, ensure that a further 5 samples have been taken on 5 representative working shifts in order to determine the state of compliance with the relevant exposure control limit; or
- (d) if it is not practicable to comply with sub-paragraph (c) he shall—
 - (i) apply to the Executive in writing for consent to an extended period of time within which to complete the taking of the five samples as required in sub-paragraph (c), or
 - (ii) ensure that relevant operations are stopped in the affected part of the mine, leaving that part in a safe condition, and inform the Executive in writing accordingly.

(2) If the average of the 5 sample determinations made in accordance with paragraph (1)(c) or (1)(d)(i) exceeds the exposure control limit for respirable dust or the exposure control limit for quartz, the manager shall—

- (a) ensure that relevant operations are stopped in the affected part of the mine as soon as this can be done consistently with leaving that part in a safe condition, and inform the Executive in writing accordingly; or
- (b) permit relevant operations to continue in the affected part of the mine and provide justification for that decision to the Executive in writing forthwith.

(3) If, in accordance with paragraph (2)(b), the manager has permitted relevant operations to continue, he shall ensure that a further 5 samples have been taken on 5 representative working shifts within 15 working days of receipt of the notification of the findings of the sample determinations referred to in paragraph (2).

(4) If the average of the 5 sample determinations made in accordance with paragraph (3) exceeds the exposure control limit for respirable dust or the exposure control limit for quartz, the manager shall ensure that relevant operations are stopped in the affected part of the mine and inform the Executive accordingly in writing.

(5) Where relevant operations have been stopped in accordance with paragraph (1)(d)(ii), (2)(a) or (4), the mine owner shall not permit relevant operations to be resumed until he—

- (a) is satisfied that all measures necessary to protect the health of workers at the mine have been taken;
- (b) has provided sufficient justification to the Executive in writing which shall include—
 - (i) details of any change in the method of work or in the control measures, and
 - (ii) as assessment of the effect of these changes; and,
- (c) subject to paragraph (6), has received the consent of the Executive to resume relevant operations, which shall be subject to such conditions as the Executive may impose.

(6) If the mine owner has not received a reply from the Executive within 7 working days of submitting his justification to resume relevant operations in accordance with paragraph (5)(b) then he may resume relevant operations without the consent required by paragraph (5)(c).

Health surveillance

11.—(1) Every employer shall ensure that those of his employees who are, or who are liable to be, exposed to inhalable dust are placed under health surveillance by a doctor, unless that exposure is not significant.

(2) The employer shall ensure that a health record, containing particulars approved by the Executive, in respect of each of his employees to whom paragraph (1) applies is made and maintained and that that record or a copy thereof is kept available in a suitable form for at least 40 years from the date of the last entry made in it.

(3) The employer shall—

- (a) on reasonable notice being given, allow an employee access to his personal health record;
- (b) provide the Executive with copies of such health records as the Executive may require; and
- (c) if he ceases to trade, notify the Executive forthwith in writing and make available to the Executive all health records kept by him.

(4) Health surveillance arranged by an employer in order to comply with his duty under paragraph (1) shall be at the cost of that employer and shall take place during the working hours of the employee or at a time agreed with the employee.

(5) An employee who is the subject of health surveillance shall furnish the doctor with such information concerning his health as the doctor may reasonably require.

(6) Where, as a result of health surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a doctor to be the result of exposure to inhalable dust—

- (a) the manager shall—
 - (i) review the risk assessment, and
 - (ii) review any measure taken to comply with regulation 5, taking into account any advice given by a doctor or by the Executive; and
- (b) the employer of that employee shall—
 - (i) ensure that a doctor informs the employee accordingly and provides the employee with information and advice regarding further health surveillance,
 - (ii) consider assigning the employee to alternative work where there is either a lower exposure to inhalable dust or no such exposure, taking into account any advice given by a doctor, and
 - (iii) provide for a review of the health of any other employee who has been similarly exposed, including a medical examination where such an examination is recommended by a doctor or by the Executive.

(7) Where, for the purpose of carrying out his functions under these Regulations, a doctor requires to inspect any workplace or any record kept for the purposes of these Regulations, the employer or the owner as the case may be shall permit him to do so.

Information, instruction and training for persons who may be exposed to inhalable dust

12.—(1) Where an employer undertakes work which is liable to expose an employee to inhalable dust, he shall provide that employee with suitable and sufficient information, instruction and training.

(2) Without prejudice to the generality of paragraph (1), the information, instruction and training provided under that paragraph shall include—

- (a) the risk which exposure to inhalable dust presents to health;
- (b) the relevant exposure control limits;
- (c) the significant findings of the risk assessment;

- (d) the appropriate precautions and actions to be taken by the employee in order to safeguard himself and other employees at the workplace;
 - (e) if the exposure control limit for respirable dust or the exposure control limit for quartz is exceeded, provision forthwith of all relevant sampling results to the employee or his representative; and
 - (f) the collective results of any health surveillance undertaken in accordance with regulation 11 in a form calculated to prevent those results from being identified as relating to a particular person.
- (3) The information, instruction and training required by paragraph (1) shall be—
- (a) adapted to take account of significant changes in the type of work carried out or methods of work used by the employer; and
 - (b) provided in a manner appropriate to the level, type and duration of exposure identified by the risk assessment.
- (4) The employer shall ensure that any person (whether or not his employee) who carries out work in connection with the employer's duties under these Regulations has suitable and sufficient information, instruction and training.

