



**Guide to
Chemicals (Asbestos Articles) Regulations 2011**

S.I. No. 248 of 2011

Version 1

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Introduction

This guide is aimed at persons in possession of asbestos-containing articles, which were originally installed or in service before 1 January 2005, who want to place them on the Irish market - whether for payment or free of charge.

Examples of such articles would include *second-hand acetylene cylinders, articles of historical value and classic/vintage cars*.

The Chemicals (Asbestos Articles) Regulations 2011 (S.I. 248 of 2011) herein referred to as the ‘CAA Regulations’ came into operation on 31st May 2011. These CAA Regulations have been made under the Chemicals (Amendment) Act 2010 (No. 32 of 2010). The objective of the guide is to give information on the purpose of the CAA Regulations and the intent of the legal text. It is not intended as a legal interpretation of the legislation.

Entry 6 of Annex XVII contained in Regulation (EC) No. 552/2009¹ amending Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation²), restricts the manufacture, placing on the market³ and use of **asbestos fibres and articles containing these fibres**.

The purpose of the CAA Regulations is to give effect to provisions laid down in the second subparagraph of paragraph 2 of Entry 6 (6.2.2) of Annex XVII to the REACH Regulation. Under 6.2.2, Member States are allowed to decide whether or not to allow the placing on the market of second hand articles (i.e. articles installed or in service before 1st January 2005) containing asbestos fibres at a national level.

The text of entry 6 can be found in Appendix 1 to this guide. 6.2.2 is shaded for reference.

The CAA Regulations govern the regime under which persons or bodies must apply to the Health and Safety Authority (HSA) for an ‘asbestos article exemption certificate’ before they may place permitted asbestos-containing articles on the market – whether for payment or free – and make it an offence to place such articles on the market in the absence of such an exemption certificate. Asbestos containing articles which were originally installed or in service before 1

¹ Commission Regulation ([EC No. 552/2009](#)) amending Regulation (EC) No. 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);

² Regulation (EC) [No. 1907/2006](#) of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH);

³ Means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market;

January 2005 can only be placed on the market in accordance with any conditions and time limits as specified in a valid certificate issued under the Regulations. Otherwise, asbestos-containing articles may not be placed on the Irish market.

Background

Asbestos is a naturally occurring chemical substance which has in the past been widely used because it is very resistant to heat, electricity and also many other chemicals. Despite these properties, asbestos has serious, well-established health risks and its use has been strictly controlled in Ireland and Europe.

The marketing and use of asbestos has been restricted since 1999 under the Marketing and Use (M&U) Directive 76/769/EEC. In 2009, the REACH Regulation repealed and replaced the M&U Directive, with the aim of maintaining the level of protection, by transferring the existing requirements into the new EU chemicals regime.

Entry 6 of Annex XVII to the REACH Regulation now restricts the manufacture, placing on the market and use of **asbestos fibres and articles containing these fibres**. A technical change was made to entry number 6 allowing Member States to permit the continued placing on the market of articles⁴ containing asbestos fibres in their entirety, which were already installed and/or in service before 1 January 2005, subject to specific conditions ensuring a high level of protection of human health. Please refer to Appendix 1 for entry 6 of Annex XVII.

Why this technical change to the existing restriction?

The REACH Regulation defines the term “placing on the market” however the M&U Directive did not define such a term. Therefore, if the exact restriction on asbestos containing articles was carried over from the M&U Directive into Annex XVII to the REACH Regulation, it would only have addressed the use of articles containing asbestos fibres (in service prior to 1st January 2005) and would not mention the placing on the market of such articles. This would mean that the use of such pre-1st Jan 2005 asbestos containing articles would continue to be allowed, but the supplying or making available of such articles, whether in return for payment or free of charge, to a third party would be prohibited, as of the entry into force of the Title VIII (Restrictions) of REACH i.e. 1st June 2009. To address this anomaly, it was therefore decided at EU-level to include a technical change to the asbestos restriction entry i.e. replace the word ‘use’ with ‘placing on the market and use’ in those entries where only a prohibition on the use of the substance was included.

