EXPLANATORY MEMORANDUM TO

THE MINES (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2022

S.R. 2022 No. 09

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department for the Economy to accompany the Statutory Rule (details above), which is laid before the Northern Ireland Assembly.

1.2. The Rule is made in exercise of the powers conferred by Articles 17(1) and (2) and paragraphs 7, 8 and 12(3) of Schedule 3 to the Health and Safety at Work (Northern Ireland) Order 1978 ("the 1978 Order") and is subject to the negative resolution procedure.

1.3. The Rule comes into operation on 21st March 2022.

2. Purpose

2.1 The Statutory Rule is connected to the implementation of Directive (EU) 2017/2398 of the European Parliament and of the Council of 12 December 2017 amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work.

2.2 The Rule will amend the Mines Regulations (Northern Ireland) 2016 (S.R. 2016 No. 427)[1].

3. Background

3.1 The Mines Regulations (Northern Ireland) 2016 impose duties on mine operators to protect persons at work from the risks to their health arising from exposure to inhalable and respirable dust and Respirable Crystalline Silica (RCS) below ground in coal mines. Directive (EU) 2017/2398 amends the Carcinogens and Mutagens Directive (2004/37/EC) and sets down new occupational exposure limits values (OELVs) for a number of carcinogens or mutagens. Importantly, it includes a new binding limit for exposure to RCS of 0.1mg/m^3. OELVs are implemented into Northern Ireland law by the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (S.R. 2003 No. 34)[2] (COSHH), in particular, the approved Workplace Exposure Limits (WELs) set down in the EH40/2005 publication[3].

3.2 Northern Ireland already has an established WEL for RCS of 0.1mg/m^3, identical to the new EU limit, but that WEL is disapplied below ground in coal mines by the Mines Regulations (Northern Ireland) 2016. Since 2007 an RCS concentration of up to 0.3mg/m^3 of RCS has been permitted below ground in coal mines, with the Mines Regulations (Northern Ireland) 2016 requiring remedial action to be taken at or above this level. Following the introduction of the Mines Regulations (Northern Ireland) 2016 all other COSHH requirements now apply below ground at coal mines. The current RCS WEL, and therefore the new EU limit, of 0.1mg/m^3 already applies above ground at coal mines and at all other mines.

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[1] http://www.legislation.gov.uk/nisr/2016/427/contents/made
[2] http://www.legislation.gov.uk/nisr/2003/34/contents/made
[3] https://www.hseni.gov.uk/publications/eh402005-workplace-exposure-limits

3.3 The establishment of the new binding EU OELV for RCS means that it is no longer possible to apply the higher limit of 0.3mg/m^3 below ground in coal mines and the Mines Regulations (Northern Ireland) 2016 are being amended accordingly.

4. Consultation

4.1 The Health and Safety Executive for Northern Ireland ("HSENI") ran a public consultation exercise from 5 November 2019 to 3 December 2019. Letters were issued to 460 consultees, including individuals and bodies representative of section 75 of the Northern Ireland Act 1998 and other organisations with an interest in equality and related issues (including each member of the Northern Ireland Assembly). There were also consultees from the mining and woodworking industries. The consultation document was posted on the HSENI website[4].

4.2 During the consultation period no formal replies were received.

4.3 A summary of the outcome of the consultation exercise can be found on the HSENI website[5].

5. Equality Impact

5.1. The Statutory Rule has been screened for any possible impact on equality of opportunity affecting the groups listed in section 75 of the Northern Ireland Act 1998 and no adverse or, with the exception of age, differential impacts were identified. As the proposals relate primarily to workplaces they will have a justified differential impact on those of a working age. There is no evidence to suggest that the proposals will impact disproportionately on any other Section 75 group.

6. Regulatory Impact

6.1 An Impact Assessment has not been prepared for this Statutory Rule. Currently there are no coal mines in operation in Northern Ireland and consequently there will be no additional costs or benefits from the implementation of the RCS WEL below ground in coal mines.

7. Financial Implications

7.1 The Rule has no effect on business, and there are no cost implications for the Department for the Economy.

8. Section 24 of the NI Act 1998

8.1 The Department has considered the matter of Convention rights and is satisfied that there are no matters of concern.

9. EU Implications

9.1 This Statutory Rule amends the Mines Regulations (Northern Ireland) 2016 to implement a new EU limit, of 0.1mg/m^3 for exposure to RCS below ground in coal mines, as set down in Directive (EU) 2017/2398.

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[4] https://www.hseni.gov.uk/CDM/Phase1/Consultation
[5] https://www.hseni.gov.uk/CDM/Phase1/Consultation

10. Parity or Replicatory Measure

10.1 In Great Britain an amendment to the Mines Regulations 2014 (S.I. 2014/3248) is contained in the Carcinogens and Mutagens (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/40)[6] which were made on 20 January 2019 and came into force on 2 March 2020.

11. Additional Information

11.1 The Statutory Rule will be supported by guidance produced by the Health and Safety Executive (HSE) in Great Britain. The HSE publication: EH40/2005[7], which sets down WELs, has been updated to transpose the amended Carcinogens and Mutagens Directive and this will reflect the proposed amendments to the Mines Regulations (Northern Ireland) 2016.

11.2 The HSE publication *"The Mines Regulations 2014: Guidance on Regulations (L149)"*[8], which can be read across to the Mines Regulations (Northern Ireland) 2016, will also be updated. The revised guidance will give practical advice on how to comply with the Great Britain Mines Regulations and more specifically the COSHH Regulations in relation to RCS below ground in coal mines.

Department for the Economy

January 2022

[6] http://www.legislation.gov.uk/uksi/2020/40/contents/made
[7] https://www.hse.gov.uk/pubns/books/eh40.htm
[8] https://www.hse.gov.uk/pubns/books/l149.htm