

1983/70



THE ASBESTOS REGULATIONS 1983

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government House at Wellington this 18th day of April 1983

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to—

- (a) The Construction Act 1959, in relation to construction work; and
 - (b) The Factories and Commercial Premises Act 1981, in relation to work (other than construction work) in undertakings; and
 - (c) The Health Act 1956, in every other case,—
- His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Asbestos Regulations 1983.

(2) These regulations shall come into force on the 14th day after the date of their notification in the *Gazette*.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“Approved”, except in relation to approved protective equipment, means approved for the time being by an Inspector:

“Approved protective equipment” means equipment for the time being approved by the Director-General of Health under regulation 15 of these regulations:

“Asbestos” means—

(a) Actinolite, amosite, chrysotile, crocidolite, fibrous anthophyllite, or tremolite; or

(b) A mixture containing a mineral specified in paragraph (a) of this definition; or

(c) A material that is composed wholly or partly of any such mineral; or

(d) A material or article that is contaminated by any such mineral:

“Asbestos dust” means asbestos fibres in the air in a concentration exceeding that for the time being designated under regulation 31 of these regulations by the Director-General of Health:

“Asbestos fibre” means a particle of asbestos that is not less than 5 micrometres and not more than 100 micrometres in length, and is less than 3 micrometres in width, and has a length to width ratio of not less than 3 to 1:

“Certified dust control equipment” means dust control equipment in respect of which a certificate under regulation 10 of these regulations is for the time being in effect:

“Chief Construction Safety Engineer” means the Chief Construction Safety Engineer appointed under section 4 (1) of the Construction Act 1959:

“Chief Inspector of Factories” means the Chief Inspector of Factories appointed under section 4 (6) of the Factories and Commercial Premises Act 1981:

“Construction work” has the same meaning as it has in section 2 of the Construction Act 1959:

“Defect” includes any matter requiring repair, whether or not it is a defect in design:

“Dust control equipment” means equipment that, when operated in satisfactory working order, prevents the entry of asbestos dust into the air:

“Employer”—

(a) In relation to construction work, has the same meaning as it has in section 2 of the Construction Act 1959:

(b) In relation to work (other than construction work) in an undertaking, includes every occupier of that undertaking:

(c) In every other case, includes every person who carries on business on his own account involving work involving asbestos, whether or not he employs any other person in that business:

“Employee”—

(a) Does not include an independent contractor, or any person undertaking work on his own account:

(b) In relation to construction work, includes a workman as defined in section 2 of the Construction Act 1959:

“Inspector”,—

(a) In relation to construction work, means a Construction Safety Inspector as defined in section 2 of the Construction Act 1959; and, for the purposes only of regulation 18 of these regulations, includes an Inspector of Health as defined in section 2 (1) of the Health Act 1956:

(b) In relation to work (other than construction work) in an undertaking, means an Inspector of Factories appointed under section 4 (1) of the Factories and Commercial Premises Act 1981; and, for the purposes only of regulation 18 of these regulations, includes an Inspector of Health as aforesaid:

(c) In every other case means an Inspector of Health as aforesaid:

“Medical Officer of Health” has the same meaning as it has in section 2 (1) of the Health Act 1956:

“Undertaking” has the same meaning as it has in section 2 (1) of the Factories and Commercial Premises Act 1981:

“Welfare”, in relation to a person, includes his health and safety:

“Work involving asbestos” means—

(a) Work involving the handling, working, processing, use, storage, cleaning, or disposal of asbestos, or the demolition or destruction of any building or thing containing asbestos; or

(b) Any cleaning work in consequence of or in connection with any work specified in paragraph (a) of this definition.

(2) For the purposes of these regulations, every person who is an employer by virtue of being an occupier of any premises in which work involving asbestos is undertaken shall be deemed to employ every person (not being an independent contractor or a person undertaking work on his own account) who undertakes the work in those premises.

3. Exemptions from regulations—(1) An Inspector may by a certificate in writing exempt a person from compliance with any provisions of these regulations (other than regulation 7, regulation 17, or regulation 18 of these regulations).