The broad REACH definition of ‘placing on the market’ would also have made it technically illegal to supply articles containing asbestos fibres to specialists to dismantle them and/or render

⁴ Please note that the legal services of the EU Commission have indicated that fixed articles (houses/buildings) are not within the scope of the definition of an article in REACH.

them safe. Subject to the REACH provisions allowing scientific research, it could also become illegal to send samples of asbestos containing materials to analysts in order to meet legal obligations to identify and/or monitor the presence of asbestos or to support enforcement activity.

To overcome these problems, it was agreed that the restriction should prohibit the **use and placing on the market** of articles containing asbestos fibres. However a provision was written into the restriction entry which allows Member States to put measures in place at a national level to allow the placing on the market of articles containing asbestos fibres in their entirety, which were already installed and/or in service before 1st January 2005. This is provided that specific conditions ensuring a high level of protection of human health are met.

In Ireland, the CAA Regulations made under the Chemicals (Amendment) Act 2010 to enact special exemption arrangements only for certain asbestos-containing articles were brought in by Ministerial Order on 31st May 2011.

Principle of substitution

In the interest of health and safety, Ireland is committed to limiting the risk associated with its' asbestos legacy. Ireland wishes to follow the principle that asbestos-containing articles or components of articles should be substituted when it is reasonably practicable to do so, in a manner that does not compromise the health and safety of the person(s) carrying out the substitution.

Exemption certificate

In cases where the asbestos-containing article or component of an article cannot be substituted, the exempting authority will consider applications for an asbestos exemption certificate to allow the placing on the market of such articles. The Health and Safety Authority (HSA) is the exempting authority for the purposes of the CAA Regulations.

There are two scenarios where the HSA will **not** issue an exemption certificate:

1. in the case of articles containing asbestos which were used in construction applications (e.g. asbestos cement products, spray applications, laggings, asbestos insulating board, floor tiles, toilet cisterns, bitumen products etc). Safer alternatives are available and the HSA is of the opinion there is no reasonable justification to allow such products to be re-used, and
2. where it is reasonably practicable for the asbestos-containing component of the article to be substituted. For example, in the case of a vintage car with asbestos-containing brake pads, it may be considered reasonably practical to substitute these with non-asbestos containing brake pads.

The placing on the market will be permitted in the case of articles transferred to specialists for asbestos removal and disposal or rendering such articles as safe and in the case of articles being sent as samples for analysis.

Applying for an Exemption Certificate

An *Exemption Certificate Application Form* is available for download from the Health and Safety' Authority's Website at:

http://www.hsa.ie/eng/Topics/Business_Licensing_and_Notification_Requirements/

If you are unsure whether these regulations apply to you please send your queries to chemicals@hsa.ie or call

Guidance on legal text

Citation (Regulation 1)

These Regulations may be cited as the Chemicals (Asbestos Articles) Regulations 2011.

Interpretation (Regulations 2)

Regulation 2 is an interpretation section and defines the terms used in the CAA Regulations. It includes the following definitions —

“Act” means the Chemicals Act 2008 (No. 13 of 2008), as amended by the Chemicals (Amendment) Act 2010 (No. 32 of 2010);

“appeal” means an appeal under Regulation 10;

“applicant” means any person who applies for a certificate under Regulation 5;

“article” means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition, as provided for in Article 3(3) of the REACH Regulation;

“asbestos-containing article” means any article in its entirety containing any of the asbestos fibres listed below—

- a) Crocidolite [CAS No. 12001-28-4],
- b) Amosite [CAS No. 12172-73-5],
- c) Anthophyllite [CAS. No 77536-67-5],
- d) Actinolite [CAS No. 77536-66-4],
- e) Tremolite [CAS No. 77536-68-6], or
- f) Chrysotile [CAS No. 12001-29-5 and CAS No. 132207-32-0];

Note: This definition uses the list of asbestos fibres covered by entry number 6 of Annex XVII in Regulation (EC) No. 552/2009 amending REACH Regulation. This list of asbestos fibres is contained in the ‘designation of the substance, of the group of substances or of the preparation’ column of entry 6. The definition is provided to indicate the types of asbestos fibres covered by this Regulation.

