

Subsidiary Legislation made under ss. 58 and 81(2).

Control of Asbestos Regulations 2007

LN. 2007/037

		<i>Commencement</i>	1.3.2007
Amending enactments	Relevant current provisions	Commencement date	
LN. 2012/098	r. 3(2)(c)(i)-(ii)		5.7.2012

Transposing:

Directive 2003/18/EC

Implementing:

Directive 83/477/EEC

Directive 89/686/EEC

Directive 90/394/EEC

Directive 93/42/EEC

Directive 98/24/EC

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1956-12

Factories

2007/037

Control of Asbestos Regulations 2007

In exercise of the powers conferred on him by sections 58 and 81(2) of the Factories Act, and of all other enabling powers, the Minister for Employment, for the purposes of consolidating, revising and re-enacting the implementing provisions for Council Directive 83/477/EEC as amended by Council Directive 91/382/EEC and some implementing provisions for Council Directive 89/686/EEC, Directive 90/394/EEC, Directive 93/42/EEC and Directive 98/24/EC and for transposing into the law of Gibraltar Directive 2003/18/EC of the European Parliament and of the Council amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work, has made the following Regulations:—

PART 1
PRELIMINARY

Title.

1. These Regulations may be cited as the Control of Asbestos Regulations 2007.

Interpretation.

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

“adequate” means adequate having regard only to the nature and degree of exposure to asbestos, and “adequately” shall be construed accordingly;

“approved” means approved for the time being in writing by the competent authority;

“asbestos” means the following fibrous silicates—

- (a) asbestos actinolite, CAS No 77536-66-4(*);
- (b) asbestos grunerite (amosite), CAS No 12172-73-5(*);
- (c) asbestos anthophyllite, CAS No 77536-67-5(*);
- (d) chrysotile, CAS No 12001-29-5(*);
- (e) crocidolite, CAS NO 12001-28-4(*); and
- (f) asbestos tremolite, CAS No 77536-68-6(*),

and references to “CAS” followed by a numerical sequence are references to CAS Registry Numbers assigned to chemicals by the Chemical Abstracts Service, a division of the American Chemical Society;

* Number in Registry of the Chemical Abstract Service (CAS).

“competent authority” means the Factories Inspector appointed under section 77 of the Factories Act;

“control limit” means a concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method, or by a method giving equivalent results to that method approved by the competent authority, of 0.1 fibres per cubic centimetre of air averaged over a continuous period of 4 hours;

“control measure” means a measure taken to prevent or reduce exposure to asbestos (including the provision of systems of work and supervision, the cleaning of workplaces, premises, plant and equipment, and the provision and use of engineering controls and personal protective equipment);

“emergency services” include police, fire, rescue and ambulance services;

“ISO 17020” means European Standard EN ISO/IEC 17020, “General criteria for the operation of various types of bodies performing inspection” as revised or reissued from time to time and accepted by the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC);

“ISO 17025” means European Standard EN ISO/IEC 17025, “General requirements for the competence of testing and calibration laboratories” as revised or reissued from time to time and accepted by the Comité Européen de Normalisation Electrotechnique (CEN/CENELEC);

“medical examination” includes any laboratory tests and x-rays that a relevant doctor may require;

“personal protective equipment” means all equipment (including clothing) which is intended to be worn or held by a person at work and which protects that person against one or more risks to his health, and any addition or accessory designed to meet that objective;

“relevant doctor” means a registered medical practitioner employed in Gibraltar;

“risk assessment” means the assessment of risk required by regulation 6(1)(a);

“1997 WHO recommended method” means the publication “Determination of airborne fibre concentrations. A recommended method, by phase-contrast optical microscopy (membrane filter method)”, WHO (World Health Organisation), Geneva 1997.

(2) For the purposes of these Regulations, except in accordance with regulation 10(3) and (5), in determining whether an employee is exposed to asbestos or whether the extent of such exposure exceeds the control limit, no account shall be taken of respiratory protective equipment which, for the time being, is being worn by that employee.