(2) An Inspector may grant an exemption under subclause (1) of this regulation subject to any conditions that he may specify in the certificate of exemption.

(3) Notwithstanding subclause (1) or subclause (2) of this regulation—

(a) No Inspector shall grant an exemption under this regulation unless he is satisfied that the work to which it relates, if carried on pursuant to the exemption, will be carried on as safely as if the exemption had not been granted; and

- (b) No Inspector shall in any event grant an exemption in contravention of any condition for the time being imposed under subclause (4) of this regulation.
- (4) From time to time—
 - (a) The Chief Construction Safety Engineer and the Director-General of Health jointly, in the case of construction work involving asbestos; or
 - (b) The Chief Inspector of Factories and the Director-General of Health jointly, in the case of work (other than construction work) involving asbestos in any undertaking; or
 - (c) The Director-General of Health alone, in any other case—
 may by notice published in the *Gazette* specify conditions on which Inspectors may grant exemptions under this regulation.

4. Revocation of exemptions—Any exemption granted under regulation 3 of these regulations may at any time be revoked—

- (a) In any case, by any Inspector or by the Director-General of Health; and
- (b) In the case of an exemption relating to construction work involving asbestos, by the Chief Construction Safety Engineer; and
- (c) In the case of an exemption relating to work (other than construction work) involving asbestos in any undertaking by the Chief Inspector of Factories.

General Duties

5. General duties of employers—Every employer shall ensure that these regulations are complied with in respect of—

- (a) All work involving asbestos that is undertaken by or for that employer; and
 - (b) Every person who is employed by that employer to undertake any such work.
- (2) Every employer shall ensure that every person who is employed by him to undertake work involving asbestos is given adequate instruction, before commencing the work, as to—
- (a) The dangers arising from work involving asbestos; and
 - (b) The precautions to be taken by persons undertaking such work; and
 - (c) The particular dangers to the health of persons engaged in such work who smoke; and
 - (d) The requirements imposed on employees by these regulations.

6. General duties of employees—Every person who is employed in work involving asbestos shall take reasonable care for the protection of—

- (a) His welfare; and
- (b) The welfare of every other person who may be affected by any act or omission by the employee in the course of that work.

7. Prohibition on exposure of persons to asbestos dust—Every employer who undertakes work involving asbestos shall ensure that no person who is employed by him in that work, or is lawfully in the vicinity of that work, is exposed to asbestos dust caused by the work.

Dust Control Equipment

8. Application of regulations 9 to 11—Regulations 9 to 11 of these regulations shall not apply in respect of any work to which regulation 12 (1) of these regulations applies.

9. Dust control equipment—No employer shall undertake work involving asbestos that is liable to cause asbestos dust, unless—

- (a) At all times while the work is being undertaken; and
- (b) During the period of 5 minutes immediately following every period during which the work is undertaken—

certified dust control equipment is operated in satisfactory working order at every place where the work is undertaken.

10. Certification of dust control equipment—(1) An engineer who is registered under the Engineers Registration Act 1924 may, where he is satisfied that any dust control equipment is suitably designed and installed and is in satisfactory working order, issue a certificate in writing to that effect in respect of that dust control equipment.

(2) Every certificate issued under this regulation shall have effect for the period of 12 months immediately following the date of its issue, and shall then cease to have effect.

(3) Every employer who undertakes work involving asbestos that is liable to cause asbestos dust—

- (a) Shall retain, for the period of 2 years immediately following the date of its issue, every certificate issued under this regulation in respect of the dust control equipment operated in the course of the work; and
- (b) Shall during that period produce the certificate on demand to an Inspector.

11. Detection of defects—(1) Every employer who undertakes work involving asbestos that is liable to cause asbestos dust shall cause all dust control equipment operated in the course of the work to be inspected for defects, at least once every 7 days, by a competent person.

(2) Every person who, being—

- (a) A competent person carrying out an inspection under subclause (1) of this regulation; or
- (b) An employee undertaking work involving asbestos—

discovers any defect in any dust control equipment shall forthwith report the defect to the employer by whom the dust control equipment is operated.