“CAS No.” means the Chemical Abstract Service number assigned to a substance;

“certificate” means an asbestos article exemption certificate issued under Regulation 4;

“certificate application” means an application to an exempting authority for a certificate under Regulation 5;

“exempting authority” means the Health and Safety Authority;

“Exposure to Asbestos Regulations” means the Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations 2006 and 2010;

“parties to the appeal” means—

- (a) the person(s) appealing under Regulation 10(2),
- (b) the exempting authority which made the decision the subject of the appeal, and
- (c) any other party who took part in the process leading to the decision under appeal.

“person” means any natural or legal person who is acting, whether inside or outside of a trade, business or profession, for the purposes of this Regulation;

“placing on the market” means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed as placed on the market, as provided for in Article 3(12) of the REACH Regulation;

“REACH Regulation” means Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006¹, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and establishing a European Chemicals Agency, as amended;

(2) In these Regulations—

- a) a reference to a Regulation or a Schedule is to a Regulation of, or a Schedule to, these Regulations, unless it is indicated that reference to some other Regulation is intended, and
- b) a reference to a paragraph or a subparagraph is a reference to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

Application (Regulation 3)

Regulation 3 describes how a person is not allowed to place on the market an asbestos-containing article which was installed or in service before 1st January 2005, unless he/she holds a certificate obtained from the exempting authority and the conditions specified in the certificate are complied with.

The placing on the market of asbestos-containing articles is allowed without a certificate in the case of articles:

- a) transferred to specialists for asbestos removal and disposal;
- b) transferred to specialists to render them safe and
- c) that are sent as samples for analysis.

This is to allow for the continued removal of asbestos containing materials by specialist contractors. Point (c) is to allow articles to be tested for the suspected presence of asbestos e.g. for compliance with health and safety legislation or quality assurance purposes. The provisions of the Exposure to Asbestos Regulations S.I. No. 589/2010 will still apply to scenarios a) to c).

Asbestos article exemption certificate (Regulation 4)

The exempting authority will review each application for a certificate on **a case by case basis**. It will be possible for the exempting authority to issue the certificate to exempt an article or category of articles (e.g. one vintage car or a group of 10 vintage cars) from the restriction laid down in the second subparagraph of paragraph 2 in entry number 6 of Annex XVII. It is not intended that a certificate will be issued to cover a group of different articles (e.g. a vintage car and an acetylene cylinder).

The exempting authority has the power to decide to exempt a category of articles from the provisions of Regulation 3(1). The exempting authority may issue a certificate to exempt an asbestos-containing article, or category of such articles, from the prohibition on the placing on the market of asbestos-containing articles provided for by Article 67 of and Annex XVII to, the REACH Regulation.

The certificate will include certain conditions appropriate to the circumstances of the case with the objective being to ensure a high level of protection of human health. The exempting authority may (on a case-by-case basis) make the certificate time-limited or it may be varied or revoked by a notice in writing.

The exempting authority must be satisfied that the health and safety of the persons, likely to be affected by the exemption, will not be compromised before issuing a certificate. In coming to this conclusion the exempting authority must consider the circumstances of the case. It must also consider and decide on the conditions to be attached to the certificate as well as giving consideration to any other requirements which applies to the case, which may be imposed by or under any other pieces of legislation.

The person holding a certificate must comply with the conditions attached to it.

The exempting authority will not issue certificates for articles containing asbestos used in construction applications (e.g. asbestos cement products, spray applications, laggings, asbestos insulating board, floor tiles, toilet cisterns, bitumen products etc.) as safer alternatives are available and the Authority are of the opinion there is no reasonable justification to allow such products to be used.