(3) A reference to work with asbestos in these Regulations shall include—

- (a) work which consists of the removal, repair or disturbance of asbestos or materials containing asbestos;
- (b) work which is ancillary to such work; and
- (c) supervision of such work and such ancillary work.

Application of these Regulations.

3.(1) These Regulations shall apply to a self-employed person as they apply to an employer and an employee and as if that self-employed person were both an employer and an employee.

(2) Subject to sub-regulation (3), regulation 8 (notification of work with asbestos), 14(1) (arrangements to deal with accidents, incidents and emergencies), 17(1)(a) (asbestos areas) and 21 (health records and medical surveillance) shall not apply where—

- (a) the exposure of employees to asbestos is sporadic and of low intensity;
- (b) it is clear from the risk assessment that the exposure of any employee to asbestos will not exceed the control limit; and
- (c) the work involves—
 - (i) short, non-continuous maintenance activities in which only non-friable materials are handled,
 - (ii) removal without deterioration of non-graded materials in which the asbestos fibres are firmly linked in a matrix,
 - (iii) encapsulation or sealing of asbestos-containing materials which are in good condition, or
 - (iv) air monitoring and control, and the collection and analysis of samples to ascertain whether a specific material contains asbestos.

(3) No exposure to asbestos will be sporadic and of low intensity within the meaning of paragraph (a) of sub-regulation (2) if the concentration of asbestos in the atmosphere when measured in accordance with the 1997 WHO recommended method or by a method giving equivalent results to that method approved by the competent authority exceeds or is liable to exceed the concentration approved in relation to a specified reference period for the purposes of this sub-regulation by the competent authority.

(4) Where a duty is placed by these Regulations on an employer in respect of his employees, he shall, so far as is reasonably practicable, be under a like duty in respect of any other person, whether at work or not, who may be affected by the work activity carried out by the employer except that the duties of the employer—

- (a) under regulation 9 (information, instruction and training) shall not extend to persons who are not his employees unless those persons are on the premises where the work is being carried out; and
- (b) under regulation 21 (health records and medical surveillance) shall not extend to persons who are not his employees.

(5) Regulation 16, insofar as it requires an employer to ensure that premises are thoroughly cleaned, shall not apply—

- (a) to the City Fire Brigade within the meaning of section 3 of the Fire Service Act, in respect of premises attended by its employees for the purpose of fighting a fire or in an emergency; or
- (b) to the employer of persons who attend a ship in dock premises for the purpose of fighting a fire or in an emergency, in respect of any ship so attended,

and for the purposes of this sub-regulation—

- (i) “ship” includes all vessels and hovercraft which operate on water or land and water, and
- (ii) “dock premises” means a dock, wharf, quay, jetty or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities.

(6) These Regulations shall not apply to the master or crew of a ship or to the employer of such persons in respect of the normal shipboard activities of a ship's crew which are carried out solely by the crew under the direction of the master, and for the purposes of this regulation,

“ship” includes every description of vessel used in navigation, other than a ship forming part of Her Majesty’s Navy.

PART 2

GENERAL REQUIREMENTS

Duty to manage asbestos in non-domestic premises.

4.(1) In this regulation “the dutyholder” means—

- (a) every person who has, by virtue of a contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access thereto or egress therefrom; or
- (b) in relation to any part of non-domestic premises where there is no such contract or tenancy, every person who has, to any extent, control of that part of those non-domestic premises or any means of access thereto or egress therefrom,

and where there is more than one such dutyholder, the relative contribution to be made by each such person in complying with the requirements of this regulation will be determined by the nature and extent of the maintenance and repair obligation owed by that person.

(2) Every person shall cooperate with the dutyholder so far as is necessary to enable the dutyholder to comply with his duties under this regulation.

