

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

**No. 3472 of 2 June, 2005**

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LEGAL NOTICE NO. 91 OF 2005.

**FACTORIES ACT**

**FACTORIES (CONTROL OF CARCINOGENS AND MUTAGENS AT  
WORK) (AMENDMENT) REGULATIONS 2005**

In the exercise of the powers conferred upon him by sections 58 and 81 of the Factories Act, and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC), the Governor has made the following Regulations—

**Title.**

1. These Regulations may be cited as the Factories (Control of Carcinogens and Mutagens at Work) (Amendment) Regulations 2005.

**Amendment of Factories (Control of Carcinogens and Mutagens at Work) Regulations 2003.**

2. The Factories (Control of Carcinogens and Mutagens at Work) Regulations 2003 are amended as follows—

(a) in regulation 4(1)—

(i) at the end of paragraph (f) for “.” substitute “,”;

(ii) after paragraph (f) insert—

“(g) the cases of replacement.”;

(b) in regulation 4(2)—

(i) at the end of paragraph (k) delete “and”;

(ii) at the end of paragraph (l) for “.” substitute “; and”;

(iii) after paragraph (l) insert–

"(m) collective prevention measures and/or, where exposure cannot be avoided by other means, individual protection measures.”;

(c) in regulation 8(1)–

(i) at the end of paragraph (d) delete “and”;

(ii) at the end of paragraph (e) for “.” substitute “; and”;

(iii) after paragraph (e) insert the following paragraph and tailpiece–

“(f) the steps to be taken by workers (including rescue workers) in the case of incidents and to prevent incidents,

and such training shall be adapted where new risks are identified or the nature of the risk changes, and if necessary such training shall be repeated periodically.”;

(d) for regulation 9(1) substitute–

“(1) Where an employee is or is liable to be exposed to carcinogens or mutagens, the employer shall, if appropriate, ensure that the employee undergoes health surveillance prior to exposure and at regular intervals thereafter.”;

(e) after regulation 9 insert–

**“Abnormality in employee.**

9A. Where as a result of the health surveillance carried out in accordance with regulation 9, an employee is found to be suffering from an abnormality that is suspected to be the result of exposure to carcinogens or mutagens–

- (a) an inspector or a doctor may require other employees who have been similarly exposed to undergo health surveillance;
  - (b) a further assessment under regulation 3 shall be undertaken; and
  - (c) where cancer is identified as resulting from the occupational exposure to a carcinogen or mutagens, an inspector must be informed.”;
- (f) after regulation 10 insert–

**“Information for workers.**

10A. An employee and/or his representative shall be entitled to request information from his employer so that he may verify that the provisions of these regulations are being complied with, and in particular–

- (a) to be able to assess the consequences for his safety and health of the selection, wearing and use of protective clothing and equipment, without prejudice to the employer's responsibility for determining the effectiveness of protective clothing and equipment;
- (b) the steps determined by the employer which are referred to in regulation 6(1), without prejudice to the employer's responsibility for determining such steps;
- (c) in the event of an abnormal exposure employees and/or their representatives shall be informed as quickly as possible of the causes thereof and of the measures taken or to be taken to rectify the situation;
- (d) an employer must keep an up-to-date list of employees engaged in the activities in respect of which the results of an assessment reveal a risk to their health or safety, indicating, if the information is available, the exposure to which they have been subjected;

- (e) an employer shall grant to the doctor and/or an inspector, as well as all other persons who have responsibility for health and safety at work, access to the list referred to in point (d);
- (f) an employee shall be granted access by his employer to the information on the list which relates to him personally;
- (g) an employee and/or his representative shall be granted access to anonymous collective information.”.

Dated this 2nd day of June, 2005.

By Command,

P. R. BARTON,

Deputy Governor.

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**EXPLANATORY MEMORANDUM**

*(This note does not form part of the Regulations)*

These Regulations amend the Factories (Control of Carcinogens and Mutagens at Work) Regulations 2003 (“the 2003 Regulations”) in the light of Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC).

Directive 2004/37/EC consolidates previous directives and the amendments to the 2003 Regulations ensure that all the obligations are fully transposed.