Protective Clothing and Equipment

12. Application of regulations 14 to 16—(1) This subclause shall apply to work involving asbestos that is likely to cause asbestos dust, in every case where an Inspector has served on the employer undertaking the work notice in writing that regulations 14 to 16 of these regulations are to apply to the work instead of regulations 9 to 11 of these regulations.

(2) An Inspector shall not serve a notice under subclause (1) of this regulation unless he is satisfied that it is impracticable, because of the nature or the location of the work to which the notice applies, to require the employer to comply with the requirements of regulation 9 of these regulations in respect of the work.

(3) Regulations 14 to 16 of these regulations shall apply to work involving asbestos (in addition to regulations 9 to 11 of these regulations) in every case where an Inspector has served notice in writing to that effect on the employer undertaking the work.

(4) An Inspector shall not serve a notice under subclause (3) of this regulation unless he is satisfied that it is necessary, for the protection of the welfare of persons undertaking the work to which the notice applies, both to require certified dust control equipment and to require approved protective clothing and approved protective equipment.

(5) Where regulations 14 to 16 of these regulations apply to work involving asbestos by virtue of this regulation, the employer shall ensure that notice of the application of those regulations to the work is given to every person who is employed by him in that work.

13. Election in case of construction work—(1) An employer who undertakes construction work involving asbestos may elect that regulations 14, 16, and 29 of these regulations shall be complied with instead of regulations 9 to 11 of these regulations in respect of that work.

(2) Where an employer elects under subclause (1) of this regulation that regulations 14, 16, and 29 of these regulations shall be complied with in respect of any construction work involving asbestos, he shall be deemed to be complying with regulations 9 to 11 of these regulations while regulations 14, 16, and 29 of these regulations are complied with in respect of that work.

(3) Where the employer so elects, he shall ensure that notice of his election is given to every person who is employed by him in the work to which the election relates.

(4) Where the employer has notified an employee in accordance with subclause (3) of this regulation, regulations 16 and 29 (2) of these regulations shall apply to that employee as long as the election remains in force.

(5) Subclauses (1), (2), and (4) of this regulation shall not apply—

(a) In any case where an Inspector by notice in writing served on the employer requires him to comply with regulations 9 to 11 of these regulations instead of regulations 14, 16, and 29 of these regulations; or

(b) In any case where, under regulation 12 (3) of these regulations, regulations 14 to 16 of these regulations apply in addition to regulations 9 to 11 of these regulations.

14. Provision of protective clothing and equipment—Every employer who undertakes work to which subclause (1) or subclause (3) of regulation 12 of these regulations applies shall—

(a) Provide approved protective clothing and approved protective equipment for every person employed by him to undertake the work; and

(b) Ensure that the employee does not undertake the work unless he has been instructed adequately in the wearing of the protective clothing and the use of the protective equipment; and

(c) Ensure that the employee does not undertake the work (or any other work for the employer) in any place into which asbestos dust is liable to escape, unless the employee is wearing the protective clothing and using the protective equipment; and

- (d) Maintain the protective clothing and protective equipment in effective order; and
- (e) Cause the protective clothing to be regularly cleaned, and (if capable of laundering) to be laundered at least once every 7 days; and
- (f) Cause the protective equipment to be regularly cleaned; and
- (g) Ensure that as far as practicable, each set of protective clothing and protective equipment is allocated to the same person whenever it is worn or used; and
- (h) Ensure that no protective clothing or protective equipment that has been worn or used by one employee is worn or used by any other employee unless it has been thoroughly cleaned and disinfected since it was last worn or used by the first employee; and
- (i) Provide adequate and suitable locker accommodation for the storage of the protective clothing and protective equipment in a changing room that is conveniently accessible for every employee who is required to wear the clothing or use the equipment; and
- (j) Ensure that no locker accommodation under this regulation is used for any purpose other than that for which it is required by this regulation.

