STATUTORY INSTRUMENTS

2020 No. 40

MERCHANT SHIPPING

HEALTH AND SAFETY

The Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020

Made - - - -	*20th January 2020*
Laid before Parliament	*27th January 2020*
Coming into force - -	*2nd March 2020*

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**a**), section 15(1) and (2) of, and paragraphs 8(2) and 9 of Schedule 3 to the Health and Safety at Work etc. Act 1974(**b**) and sections 85(1), (3) and (7) and 86(1) of the Merchant Shipping Act 1995(**c**), makes the following Regulations.

The Secretary of State is a Minister designated(**d**) 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 in them.

In so far as the following Regulations are made in exercise of powers conferred by sections 15(1) and (2) of the Health and Safety at Work etc. Act 1974, they give effect without modifications to proposals submitted by the Health and Safety Executive under section 11(3) of the 1974 Act(**e**) after carrying out consultation in accordance with section 50(3)(**f**) of that Act.

In so far as the following Regulations are made in exercise of powers conferred by section 85 of the Merchant Shipping Act 1995, the Secretary of State has, in accordance with section 86(4) of the Act, consulted persons in the United Kingdom that the Secretary of State considers will be affected by the proposal to make these Regulations.

(**a**) 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a) and the European Union (Amendment) Act 2008 (c. 7), Schedule. There are other amendments but none is relevant.

(**b**) 1974 c. 37; section 15(1) was substituted by paragraph 6 of Schedule 15 to the Employment Protection Act 1975 (c.71) and amended by S.I. 2002/794. Section 15(2) was amended by paragraphs 1 and 5 of Schedule 12 to the Energy Act 2013 (c.32).

(**c**) 1995 c. 21; section 85(1) was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8(2), and section 85(3) was amended by section 8(4) of that Act. There are other amendments to section 86 but none is relevant.

(**d**) S.I. 1993/595; there are amending instruments but none is relevant.

(**e**) Section 11 was substituted by articles 3 and 5 of S.I. 2008/960.

(**f**) Section 50(3) was amended by paragraph 16 of Schedule 15 to the Employment Protection Act 1975 (c.71), articles 3 and 16 of S.I. 2008/960, paragraphs 4 and 6 of Schedule 7 to the Health and Social Care Act 2012 (c.7), and paragraphs 1 and 11 of Schedule 12 to the Energy Act 2013 (c.32).

Citation and commencement

1. These Regulations may be cited as the Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020 and come into force on 2nd March 2020.

Interpretation

2. In these Regulations, "the 2007 Regulations" means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007(**a**).

Amendment of regulation 14 of the 2007 Regulations

3.—(1) Regulation 14 of the 2007 Regulations (health surveillance)(**b**) is amended as follows.

(2) After paragraph (4) insert—

"(4A) Where the doctor or body responsible for the health surveillance of a worker records in that worker's individual medical record, kept pursuant to paragraph (4), that the health surveillance of the worker should continue after exposure has ended, the worker's employer must ensure that, while the worker is employed by the employer, the health surveillance of that worker continues for as long as recommended by the doctor or body.

(4B) The worker's employer ceases to be under an obligation to ensure that health surveillance continues for as long as recommended by the doctor or body when a doctor or body responsible for the health surveillance of the worker records in the worker's individual medical record that this is no longer recommended."

Introduction of a statutory review requirement in the 2007 Regulations

4. After regulation 25 (prohibition on levy) of the 2007 Regulations insert—

"**26. Review**

(1) The Secretary of State must from time to time—

(a) carry out a review of the regulatory provision contained in these Regulations, and

(b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 2nd March 2025.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(**c**) requires that a report published under this regulation must, in particular—

(a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),

(b) assess the extent to which those objectives are achieved,

(c) assess whether those objectives remain appropriate, and

(d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, "regulatory provision" has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015(**d**) (see section 32 of that Act).
"

(**a**) S.I. 2007/3100, amended by S.I. 2010/1110, 2015/21. There are prospective amendments to be made by S.I. 2018/1202.

(**b**) Contravention of, or failure to comply with, regulation 14 is an offence under regulation 17 of S.I. 2007/3100. In England and Wales, section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c. 10) removed the limit on a fine imposed following summary conviction so that the offence is punishable by a fine of any amount.

(**c**) 2015 c. 26.

(**d**) Section 30(3) was amended by section 19 of the Enterprise Act 2016 (c. 12) and paragraph 36 of Schedule 8 to the European Union (Withdrawal) Act 2018 (c. 16).

Amendment of Schedule 1 to the 2007 Regulations

5.—(1) Schedule 1 to the 2007 Regulations (other substances and processes to which the definition of carcinogen relates) is amended as follows.

(2) In the list of substances and processes to which the definition of carcinogen relates, after "Hardwood dusts.", insert—

"Work involving exposure to respirable crystalline silica dust generated by a work process. "

Amendment of Schedule 2 to the 2007 Regulations

6.—(1) Schedule 2 (table of limit values) is amended as follows.

(2) For the table of limit values in Schedule 2, substitute the table in the Schedule to these Regulations.

Amendment of the Mines Regulations 2014

7.—(1) The Mines Regulations 2014(**a**) are amended as follows.

(2) In regulation 2(1) for the definition of "action level" substitute—

""action level" means, in relation to respirable dust, a concentration in air equal to or greater than 3mg/m^3 as a time-weighted average over a 40 hour period;".

(3) Omit regulation 44.

