

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3332 of 20 March 2003

LEGAL NOTICE NO. 34 OF 2003

**FACTORIES ORDINANCE
CONTROL OF ASBESTOS AT WORK REGULATIONS
(AMENDMENT) REGULATIONS 2003**

In exercise of the powers conferred on him by section 58 of the Factories Ordinance, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Council Directive 98/24/EC, the Governor has made the following Regulations—

Title.

1. These Regulations may be cited as the Control of Asbestos at Work Regulations (Amendment) Regulations 2003.

Amendment of the Control of Asbestos at Work Regulations.

2.(1) The Control of Asbestos at Work Regulations shall be amended in accordance with the provisions of this regulation.

(2) After regulation 3 there shall be inserted the following regulation—

“Duty to manage asbestos in non-domestic premises.

3A.(1) Every employer shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in non-domestic premises occupied by him and in which persons work.

(2) It shall be the duty of every person who has, by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of—

- (a) the premises; or
- (b) any means of access thereto or egress therefrom,

to take such measures as are necessary, so far as is reasonable given the nature and extent of that obligation, to enable the employer to comply with the requirements of this regulation.

(3) In making the assessment—

- (a) such steps as are reasonable in the circumstances shall be taken; and
- (b) the condition of any asbestos which is, or has been assumed to be, present in the premises shall be considered.

(4) Without prejudice to the generality of sub-regulation (3), the employer shall ensure that—

- (a) account is taken of building plans or other relevant information and of the age of the premises; and
- (b) an inspection is made of those parts of the premises which are reasonably accessible.

(5) The employer shall ensure that the assessment is reviewed forthwith if—

- (a) there is reason to suspect that the assessment is no longer valid; or
- (b) there has been a significant change in the premises to which the assessment relates.

(6) The employer shall ensure that the conclusions of the assessment and every review are recorded.

(7) Where the assessment shows that asbestos is or is liable to be present in any part of the premises the employer shall ensure that—

- (a) a determination of the consequent risk is made;
- (b) a written plan identifying those parts of the premises concerned is prepared; and

- (c) the measures which are to be taken for managing the consequent risk are specified in the written plan.

(8) The measures to be specified in the plan for managing the risk shall include adequate measures for—

- (a) monitoring the condition of any asbestos or any substance containing or suspected of containing asbestos;
- (b) ensuring any asbestos or any such substance is properly maintained or where necessary safely removed; and
- (c) ensuring that information about the location and condition of any asbestos or any such substance is—
 - (i) provided to every person liable to disturb it, and
 - (ii) made available to the emergency services.

(9) The employer shall ensure that—

- (a) the plan is reviewed and revised at regular intervals, and forthwith if—
 - (i) there is reason to suspect that the plan is no longer valid, or
 - (ii) there has been a significant change in the premises to which the plan relates;
- (b) the measures specified in the plan are implemented; and
- (c) the measures taken to implement the plan are recorded.

(10) In any proceedings for an offence for a contravention of any of the provisions of this regulation it

shall, subject to sub-regulation (11), be a defence for the person charged to prove—

- (a) that the commission of the offence was due to the act or default of another person not being one of his employees (hereinafter called “the other person”); and
- (b) that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(11) The person charged shall not, without leave of the court, be entitled to rely on the defence referred to in sub-regulation (10) unless, within a period ending seven clear days before the hearing to determine mode of trial he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession.

(12) For the purposes of this regulation, an employer shall be deemed to occupy the common parts of premises where he has control over maintenance or repair activities in those parts of those premises.

(13) In this regulation, a reference to—

- (a) “the assessment” is a reference to the assessment required by sub-regulation (1);
- (b) “the premises” is a reference to the non-domestic premises referred to in sub-regulation (1); and
- (c) “the plan” is a reference to the plan required by sub-regulation (7).”.

(3) For regulation 5 there shall be inserted the following regulation—

“Assessment of work which exposes employees to asbestos.

5.(1) An employer shall not carry out work which is liable to expose his employees to asbestos unless he has—

- (a) made a suitable and sufficient assessment of the risk created by that exposure to the health of those employees and of the steps that need to be taken to meet the requirements of these Regulations;
- (b) recorded the significant findings of that assessment; and
- (c) implemented the steps referred to in paragraph (a).