In addition, certificates will not be issued in the case of articles where it is reasonably practicable for the asbestos-containing article or asbestos-containing component of the article to be substituted. E.g. In the case of a vintage car with asbestos-containing brake pads – it may be considered reasonably practical to substitute these with non-asbestos containing brake pads. In this case, an application for a certificate may be declined.

The Authority would only consider issuing a certificate where the asbestos is in an internal/enclosed part of the article, meaning that the asbestos cannot be easily replaced and a justification is given as to why it is reasonable to place such an article on the market e.g. a museum placing on the market a museum artifact which has the asbestos contained in a internal/enclosed part of the article.

Application for certificate (Regulation 5)

It is required that all certificate applications include all the information specified in Schedule 1 (as a minimum) in order for the exempting authority to make a reasonable decision. A fee may also be required.

The certificate application information requirements outlined in Schedule 1 are as follows:

- (a) the name, address, telephone number and e-mail address, if any, of the applicant and of the person, if any, acting on behalf of the applicant;
- (b) the names of the company directors and the address and registration number of the company, where an applicant referred to in point (a) is a company registered under the Companies Acts 1963 to 2009;
- (c) the location, townland or postal address in which the article is currently located;
- (d) a description of the category of business/activity;
- (e) a description of the article and its use for which the certificate is being sought;
- (f) presumed/confirmed asbestos content and fibre type;
- (g) photographic evidence of the article for which the certificate is being sought;

- (h) a justification as to why it is necessary to place the asbestos-containing article on the market;
- (i) an explanation as to why it is not reasonably practicable to substitute the asbestos-containing component of the article;
- (j) description of measures that will be taken to ensure a high level of protection of human health;

Applications must be made at least 6 working weeks before the date the asbestos-containing article is expected to be placed on the market. This is to allow the exempting authority sufficient time to make a decision to determine if such an asbestos containing article can be placed on the market.

When a certificate application comes in to the exempting authority, it will stamp each document with the date of its receipt. This is the date by which the statutory time period for processing an application begins.

After the exempting authority confirms that the application is valid i.e. it contains all the required information outlined in Schedule 1, it has a period of 2 working weeks from receipt, to respond to the applicant (by either email or letter) to acknowledge the date of receipt of the valid application and to issue a reference number unique to the certificate being applied for.

If the exempting authority decides that the application does not contain all the required information listed in Schedule 1 the application will be deemed invalid. In the case of invalid applications within 2 working weeks of receipt, the exempting authority will contact the applicant (by email or letter) informing them that it cannot consider the application as it is deemed to be invalid. In this correspondence, the exempting authority will indicate the information requirements of Schedule 1 have not been included and return the certificate application including all particulars to the applicant. The exempting authority will enter details of the invalid application in the certificate register under Regulation 11. Until such time as a new application is made the asbestos-containing article cannot be placed on the market.

Requirement to submit further information (Regulation 6)

When the exempting authority has reviewed a valid certificate application, it may decide that further information is required in order for it to be able to process the application in full. It may require further evidence to verify any particulars or information given in or in relation to the application or as may be reasonably necessary to clarify the matters dealt with in the applicant's application.

In this case, the exempting authority has the capacity to request such additional information/evidence. This will be done in writing (email or letter) within 4 working weeks of

receipt of the application. The applicant will have a specific timeframe by which to submit this additional information. This timeframe will be set on a case-by-case basis by the exempting authority and will be contained in the written correspondence. The applicant may have the opportunity to propose a new time limit that may be more appropriate. The time (6 weeks time period for processing an application) will stop until **all** the further information provisions are submitted.

If following a request for further information, the exempting authority does not receive all the information requested within the specified timeframe, it will be assumed by the exempting authority that the applicant no longer wants to proceed with the application and this application will be refused and the process outlined in Regulation 8 will apply.

Period for determination of certificate application (Regulation 7)

The exempting authority will make a decision on whether or not to grant a certificate within 6 working weeks of receipt of a valid application. If further information is requested (in line with Regulation 6(1)) the exempting authority will make its decision under Regulation 8 within 4 working weeks of receipt of this further information.