Exemption certificates

13.—(1) Subject to paragraph (2) the Executive may, by a certificate in writing, exempt any person or class of persons or any substance or class of substances from all or any of the requirements or prohibitions imposed by regulations 4(5), 5(4), 6, 7, 8(2), 9(2) to (4), 10(2) to (6), and 11(4), (5) and (7), and any such exemption may be granted subject to conditions and to a limit of time and may be revoked by a certificate in writing at any time.

(2) The Executive shall not grant any such exemption unless having regard to the circumstances of the case, and, in particular, to—

- (a) the conditions, if any, which it proposes to attach to the exemption;
- (b) any requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Repeals, revocations and saving

14.—(1) In section 74 of the 1954 Act—

- (a) at the end of sub-paragraph (a) of paragraph (1) the word “and”;
- (b) sub-paragraph (b) of paragraph (1); and
- (c) in paragraph (2), the words “or in the case of a mine of coal, dust of such character and in such quantity as to be likely to be injurious to the persons employed”,

are repealed.

(2) The Coal Mines (Respirable Dust) Regulations 1975(a), the Coal Mines (Respirable Dust) (Amendment) Regulations 1978(b), and the Mines (Substances Hazardous to Health) Regulations 1996(c) are revoked.

(3) In Schedule 2 to the Personal Protective Equipment at Work Regulations 1992(d) delete Part IV.

(4) In regulation 5(1)(a)(i) of the Control of Substances Hazardous to Health Regulations

(a) S.I. 1975/1433.

(b) S.I. 1978/807.

(c) S.I. 1996/2001.

(d) S.I. 1992/2966, to which there are amendments not relevant to these Regulations.

2002(a) replace the words “the Coal Mines (Respirable Dust) Regulations 1975” with the words “the Coal Mines (Control of Inhalable Dust) Regulations 2007”.

(5) Any record or register required to be kept under the Coal Mines (Respirable Dust) Regulations 1975 shall, notwithstanding the revocation of those Regulations by paragraph (2), be kept in the same manner and for the same period as specified in those Regulations as if these Regulations had not been made, except that the Executive may approve the keeping of records at a place or in a form, other than at the place where, or in the form in which, records were required to be kept under those Regulations.

Signed by authority of the Secretary of State for Work and Pensions

Lord McKenzie of Luton
Minister of State

Date

Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and replace the Coal Mines (Respirable Dust) Regulations 1975 (S.I. 1975/1433, as amended by S.I. 1978/807). The Regulations impose duties on mine owners, mine managers, employers, and employees to protect persons at work in coal mines from risks to their health arising from exposure to inhalable dust of mineral origin. They implement as respects Great Britain those provisions of Council Directive 98/24/EC (OJ No. L 131, 5.5.98, p.11) on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) which are applicable to risk from this source.

2. The Regulations make provision for—

- (a) the definition of inhalable dust and respirable dust, and the setting of exposure control limits for respirable dust and quartz (regulation 2);
- (b) the exclusion of tourist mines, as defined, from the application of the Regulations (regulation 3);
- (c) risk assessment by the mine manager (regulation 4);
- (d) prevention, or where this is not reasonably practicable, reduction to as low a level as is reasonably practicable of exposure to inhalable dust by the mine manager (regulation 5);
- (e) proper use of control measures by the mine manager and employees and maintenance by the mine manager (regulations 6 and 7);
- (f) the operation by the mine manager of a sampling scheme for respirable dust and quartz (regulation 8);
- (g) arrangements by the mine owner for the evaluation in a laboratory of samples so obtained (regulation 9);
- (h) action to be taken by the mine manager when samples exceed an exposure control limit, including the stopping of operations in specified circumstances (regulation 10);
- (i) health surveillance to be provided by the employer (regulation 11);
- (j) information, instruction and training to be provided by the employer (regulation 12);
- (k) power for the Health and Safety Executive to grant exemptions from specified provisions of the Regulations (regulation 13); and
- (l) consequential repeals, revocations and amendments (regulation 14).

(a) S.I. 2002/2677, to which there are amendments not relevant to these Regulations.

3. Copies of publications mentioned in regulation 2 of the Regulations are available as follows—

- (a) the exposure control limits for respirable dust and for quartz which the Health and Safety Commission has approved and are in force at the time of the coming into force of these Regulations are available in the Approved Code of Practice and Guidance for these Regulations, obtainable from HSE Books, PO Box 1999 Sudbury, Suffolk CO10 2WA; and
- (b) copies of British Standard BS EN 481 1993 are obtainable from British Standards Institution, BSI House, 389 Chiswick High Road, London W4 4AL.

4. A copy of the regulatory impact assessment 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 the Transposition Note in relation to the implementation of Council Directive 98/24/EC by these Regulations can be obtained from the Health and Safety Executive, International Branch at the same address. Copies of both these documents have been placed in the Libraries of each House of Parliament.