(4) In regulation 45—

(a) in paragraph (5) omit "and respirable crystalline silica";

(b) in paragraph (6) omit "or respirable crystalline silica";

(c) in paragraph (6)(a) omit "relevant".

Signed by authority of the Secretary of State for Transport

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

20th January 2020

SCHEDULE

Regulation 6(2)

Table of Limit Values

Name of agent	*EC No(1)*	*CAS No (2)*	*Limit values(3)*			*Notation*	*Transitional measures*
			mg/m^3(4)	*ppm (5)*	*f/ml (6)*		
Hardwood dusts	—	—	2 (7)	—	—	—	Limit value 3 mg/m^3 until 17 January 2023
Chromium (VI) compounds which are carcinogens within the	—	—	0,005	—	—	—	Limit values: 0,025 mg/m^3 for welding or plasma cutting

(**a**) S.I. 2014/3248.

meaning of point (i) of Article 2(a) (as chromium)							processes or similar work processes that generate fume until 17 January 2025, and 0,010 mg/m^3 until 17 January 2025 in all other cases
Refractory ceramic fibres which are carcinogens within the meaning of point (i) of Article 2(a)	—	—	—	—	0,3	—	
Respirable crystalline silica dust	—	—	0,1 [8]	—	—	—	
Benzene	200-753-7	71-43-2	3,25	1	—	skin [9]	
Vinyl chloride monomer	200-831-0	75-01-4	2,6	1	—	—	
Ethylene oxide	200-849-9	75-21-8	1,8	1	—	skin [9]	
1,2-Epoxypropane	200-879-2	75-56-9	2,4	1	—	—	
Acrylamide	201-173-7	79-06-1	0,1	—	—	skin [9]	
2-Nitropropane	201-209-1	79-46-9	18	5	—	—	
o-Toluidine	202-429-0	95-53-4	0,5	0,1	—	skin [9]	
1,3-Butadiene	203-450-8	106-99-0	2,2	1	—	—	
Hydrazine	206-114-9	302-01-2	0,013	0,01	—	skin [9]	
Bromoethylene	209-800-6	593-60-2	4,4	1	—	—	

[1] EC No, i.e. Einecs, ELINCS or NLP, is the official number of the substance within the European Union, as defined in Section 1.1.1.2 in Annex VI, Part 1, to Regulation (EC) No 1272/2008.

[2] CAS No: Chemical Abstract Service Registry Number.

[3] Measured or calculated in relation to a reference period of eight hours.

[4] mg/m^3 = milligrams per cubic metre of air at 20 °C and 101,3 kPa (760 mm mercury pressure).

[5] ppm = parts per million by volume in air (ml/m^3).

[6] f/ml = fibres per millilitre.

[7] Inhalable fraction: if hardwood dusts are mixed with other wood dusts, the limit value shall apply to all wood dusts present in that mixture.

[8] Respirable fraction.

[9] Substantial contribution to the total body burden via dermal exposure possible.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 (S.I. 2007/3100) ("the 2007 Regulations") and the Mines Regulations 2014 (S.I. 2014/3248) ("the 2014 Regulations"). They implement, in relation to United Kingdom ships (as defined by regulation 2 of the 2007 Regulations), Directive 2017/2398/EC (OJ No. L345, 27.12.2017, p. 87-95), which amends Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work. They also make provision to implement Directive 2017/2398/EC in relation to coal mine workers in Great Britain.

In relation to United Kingdom ships, regulation 3 imposes on employers an additional obligation in relation to the health surveillance of workers. If a doctor or body responsible for undertaking the health surveillance of a worker recommends that such surveillance be continued after exposure has ended, the worker's employer must ensure that the surveillance is continued for the period recommended. Regulation 5 amends Schedule 1 to the 2007 Regulations so that work involving exposure to respirable crystalline silica dust ("RCS dust") generated by a work process is added to the list of other substances and processes to which the definition of carcinogen relates. Regulation 6 replaces the table of limit values for occupational exposure in the 2007 Regulations with an updated version.

Where a duty is owed by an employer to a worker in respect of a risk concerning workplace health and safety provided for in the 2007 Regulations, and at least one seafarer who is not a worker is exposed to that risk, a duty is imposed in respect of seafarers who are not workers by regulation 13A of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962).

These Regulations are also relevant to ships which are not United Kingdom ships when such ships are in United Kingdom waters. Such ships are subject to inspection to ascertain whether the standards required in relation to United Kingdom ships by the 2007 Regulations are met in relation to the ship in question. If a ship falls short of the standards, measures may be taken to rectify this.

Regulations making provision in relation to United Kingdom ships are made under powers contained in the Merchant Shipping Act 1995, except in their application to Government ships (within the meaning of section 308(4) of the Merchant Shipping Act 1995), where the power is provided by section 2(2) of the European Communities Act 1972.

Regulation 4 introduces a new provision into the 2007 Regulations which requires the Secretary of State to review the operation and effect of those Regulations and publish a report within five years after they come into force and within every five years after that. Following such a review, it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

Regulation 7 amends the 2014 Regulations so that the Control of Substances Hazardous to Health Regulations 2002 apply to RCS dust below ground in coal mines. This will increase protections for workers in coal mines below ground in relation to exposure to RCS dust.

In so far as amendments to the 2014 Regulations are concerned, a full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from www.legislation.gov.uk. The impact assessment is also available from the Health and Safety Executive, Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS. In so far as amendments to the 2007 Regulations are concerned, a full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, public or voluntary sector is foreseen.

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