15. Approval of protective clothing and equipment—(1) An Inspector may, where he is satisfied that any type of protective clothing is effective to prevent harm from asbestos dust to the wearer, approve that protective clothing for the purposes of these regulations.

(2) The Director-General of Health may, where he is satisfied that any type of protective equipment is effective to prevent harm from asbestos dust to the user, approve that protective equipment for the purposes of these regulations.

16. Use of protective clothing and equipment—(1) Every employee who undertakes work to which subclause (1) or subclause (3) of regulation 12 of these regulations applies shall—

- (a) At all times while so working, wear the protective clothing and use the protective equipment provided for him under regulation 14 of these regulations; and
- (b) Immediately after wearing the protective clothing or using the protective equipment, place it in the locker accommodation provided for the purpose under regulation 14 of these regulations; and
- (c) Forthwith report to his employer every defect that he discovers in protective clothing or protective equipment provided by the employer.

(2) Notwithstanding subclause (1) of this regulation, an employee who undertakes work involving asbestos to which this regulation applies shall, if required to do so by his employer, immediately after use hand the protective clothing and protective equipment referred to in that subclause to the employer, or to any other person designated for that purpose by the employer, for repair, cleaning, disinfecting, or replacement.

(3) No employee who undertakes work involving asbestos to which this regulation applies shall—

- (a) In any place other than a changing room referred to in regulation 14 of these regulations, put on or remove any protective clothing or protective equipment that is provided for him under that regulation; or
 - (b) Wear the protective clothing or use the protective equipment in any place where food or drink is being handled, stored, or consumed.
- (4) Notwithstanding subclause (3) of this regulation, an employee who undertakes work involving asbestos (not being work involving crocidolite) may wear protective clothing or use protective equipment, in any place at which the work is undertaken, while light refreshments are being handled, kept, or consumed at that place.

Crocidolite

17. Restrictions on use of crocidolite—(1) Except as provided in regulation 18 of these regulations, no person shall undertake construction work involving crocidolite except in accordance with the prior written approval of the Chief Construction Safety Engineer and the Director-General of Health jointly.

(2) Except as provided in regulation 18 of these regulations, no person shall, in an undertaking, undertake work (not being construction work) involving crocidolite except in accordance with the prior written approval of the Chief Inspector of Factories and the Director-General of Health jointly.

(3) Except as provided in regulation 18 of these regulations, no person shall undertake work involving crocidolite (being work to which neither subclause (1) nor subclause (2) of this regulation applies) except in accordance with the prior written approval of the Director-General of Health.

(4) An approval under this regulation may be given subject to any conditions that may be specified in the approval by the officer or officers by whom it is given.

(5) No approval may be given under this regulation unless the officer by whom it is given is satisfied—

- (a) That the work to be undertaken is necessary, and that the involvement of crocidolite in the work is essential or unavoidable; and
- (b) That, if undertaken in accordance with the approval and the conditions (if any) on which the approval is given, the work will not endanger the welfare of any person.

(6) In this regulation, “work involving crocidolite” means work involving asbestos, where the asbestos consists of or includes crocidolite.

18. Approval to handle crocidolite in emergencies—(1) Any person may,—

- (a) Until an approval under subclause (2) of this regulation expires; and
- (b) To the extent only specified in that approval; and
- (c) Subject to the conditions (if any) subject to which that approval was given,—

handle crocidolite.

(2) An Inspector may give a written approval (in the form specified in the Schedule to these regulations) to any person to handle crocidolite.

(3) No Inspector shall give an approval under subclause (2) of this regulation unless—

- (a) He is satisfied that the crocidolite concerned poses an immediate danger to health; and
 - (b) The approval is limited to such work as appears to him to be necessary to deal with that danger.
- (4) Every approval under subclause (2) of this regulation shall expire as soon as the work to which it relates has been completed.
- (5) An approval under subclause (2) of this regulation may be given subject to any conditions the Inspector concerned thinks fit.