In cases where the exempting authority is not able to make a decision within the specified time period, it will inform the applicant of this and of the revised date by which the decision will be made. However, this revised date will not be later than a period of 2 weeks from the original date of the due decision.

If the exempting authority fails to make a decision within the given time period the certificate application will be deemed to have been refused in line with Regulation 8.

Decision to grant or refuse certificate (Regulation 8)

The exempting authority will make a decision on whether or not to grant a certificate on the basis of its processing of the application and information submitted by the applicant.

Once the decision is made, the exempting authority will notify the applicant in writing of its decision to grant or refuse the certificate application.

The exempting authority's decision will include:

- (a) the date of the decision;
- (b) in the case of a decision to grant a certificate, any relevant conditions and/or any time limit attached to the certificate;
- (c) in the case of a decision to refuse a certificate, the reasons for refusal; and

- (d) details on how to appeal against the decision made in line with paragraph (1) pursuant to Regulation 10.

The HSA will use the powers conferred on it by the Chemicals Act in making its decision to grant or refuse a certificate application.

Review of grant of certificate (Regulation 9)

The exempting authority will have the capacity to be able to go back and review its decision to grant a certificate if it has reason to believe that the provisions of Regulation 4(3) are no longer being met. This may occur if it is of the opinion that the placing on the market of the asbestos containing article is no longer justified, as suitable alternatives exist or there is a health or safety risk to persons, for example.

Following its review of an existing decision on a certificate application, the exempting authority may intend to revoke the certificate. In the case of any person to whom the certificate relates the exempting authority will give notice of its intention to revoke the certificate and publish a notice of its intention on its website. This web publication is to cover situation where the applicant may have changed address or is no longer contactable by normal post. If however the certificate applies to a particular article or category of articles exempted under Regulation 3(2), the exempting authority will just publish a notice of its intention on its website.

An exempting authority's notice to revoke a certificate will specify: the reference number relating to the relevant certificate and the reasons for the proposed revocation. The exempting authority will also give the certificate holder the opportunity to submit any comments on the proposed revocation may be made in writing to the exempting authority within 4 working weeks of the date of publication or issue of the notice.

The exempting authority will make a decision on whether or not to revoke a certificate within 8 working weeks of the date of the notice, 4 working weeks after the deadline for comments to be submitted.

Once the exempting authority has completed its review and considered any comments submitted it will, in the case of any person to whom the certificate relates, give notice of its decision to revoke the certificate and publish a notice of its decision on its website. In cases where the certificate applies to a particular article or category of articles, the exempting authority will just publish a notice of its decision on its website.

The exempting authority will use the powers conferred on it by the Chemicals Act in making its decision to revoke a certificate application. In cases where the exempting authority fails to make a decision within a specified time period, it will be deemed to have decided not to revoke the certificate under review.

Appeals (Regulation 10)

The exempting authority will designate a member or members of its staff, as it considers appropriate to be appeals officers under this Regulation. Such a designated member or members of staff will be the appeals officer(s) for a period of time determined by the exempting authority.

The following persons may appeal to an appeals officer—

- (a) in respect of a decision under Regulation 8(1), the applicant in the certificate application the subject of the decision; and
- (b) in respect of a decision under Regulation 9(4)—
 - (i) the person to whom the certificate the subject of the decision was issued, and
 - (ii) any person who made representations under Regulation 9(3)(c).

Such persons must submit their appeal to the appeals officer within 4 working weeks beginning on the date of the decision that is the subject of the appeal. The person making an appeal will need to make his/her appeal in writing and they must state the subject matter of the appeal and the grounds of the appeal.

The appeals officer will give copies of appeal documents to each of the other parties to the appeal.

Where an appeal is brought, the person making the appeal will provide all relevant information or evidence in their possession or procurement for the purpose of determining the appeal, including all documents submitted to the exempting authority in the context of the decision under appeal. The person making the appeal must also comply with any request from the appeals officer for further information.