(2) Without prejudice to the generality of sub-regulation (1), the assessment shall—

- (a) subject to regulation 4, identify the type of asbestos to which employees are liable to be exposed;
- (b) determine the nature and degree of exposure which may occur in the course of the work;
- (c) consider the effect of control measures which have been or will be taken in accordance with regulation 9;
- (d) consider the results of monitoring of exposure in accordance with regulation 16;
- (e) set out the steps to be taken to prevent or reduce to the lowest level reasonably practicable that exposure;
- (f) consider the results of relevant medical surveillance; and
- (g) include such additional information as the employer may need in order to complete the assessment.

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

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

- (b) there is a significant change in the work to which the assessment relates; or
- (c) the results of any monitoring carried out pursuant to regulation 16 show it to be necessary,

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

(4) Where, in accordance with the requirement in sub-regulation (2)(b), the assessment has determined that the exposure of his employees to asbestos may exceed the action level, the employer shall keep a copy of the significant findings of that assessment at those premises at which, and for such time as, the work to which that assessment relates is being carried out.

(5) In this regulation, a reference to “the assessment” is a reference to the assessment required by sub-regulation (1)(a).”.

(4) For regulation 6(1) there shall be substituted the following regulation—

“6.(1) An employer shall not undertake any work with asbestos unless he has prepared a suitable written plan of work (hereinafter referred to in this regulation as “the plan of work”) detailing how that work is to be carried out.”.

(5) For regulation 8 and 9 there shall be substituted the following regulations—

“Information, instruction and training.

8.(1) Every employer shall ensure that adequate information, instruction and training is given to those of his employees—

- (a) who are or are liable to be exposed to asbestos, or who supervise such employees, so that they are aware of—

- (i) the results of the assessment required by regulation 5(1)(a),
- (ii) the risks to health from asbestos,
- (iii) the precautions which should be observed, and
- (iv) the relevant control limit and action level,

in order to safeguard themselves and other employees; and

- (b) who carry out work in connection with the employer's duties under these Regulations, so that they can carry out that work effectively.

(2) The information, instruction and training required by sub-regulation (1) shall be—

- (a) given at regular intervals;
- (b) adapted to take account of significant changes in the type of work carried out or methods of work used by the employer; and
- (c) provided in a manner appropriate to the nature and degree of exposure identified by the assessment required by regulation 5(1)(a).

Prevention or reduction of exposure to asbestos.

9.(1) Every employer shall—

- (a) prevent the exposure of his employees to asbestos so far as is reasonably practicable;
- (b) where it is not reasonably practicable to prevent such exposure—
 - (i) reduce the exposure of his employees to asbestos to the lowest level reasonably practicable by measures other than the use of respiratory protective equipment, and

- (ii) ensure that the number of his employees who are exposed to asbestos is as low as is reasonably practicable.

(2) Without prejudice to the generality of sub-regulation (1), where employees may be exposed to asbestos in a manufacturing process or in the installation of a product, prevention of such exposure to asbestos shall be achieved, where it is practicable, by substituting for asbestos a substance which, under the conditions of its use, does not create a risk to the health of his employees or creates a lesser risk than that created by asbestos.

(3) Where it is not practicable to avoid the use of asbestos by substitution in accordance with sub-regulation (2), the measures referred to in sub-regulation (1)(b)(i) shall include, 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 in order to avoid or minimise the release of asbestos; and
- (b) the control of exposure at source, including adequate ventilation systems and appropriate organizational measures.

(4) Where, in pursuance of sub-regulation (1), it is not reasonably practicable to reduce the exposure of an employee to below the control limits which apply to that exposure, then, in addition to taking the measures required by that sub-regulation the employer shall provide that employee with suitable respiratory protective equipment which will reduce the concentration of asbestos in the air inhaled by the employee (after taking into account the effect of that respiratory protective equipment) to a concentration which is as low as is reasonably practicable and in any event below those control limits.

(5) Any personal protective equipment provided by an employer in pursuance of this regulation shall conform to a

standard approved by the Minister in accordance with the Personal Protective Equipment Regulations 1996 (Legal Notice 31 of 1996) relating to personal protective equipment.

(6) Every employer shall take immediate steps to remedy the situation where the concentration of asbestos in air inhaled by any employee exceeds the relevant control limit.

(7) Where asbestos is used in a work process, or is produced by a work process, the employer shall ensure that the quantity of asbestos and materials containing asbestos at the premises where that work is carried out is reduced to as low a level as is reasonably practicable.

Arrangements to deal with accidents, incidents and emergencies.