Miscellaneous Provisions

19. Screens—An Inspector may, where he considers that it is necessary or desirable to do so for the purpose of protecting the welfare of any employees or other persons, by notice in writing served on any employer undertaking work involving asbestos, require the employer to screen effectively any place at which the work is undertaken so as to prevent the escape of asbestos dust from that place to any other place.

20. Warning notices—An Inspector may, where he considers that it is necessary or desirable to do so for the purpose of protecting the welfare of any person, by notice in writing served on any employer undertaking work involving asbestos, require the employer to place signs, in conspicuous positions at the places at which the work is undertaken, and in letters not less than 100 mm in height, stating “ASBESTOS HAZARD AREA—KEEP OUT”.

21. Duty of employer to maintain cleanliness—Every employer who undertakes work involving asbestos shall take all reasonable steps to ensure that—

- (a) All machinery, apparatus, work benches, and other plant and equipment at every place where the work is undertaken; and
- (b) The external surfaces of all dust control equipment provided by him in respect of the work; and
- (c) All floors, inside walls, ceilings, ledges, and other internal surfaces in every place where the work is undertaken; and
- (d) The changing room and all locker accommodation to be provided by him under regulation 14 or regulation 29 of these regulations—

are kept in a clean state, free from dust and asbestos waste.

22. Cleaning by dustless method—(1) This regulation shall be read subject to regulation 23 of these regulations.

(2) Every employer who undertakes work involving asbestos shall carry out the cleaning required by regulation 21 of these regulations—

- (a) By a vacuum-cleaning system that complies with the specifications in regulation 24 (2) (b) of these regulations, and is properly operated for the purpose; or
- (b) By effectively wetting the area to be cleaned, by means of a water spray applied gently, and then by cleaning the area; or
- (c) By any other method that is approved by an Inspector and is effective to prevent the escape of asbestos dust from the place of work into the air.

(3) Every employer who undertakes work involving asbestos shall ensure that—

- (a) The equipment required under subclause (2) of this regulation for cleaning is maintained in satisfactory working order; and
- (b) The external surfaces of the equipment are kept in a clean state, free from dust and asbestos waste.

23. Cleaning where dustless method impracticable—(1) Where an Inspector has issued to an employer undertaking work involving asbestos a certificate in writing that it is not practicable for that employer to comply with regulation 22 of these regulations, the employer may carry out the cleaning required by regulation 21 of these regulations by any effective method other than a method specified in regulation 22 of these regulations, if—

- (a) The employer provides, for every employee carrying out the cleaning and for every other employee working in the vicinity of the cleaning, the approved protective clothing and approved protective equipment referred to in regulation 14 of these regulations; and
- (b) The employer ensures that no such employee carries out the cleaning or works in the vicinity of the cleaning unless the employee is wearing the protective clothing and using the protective equipment so provided; and
- (c) The provisions of regulations 14, 16, and 29 of these regulations are complied with in respect of every employee who is required under this subclause to wear the protective clothing or use the protective equipment.

(2) Where an employer undertakes cleaning work in accordance with this regulation, he shall ensure that notice of the requirements of this regulation is given to every employee who is required under subclause (1) of this regulation to wear approved protective clothing or use approved protective equipment.

(3) Where the employer has notified an employee in accordance with subclause (2) of this regulation, regulations 16 and 29 (2) of these regulations shall apply to that employee as long as the employer undertakes cleaning work under this regulation.

(4) Every employer who undertakes cleaning work under this regulation shall ensure that, where as a result of the cleaning, any dust or asbestos waste is deposited on any surface, the surface is cleaned forthwith.

24. Structure of buildings—(1) This regulation shall not apply to construction work.

(2) No employer shall undertake work involving asbestos that is likely to produce asbestos dust in any part of a building (being a part in which work involving asbestos has not been undertaken before the commencement of these regulations), unless that part—

- (a) Is designed and constructed so as to have as few internal surfaces as are practicable on which dust may settle, and is also constructed so that every internal surface is smooth and impervious to dust; and
- (b) Subject to regulation 23 of these regulations, has a vacuum-cleaning system that—
 - (i) Has filters; and
 - (ii) Has a source of suction situated at a fixed central point, with pipes that are fitted with suitably placed inlets to which portable cleaning implements can be attached; and

(iii) Is designed and constructed so that neither asbestos dust nor asbestos waste can escape from that part of the building into the air.