A decision on the appeal can be made even if the party to appeal neglects or refuses to give the appeals officer the relevant information within the specified timeframe. In such cases, the appeal can be decided upon without such document, information or evidence.

A person making an appeal can make written observations on the appeal to the appeals officer. A copy of such observations will be given to each other party to the appeal. If a number of persons have made an appeal jointly, a copy of the observations will be given to one such person.

The appeals officer will notify all parties to the appeal of its decision within 8 working weeks of the date of the appeals application or a further 4 working weeks, if further information is requested.

In cases where the appeals officer fails to notify the parties to an appeal of his or her decision on an appeal within the specified time period, the appeal will be deemed to have been dismissed. If this is the case, a new appeal of the decision on the same or other grounds, may be brought by the appellant.

Register (Regulation 11)

All certificate applications will be logged in a register held by the exempting authority. The information intended to be logged in listed in Schedule 2 as follows:

- (a) Reference number;
- (b) Name and address of applicant;
- (c) Date of application;
- (d) Date of decision of exempting authority;
- (e) Exempting authority's decision.

This register will be made available to the public via the internet.

Offences (Regulation 12)

A person will have committed an offence if they are in breach of Regulation 3(1) and Regulation 4(4) of the CAA Regulations. The legislative basis for such an offence is laid down in section 29(4) of the Chemicals Act.

Fees (Regulation 13)

The exempting authority can levy a fee in respect of the performance of any of its functions under these Regulations. This is in line with the provisions of section 10 of the Act.

Appendix I: Entry 6 of Annex XVII for Asbestos

Substance, group of substances or mixture	Conditions of restriction
<p>6. Asbestos fibres (a) Crocidolite CAS No 12001-28-4 (b) Amosite CAS No 12172-73-5 (c) Anthophyllite CAS No 77536-67-5 (d) Actinolite CAS No 77536-66-4 (e) Tremolite CAS No 77536-68-6 (f) Chrysotile CAS No 12001-29-5 CAS No 132207-32-0</p>	<p>1. The manufacture, placing on the market and use of these fibres and of articles containing these fibres added intentionally is prohibited. However, Member States may exempt the placing on the market and use of diaphragms containing chrysotile (point (f)) for existing electrolysis installations until they reach the end of their service life, or until suitable asbestos-free substitutes become available, whichever is the sooner.</p> <p>By 1 June 2011 Member States making use of this exemption shall provide a report to the Commission on the availability of asbestos free substitutes for electrolysis installations and the efforts undertaken to develop such alternatives, on the protection of the health of workers in the installations, on the source and quantities of chrysotile, on the source and quantities of diaphragms containing chrysotile, and the envisaged date of the end of the exemption. The Commission shall make this information publicly available.</p> <p>Following receipt of those reports, the Commission shall request the Agency to prepare a dossier in accordance with Article 69 with a view to prohibit the placing on the market and use of diaphragms containing chrysotile.</p> <p>2. The use of articles containing asbestos fibres referred to in paragraph 1 which were already installed and/or in service before 1 January 2005 shall continue to be permitted until they are disposed of or reach the end of their service life. However, Member States may, for reasons of protection of human health, restrict, prohibit or make subject to specific conditions, the use of such articles before they are disposed of or reach the end of their service life.</p> <p>Member States may allow placing on the market of articles in their entirety containing asbestos fibres referred to in paragraph 1 which were already installed and/or in service before 1 January 2005, under specific conditions ensuring a high level of protection of human health. Member States shall communicate these national measures to the Commission by 1 June 2011. The Commission shall make this information publicly available.</p>

	<p>3. Without prejudice to the application of other Community provisions on the classification, packaging and labelling of substances and mixtures, the placing on the market and use of articles containing these fibres, as permitted according to the preceding derogations, shall be permitted only if suppliers ensure before the placing on the market that articles bear a label in accordance with Appendix 7 to this Annex.</p>
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