9A.(1) Subject to sub-regulation (3) in order to protect the health of his employees from an accident, incident or emergency related to the use of asbestos in a work process or to the removal or repair of asbestos-containing materials at the workplace, the employer shall ensure that—

- (a) procedures, including the provision of relevant safety drills (which shall be tested at regular intervals), have been prepared which can be put into effect when such an event occurs;
- (b) information on emergency arrangements, including—
 - (i) details of relevant work hazards and hazard identification arrangements, and
 - (ii) specific hazards likely to arise at the time of an accident, incident or emergency, is available; and
- (c) suitable warning and other communication systems are established to enable an appropriate response, including remedial actions and rescue operations, to be made immediately when such an event occurs.

(2) The employer shall ensure that information on the procedure and systems required by sub-regulation (1)(a) and (c) and the information required by sub-regulation (1)(b) is–

- (a) made available to relevant accident and emergency services, both within and outside the workplace, to enable those services, whether internal or external to the workplace, to prepare their own response procedures and precautionary measures; and
- (b) displayed at the workplace, if this is appropriate.

(3) Sub-regulation (1) shall not apply where–

- (a) the results of the assessment required by regulation 5(1)(a) show that, because of the quantity of asbestos present at the workplace, there is only a slight risk to the health of employees; and
- (b) the measures taken by the employer to comply with the duty under regulation 9(1) are sufficient to control that risk.

(4) In the event of an accident, incident or emergency related to the unplanned release of asbestos at the workplace, the employer shall ensure that–

- (a) immediate steps are taken to–
 - (i) mitigate the effects of the event,
 - (ii) restore the situation to normal, and
 - (iii) inform any person who may be affected; and
- (b) only those persons who are responsible for the carrying out of repairs and other necessary work are permitted in the affected area and they are provided with–
 - (i) appropriate respiratory protective equipment and protective clothing, and

- (ii) any necessary specialised safety equipment and plant, which shall be used until the situation is restored to normal.”.

(6) For regulation 17 there shall be substituted the following regulation—

“Health records and medical surveillance.

17.(1) Every employer shall ensure that a health record containing particulars approved by the Factories Inspector relating to each of his employees who is exposed to asbestos is maintained unless the exposure of that employee does not exceed the action level 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.

(2) Every employer shall ensure that each of his employees who is exposed to asbestos is under adequate medical surveillance by a relevant doctor unless the exposure of that employee does not exceed the action level.

(3) The medical surveillance required by sub-regulation (2) shall include—

- (a) a medical examination not more than 2 years before the beginning of such exposure; and
- (b) periodic medical examinations at intervals of not more than 2 years or such shorter time as the relevant doctor may require while such exposure continues,

and each such medical examination shall include a specific examination of the chest.

(4) Where an employee has been examined in accordance with sub-regulation (3), the relevant doctor shall issue to the employer and that employee a certificate stating that he has been so examined and the date of the examination and the employer shall keep that certificate or a copy thereof for at least 4 years from the date on which it was issued.

(5) An employee to whom this regulation applies shall, when required by his employer and at the cost of the employer, present himself during his working hours for such examination and tests as may be required for the purposes of sub-regulation (3) and shall furnish the relevant doctor with such information concerning his health as the relevant doctor may reasonably require.

(6) Where, for the purpose of carrying out his functions under these Regulations, a relevant doctor requires to inspect any record kept for the purposes of these Regulations, the employer shall permit him to do so.

(7) Where medical surveillance is carried out on the premises of the employer, the employer shall ensure that suitable facilities are made available for the purpose.

(8) The employer shall—

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

(9) Where, as a result of medical surveillance, an employee is found to have an identifiable disease or adverse health effect which is considered by a relevant doctor to be the result of exposure to asbestos at work the employer of that employee shall—

- (a) ensure that a suitable person informs the employee accordingly and provides the employee with information and advice regarding further medical surveillance;

- (b) review the assessment required by regulation 5(1)(a);
- (c) review any measure taken to comply with regulation 10, taking into account any advice given by a relevant doctor or by the Factories Inspector;
- (d) consider assigning the employee to alternative work where there is no risk of further exposure to asbestos, taking into account any advice given by a relevant doctor; and
- (e) provide for a review of the health of every other employee who has been similarly exposed, including a medical examination (which shall include a specific examination of the chest) where such an examination is recommended by a relevant doctor or by the Factories Inspector.

(10) "Relevant doctor" means a registered medical practitioner appointed for the time being in writing by the Minister for the purpose of this regulation."

Dated the 20th day of March, 2003

By Command,

D G BLUNT,

Deputy Governor.