(3) Where an employer undertakes work involving asbestos that is likely to produce asbestos dust in any part of a building (whether or not that part of the building is one in which work involving asbestos has been undertaken before the commencement of these regulations), an Inspector may by notice in writing served on the employer require the employer—

- (a) To reduce, as far as is practicable, the number of internal surfaces on which dust may settle; and
- (b) To render every internal surface smooth and impervious to dust.

(4) No Inspector shall serve a notice under subclause (3) of this regulation unless he is satisfied that, having regard to the existing internal structure of the part of the building to which the notice applies, the method of dust control used and the method of cleaning carried out are not such as to keep the premises satisfactorily free from dust.

25. Storage of asbestos—(1) No employer who undertakes work involving asbestos shall store in any container asbestos that is likely to produce asbestos dust unless—

- (a) The container is conspicuously marked, in letters not less than 25 mm in height, with the words “ASBESTOS—DO NOT INHALE DUST”; and
- (b) Where the container is a bag or sack, it is impermeable to asbestos dust.

(2) Every employer who undertakes work involving asbestos shall store all asbestos used in connection with the work (whether or not it is in a container) in a safe manner.

26. Distribution of asbestos—No employer who undertakes work involving asbestos shall distribute or receive loose mineral asbestos, or dry asbestos waste that is likely to produce asbestos dust, otherwise than in closed containers that prevent the escape of asbestos dust into the air, or in an enclosed dust-proof system of conveyance.

27. Disposal of asbestos waste—(1) Every employer who undertakes work involving asbestos shall at all times, pending disposal in accordance with subclause (2) of this regulation, keep all asbestos waste in closed containers that are impermeable to asbestos dust and are conspicuously marked with the words “ASBESTOS HAZARD—WEAR RESPIRATOR AND PROTECTIVE CLOTHING WHILE HANDLING CONTENTS”.

(2) Every employer who undertakes work involving asbestos shall safely and regularly dispose of all asbestos waste, as soon as possible after it is produced,—

- (a) By damping it and then tipping it in a place approved by the Medical Officer of Health, and immediately thereafter covering it with not less than 25 cm of earth; or
- (b) In any other manner approved by an Inspector.

(3) Notwithstanding subclause (2) of this regulation, where asbestos waste is disposed of while in an impermeable sack, it may be tipped and covered without having been damped.

- (4) Every employer who undertakes work involving asbestos—
- (a) Shall render unusable, in a manner that does not create asbestos dust, every sack or bag that has been emptied of asbestos; and
 - (b) Shall dispose of the sack or bag in the same manner as if it were asbestos waste.

28. Laundering of contaminated clothing—(1) Every employer who undertakes work involving asbestos shall ensure that all clothing that is contaminated by asbestos as a result of that work is either disposed of as asbestos waste in accordance with regulation 27 of these regulations, or is laundered—

- (a) In such a manner as to clean the clothing and to prevent the escape of asbestos dust into the air; and
 - (b) As far as practicable, at the place in which the work involving asbestos has been carried out.
- (2) Every employer who is required under subclause (1) of this regulation to cause any clothing to be laundered shall ensure—
- (a) That before the clothing is transported to any place for laundering, it is damped and placed in a closed container that is impermeable to asbestos dust and is conspicuously marked with the words "ASBESTOS-CONTAMINATED CLOTHING"; and
 - (b) Where the clothing is to be given to any other person for laundering, that before it is given to that person, the recipient is instructed in the precautions to be taken to ensure that the clothing is handled and laundered in a manner that will protect the welfare of persons coming into contact with it.