(3) In order to enable him to manage the risk from asbestos in non-domestic premises, the dutyholder shall ensure that a suitable and sufficient assessment is carried out as to whether asbestos is or is liable to be present in the premises.

(4) 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.

(5) Without prejudice to the generality of sub-regulation (4), the dutyholder 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.
- (6) The dutyholder 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.
- (7) The dutyholder shall ensure that the conclusions of the assessment and every review are recorded.
- (8) Where the assessment shows that asbestos is or is liable to be present in any part of the premises the dutyholder shall ensure that—
 - (a) a determination of the risk from that asbestos 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 risk are specified in the written plan.
- (9) 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.
- (10) The dutyholder 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.
- (11) In this regulation, a reference to—
- (a) “the assessment” is a reference to the assessment required by sub-regulation (3);
 - (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 (8).

Identification of the presence of asbestos.

5. An employer shall not undertake work in demolition, maintenance, or any other work which exposes or is liable to expose his employees to asbestos in respect of any premises unless either—

- (a) he has carried out a suitable and sufficient assessment as to whether asbestos, what type of asbestos, contained in what material and in what condition is present or is liable to be present in those premises; or
- (b) if there is doubt as to whether asbestos is present in those premises he—
 - (i) assumes that asbestos is present, and that it is not chrysotile alone, and
 - (ii) complies with the requirements of the applicable provisions of these Regulations.

Assessment of work which exposes employees to asbestos.

6.(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 risk assessment as soon as is practicable after the risk assessment is made; and
 - (c) implemented the steps referred to in paragraph (a).
- (2) Without prejudice to the generality of sub-regulation (1), the risk assessment shall–
- (a) subject to regulation 5, 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 effects of control measures which have been or will be taken in accordance with regulation 10;
 - (d) consider the results of monitoring of exposure in accordance with regulation 18;
 - (e) set out the steps to be taken to prevent that exposure or reduce it to the lowest level reasonably practicable;
 - (f) consider the results of any medical surveillance that is relevant; and
 - (g) include such additional information as the employer may need in order to complete the risk assessment.
- (3) The risk assessment shall be reviewed regularly, and forthwith if–
- (a) there is reason to suspect that the existing risk assessment is no longer valid;
 - (b) there is a significant change in the work to which the risk assessment relates; or
 - (c) the results of any monitoring carried out pursuant to regulation 18 show it to be necessary,

and where, as a result of the review, changes to the risk assessment are required, those changes shall be made and, where they relate to the significant findings of the risk assessment or are themselves significant, recorded.

(4) Where, in accordance with the requirement in paragraph (b) of sub-regulation (2), the risk assessment has determined that the exposure of his employees to asbestos may exceed the control limit, the employer shall keep a copy of the significant findings of the risk assessment

at those premises at which, and for such time as, the work to which that risk assessment relates is being carried out.

Plans of work.

7.(1) An employer shall not undertake any work with asbestos unless he has—

- (a) prepared a suitable written plan of work detailing how that work is to be carried out; and
- (b) notified the plant to the competent authority if requested.

(2) The employer shall keep a copy of the plan of work at those premises at which the work to which the plan relates is being carried out for such time as that work continues.

(3) In cases of final demolition or major refurbishment of premises, the plan of work shall, so far as is reasonably practicable, and unless it would cause a greater risk to employees than if the asbestos had been left in place, specify that asbestos shall be removed before any other major works begin.

(4) The plan of work shall include in particular details of—

- (a) the nature and probable duration of the work;
- (b) the location of the place where the work is to be carried out;
- (c) the methods to be applied where the work involves the handling of asbestos or materials containing asbestos;
- (d) the characteristics of the equipment to be used for—
 - (i) protection and decontamination of those carrying out the work, and
 - (ii) protection of other persons on or near the worksite;
- (e) the measures which the employer intends to take in order to comply with the requirements of regulation 10; and
- (f) the measures which the employer intends to take in order to comply with the requirements of regulation 16.