29. Separate locker accommodation for ordinary clothing—(1) Every employer who undertakes work involving asbestos, being work to which regulation 14 of these regulations applies, shall—

- (a) Provide adequate and suitable locker accommodation that is so situated that—
 - (i) Asbestos dust cannot be deposited on any clothing stored in such accommodation; and
 - (ii) The accommodation is separate from any locker accommodation that the employer is required to provide under regulation 14 of these regulations—
for the storage of all clothes of his employees worn to or from the work (other than clothing that is required to be stored in locker accommodation provided under that regulation); and
 - (b) Ensure that no locker accommodation provided in accordance with this regulation is used for any purpose other than that for which it is required by this regulation.
- (2) Every employee who undertakes work involving asbestos, being work to which regulation 14 of these regulations applies, shall ensure that at all times while he is undertaking such work, all of his clothing that he is not wearing during the course of the work is kept in the locker accommodation provided in accordance with this regulation.

30. Samples—An Inspector or a Medical Officer of Health may at any time, for the purpose of ascertaining whether any material contains asbestos, or whether the air in any place contains asbestos dust, cause such samples as he reasonably considers to be necessary to be taken for analysis from any place at which any work involving asbestos is being or has been undertaken.

31. Designation of concentrations of asbestos dust—(1) The Director-General of Health may from time to time, by notice published in the *Gazette*, designate the concentration of asbestos fibres in the air that shall be deemed to be asbestos dust within the meaning of these regulations.

(2) The Director-General of Health may, under subclause (1) of this regulation, designate different concentrations for different types of asbestos.

32. Medical examinations—(1) Where the Medical Officer of Health believes on reasonable grounds that the health of any employee or class of employee undertaking work involving asbestos may be affected adversely by asbestos dust in the course of that work, the Medical Officer of Health may by notice in writing served on the employer declare that this regulation shall apply to the employee or to employees of that class.

(2) Where this regulation applies to any employee or employees—

(a) The employer shall, forthwith after the notice under subclause (1) of this regulation is served on him, inform in writing every employee to whom the notice applies of the terms of the notice and of the fact that it applies to that employee; and

(b) The employer shall, forthwith on the commencement of employment by any other employee to whom the notice applies, inform that employee in writing of the terms of the notice and of the fact that it applies to that employee.

(3) Where this regulation applies to any employee or employees, the employer shall at his own expense arrange a medical examination of every such employee—

(a) In the case of every employee who is employed by him at the time when the notice under subclause (1) of this regulation is served on the employer, within 3 months after the date of service of that notice on the employer; and

(b) In the case of every employee who commences his employment after the date of service of the notice under subclause (1) of this regulation on the employer, within 6 months after the date on which he commences employment—

and, in every case, thereafter at periodic intervals not exceeding 3 years.

(4) On the termination of the employment of any employee to whom this regulation applies who—

(a) Has been employed by the same employer for at least 5 years in work in respect of which medical examinations are required under this regulation; and

(b) Has not had a medical examination under this regulation within the period of 2 years immediately preceding the termination of his employment—

the employer shall at his own expense arrange a medical examination of that employee.

(5) For the purposes of this regulation, a medical examination shall comprise—

(a) An investigation of the occupational history of the person examined; and

(b) A chest X-ray; and

(c) A clinical examination; and

- (d) Such lung function tests as the medical practitioner conducting the examination considers to be necessary for the purpose of ascertaining whether the health of the person examined has been or is likely to be affected by asbestos.
- (6) Every medical practitioner who examines an employee under this regulation—
- (a) Shall provide to the employer a written report of the result of the examination stating whether or not there is any evidence that the employee is suffering from an asbestos-related disease, and a film of the chest X-ray; and
- (b) Shall provide to the employee a copy of the report.
- (7) Every employer who receives a report or an X-ray film under subclause (6) of this regulation—
- (a) Subject to subclause (9) of this regulation, shall retain either that report or film, or a copy of it approved by the Director-General for the purpose, under his control for not less than 20 years in a place where it is readily available for inspection by the Medical Officer of Health; and
- (b) Shall produce it on demand to the Medical Officer of Health.
- (8) Where an employee who has been medically examined under this regulation leaves his employment and subsequently commences work in respect of which medical examinations are required under this regulation with any other employer, he shall supply the name and address of his former employer to his new employer; and the new employer shall forthwith notify the former employer in writing of the employee's new employment.
- (9) When an employer is notified in writing under subclause (8) of this regulation of a change of employment, he shall forthwith forward to the new employer all medical reports and X-ray films held by him under this regulation in respect of the employee.
- (10) Nothing in this regulation shall be construed as requiring any person to submit to a medical examination without his consent.