(5) The employer shall ensure, so far as is reasonably practicable, that the work to which the plan of work relates is carried out in accordance with that plan and any subsequent written changes to it.

Notification of work with asbestos.

8.(1) Subject to regulation 3(2), an employer shall not undertake any work with asbestos unless he has notified the competent authority in writing of the particulars specified in sub-regulation (3) at least 28 days before commencing that work or such shorter time before as the competent authority may agree.

(2) Where an employer has notified work in accordance with sub-regulation (1) and there is a material change in that work which might affect the particulars so notified (including the cessation of the work), the employer shall forthwith notify the competent authority in writing of that change.

(3) A notification referred to in sub-regulation (1) shall include the following particulars—

- (a) the name and address of the person making the notification and the address and telephone number of his usual place of business;
- (b) a brief description of—
 - (i) the location of the work site,
 - (ii) the types of asbestos to be used or handled (classified in accordance with definition in regulation 2),
 - (iii) the maximum quantity of asbestos of each type to be held at any one time at the premises at which the work is to take place,
 - (iv) the activities and processes involved,
 - (v) the number of workers involved, and
 - (vi) the measures taken to limit the exposure of employees to asbestos; and
- (c) the date of the commencement of the work and its expected duration.

Information, instruction and training.

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

- (a) who are or who are liable to be exposed to asbestos, or who supervise such employees, so that they are aware of—
 - (i) the properties of asbestos and its effects on health, including its interaction with smoking,
 - (ii) the types of products or materials likely to contain asbestos,
 - (iii) the operations which could result in asbestos exposure and the importance of preventive controls to minimise exposure,
 - (iv) safe work practices, control measures, and protective equipment,
 - (v) the purpose, choice, limitations, proper use and maintenance of respiratory protective equipment,
 - (vi) emergency procedures,
 - (vii) hygiene requirements,
 - (viii) decontamination procedures,
 - (ix) waste handling procedures,
 - (x) medical examination requirements, and
 - (xi) the control limit and the need for air monitoring, 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 risk assessment, and so that the employees are aware of—

- (i) the significant findings of the risk assessment, and
- (ii) the results of any air monitoring carried out with an explanation of the findings.

Prevention or reduction of exposure to asbestos.

10.(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) take the measures necessary to 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 at any one time is as low as is reasonably practicable.

(2) Where it is not reasonably practicable for the employer to prevent the exposure of his employees to asbestos in accordance with sub-regulation (1)(a), 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 organisational measures,

and the employer shall so far as is reasonably practicable provide the employees concerned with suitable respiratory protective equipment in addition to the measures required by paragraphs (a) and (b).

(3) Where it is not reasonably practicable to reduce the exposure of an employee to asbestos to below the control limit by the measures referred to in sub-regulation (1)(b)(i), then, in addition to taking those measures, 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 account of the effect of that respiratory protective equipment) to a concentration which is—

- (a) below the control limit; and
 - (b) is as low as is reasonably practicable.
- (4) Personal protective equipment provided by an employer in accordance with this regulation or with regulation 13(1) shall be suitable for its purpose and shall–
- (a) comply with any provision of the Personal Protective Equipment at Work Regulations, 1996 which is applicable to that item of personal protective equipment; or
 - (b) in the case of respiratory protective equipment, where no provision referred to in paragraph (a) applies, be of a type approved or shall conform to a standard approved, in either case, by the competent authority.
- (5) The employer shall–
- (a) ensure that no employee is exposed to asbestos in a concentration in the air inhaled by that worker which exceeds the control limit; or
 - (b) if the control limit is exceeded–
 - (i) forthwith inform any employees concerned and their representatives and ensure that work does not continue in the affected area until adequate measures have been taken to reduce employees' exposure to asbestos to below the control limit,
 - (ii) as soon as is reasonably practicable identify the reasons for the control limit being exceeded and take the appropriate measures to prevent it being exceeded again, and
 - (iii) check the effectiveness of the measures taken pursuant to sub-paragraph (ii) by carrying out immediate air monitoring.

Use of control measures, etc.

11.(1) Every employer who provides any control measure, other thing or facility pursuant to these Regulations shall take all reasonable steps to ensure that it is properly used or applied as the case may be.

(2) Every employee shall make full and proper use of any control measure, other thing or facility provided pursuant to these Regulations and, where relevant, shall–

- (a) take all reasonable steps to ensure that it is returned after use to any accommodation provided for it; and
- (b) if he discovers a defect therein, report it forthwith to his employer.

Maintenance of control measures, etc.

12.(1) Every employer who provides any control measure to meet the requirements of these Regulations shall ensure that—

- (a) in the case of plant and equipment, including engineering controls and personal protective equipment, it is maintained in an efficient state, in efficient working order, in good repair and in a clean condition; and
- (b) in the case of provision of systems of work and supervision and of any other measure, it is reviewed at suitable intervals and revised if necessary.

(2) Where exhaust ventilation equipment or respiratory protective equipment (except disposable respiratory protective equipment) is provided to meet the requirements of these Regulations, the employer shall ensure that a competent person carries out thorough examinations and tests of that equipment at suitable intervals.

(3) Every employer shall keep a suitable record of the examinations and tests carried out in accordance with sub-regulation (2) and of repairs carried out as a result of those examinations and tests, and that record or a suitable summary thereof shall be kept available for at least 5 years from the date on which it was made.

Provision and cleaning of protective clothing.

13.(1) Every employer shall provide adequate and suitable protective clothing for such of his employees as are exposed or are liable to be exposed to asbestos, unless no significant quantity of asbestos is liable to be deposited on the clothes of the employee while he is at work.

(2) The employer shall ensure that protective clothing provided in pursuance of sub-regulation (1) is either disposed of as asbestos waste or adequately cleaned at suitable intervals.

(3) The cleaning required by sub-regulation (2) shall be carried out either on the premises where the exposure to asbestos has occurred, where those premises are suitably equipped for such cleaning, or in a suitably equipped laundry.

(4) The employer shall ensure that protective clothing which has been used and is to be removed from the premises referred to in sub-regulation (3) (whether for cleaning, further use or disposal) is packed, before being removed, in a suitable receptacle which shall be

labelled in accordance with the provisions of Schedule 1 as if it were a product containing asbestos or, in the case of protective clothing intended for disposal as waste, in accordance with regulation 23(3).

(5) Where, as a result of the failure or improper use of the protective clothing provided in pursuance of sub-regulation (1), a significant quantity of asbestos is deposited on the personal clothing of an employee, then for the purposes of sub-regulations (2), (3) and (4) that personal clothing shall be treated as if it were protective clothing.

Arrangements to deal with accidents, incidents and emergencies.

14.(1) Subject to regulation 3(2) and to sub-regulation (3) of this regulation, and without prejudice to the relevant provisions of the Management of Health and Safety at Work Regulations 1996, 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 paragraphs (a) and (c) of sub-regulation (1) and the information required by paragraph (b) of sub-regulation (1) is—

- (a) made available to the relevant accident and emergency services 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 risk assessment 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 10(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.

Duty to prevent or reduce the spread of asbestos.

15. Every employer shall prevent or, where this is not reasonably practicable, reduce to the lowest level reasonably practicable the spread of asbestos from any place where work under his control is carried out.

Cleanliness of premises and plant.

16. Every employer who undertakes work which exposes or is liable to expose his employees to asbestos shall ensure that—

- (a) the premises, or those parts of the premises where that work is carried out, and the plant used in connection with that work are kept in a clean state; and

- (b) where such work has been completed, the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned.

Designated Areas.

17.(1) Every employer shall ensure that any area in which work under his control is carried out is designated as—

- (a) an asbestos area, subject to regulation 3(2), where any employee would be liable to be exposed to asbestos in that area;
- (b) a respirator zone where the concentration of asbestos fibres in the air in that area would exceed or would be liable to exceed the control limit.