33. Offences in relation to construction work—Every person commits an offence against these regulations, and shall be liable on summary conviction to the penalties provided in that behalf in section 24 of the Construction Act 1959, who acts in contravention of, or fails or refuses duly and faithfully to comply with, any requirement, obligation, rule, or provision (so far as that requirement, obligation, rule, or provision relates to construction work), imposed or enacted, or required to be observed, under these regulations.

34. Offences in relation to undertakings—Every person commits an offence against these regulations, and shall be liable on summary conviction to the penalties provided in that behalf in section 62 (1) (b) of the Factories and Commercial Premises Act 1981, who acts in contravention of, or fails or refuses duly and faithfully to comply with, any requirement, obligation, rule, or provision (so far as that requirement, obligation, rule, or provision relates to work (other than construction work) in or about an undertaking), imposed or enacted, or required to be observed, under these regulations.

35. Other offences—Every person commits an offence against these regulations, and shall be liable on summary conviction to the penalties provided in that behalf in section 136 of the Health Act 1956, who acts in

contravention of, or fails or refuses duly and faithfully to comply with, any requirement, obligation, rule, or provision (so far as that requirement, obligation, rule, or provision relates neither to construction work nor to work in or about an undertaking), imposed or enacted, or required to be observed, under these regulations.

36. Additional proof necessary in respect of offences by employees—Notwithstanding anything in any of regulations 33 to 35 of these regulations, no employee shall be convicted of an offence by reason of having contravened or failed to comply with any provision of regulation 16 or regulation 29 (2) of these regulations unless it is proved, in addition to all other ingredients of that offence, that at the time of the contravention or failure concerned—

- (a) That employee knew or should have known that the provision concerned applied to him; and
- (b) His employer had complied with the obligations of an employer under these regulations to an extent sufficient to enable that employee to comply with that provision.

37. Revocations—The following regulations are hereby revoked:

- (a) The Asbestos Regulations 1978:
 - (b) The Asbestos Regulations 1978, Amendment No. 1.
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Reg. 18

SCHEDULE

APPROVAL FOR EMERGENCY WORK INVOLVING CROCIDOLITE

PURSUANT to regulation 18 of the Asbestos Regulations 1983, I hereby give approval to [Name of occupier/employer] to undertake emergency remedial work involving crocidolite at, the work being

This approval is subject to the following conditions:

Dated this day of 19 at .

.....
 (Inspector of Health)
 (Inspector of Factories)
 (Construction Safety Inspector)*

*(Delete those that are not applicable)

NOTE: This approval is not an exemption under regulation 3 of the Asbestos Regulations 1983 and the regulations apply accordingly. This includes the need to obtain formal approval under regulation 17 for work involving crocidolite once the emergency for which this approval was given has passed.

P. G. MILLEN,
 Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are a consolidation, with some amendments, of the Asbestos Regulations 1978. The consolidation is largely a result of the passage of the Factories and Commercial Premises Act 1981 in place of the Factories Act 1946 and the Shops and Offices Act 1955 (those being 2 of the 4 enactments under which those regulations were made), and of the extended definition of "undertaking" contained in that Act. Apart from amendments consequential upon the passage of that Act, the regulations are amended by applying the penalties under the Health Act 1956 to offences against the regulations committed otherwise than in respect of construction work or work in an undertaking, by requiring employers to give employees adequate instruction about the increased dangers to the health of persons working with asbestos who smoke, and by providing for the issue of temporary approvals for the handling of crocidolite in emergencies.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 21 April 1983.

These regulations are administered in the Department of Labour and the Department of Health.