(2) Asbestos areas and respirator zones shall be clearly and separately demarcated and identified by notices indicating—

- (a) that the area is an asbestos area or a respirator zone or both, as the case may be; and
- (b) in the case of a respirator zone, that the exposure of an employee who enters it is liable to exceed the control limit and that respiratory protective equipment must be worn.

(3) The employer shall not permit any employee, other than an employee who by reason of his work is required to be in an area designated as an asbestos area or a respirator zone, to enter or remain in any such area and only employees who are so permitted shall enter or remain in any such area.

(4) Every employer shall ensure that only competent employees shall—

- (a) enter a respirator zone; and
- (b) supervise any employees who enter a respirator zone, and for the purposes of this sub-regulation a competent employee means an employee who has received adequate information, instruction and training.

(5) Every employer shall ensure that—

- (a) his employees do not eat, drink or smoke in an area designated as an asbestos area or a respirator zone; and
- (b) arrangements are made for such employees to eat or drink in some other place.

Air Monitoring.

18.(1) Subject to sub-regulation (2), every employer shall monitor the exposure of his employees to asbestos by measurement of asbestos fibres present in the air—

- (a) at regular intervals; and
- (b) when a change occurs which may affect that exposure.

(2) Sub-regulation (1) shall not apply where—

- (a) the exposure of an employee is not liable to exceed the control limit; or
- (b) the employer is able to demonstrate by another method of evaluation that the requirements of regulation 10(1) and (5) have been complied with.

(3) The employer shall keep a suitable record of—

- (a) monitoring carried out in accordance with sub-regulation (1); or
- (b) where he decides that monitoring is not required because paragraph (b) of sub-regulation (2) applies, the reason for that decision.

(4) The record required by sub-regulation (3), or a suitable summary thereof, shall be kept—

- (a) in a case where exposure is such that a health record is required to be kept under regulation 21 for at least 40 years; or
- (b) in any other case, for at least 5 years,

from the date of the last entry made in it.

(5) In relation to the record required by sub-regulation (3), the employer shall—

- (a) on reasonable notice being given, allow an employee access to his personal monitoring record;
- (b) provide the competent authority with copies of such monitoring records as the competent authority may require; and

- (c) if he ceases to trade, notify the competent authority forthwith in writing and make available to the competent authority all monitoring records kept by him.

Standards for air testing and site clearance certification.

19.(1) Every employer who carries out any measurement of the concentration of asbestos fibres present in the air shall ensure that he meets criteria equivalent to those set out in ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results.

(2) Every employer who requests a person to carry out any measurement of the concentration of asbestos fibres present in the air shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025.

(3) Every employer who requests a person to assess whether premises or parts of premises where work with asbestos has been carried out have been thoroughly cleaned upon completion of that work and are suitable for reoccupation such that a site clearance certificate for reoccupation can be issued shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with the ISO 17020 and ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results.

(4) In sub-regulation (3) “site clearance certificate for reoccupation” means a certificate issued to confirm that premises or parts of premises where work with asbestos has been carried out have been thoroughly cleaned upon completion of that work in accordance with paragraph (b) of regulation 16.

(5) Sub-regulations (1) and (2) shall not apply to work carried out in a laboratory for the purposes only of research.

Standards for analysis.

20.(1) Every employer who analyses a sample of any material to determine whether it contains asbestos shall ensure that he meets criteria equivalent to those set out in the paragraphs of ISO 17025 which cover organisation, quality systems, control of records, personnel, accommodation and environmental conditions, test and calibration methods, method validation, equipment, handling of test and calibration items, and reporting results.

(2) Every employer who requests a person to analyse a sample of any material taken to determine whether it contains asbestos shall ensure that that person is accredited by an appropriate body as competent to perform work in compliance with ISO 17025.

(3) Sub-regulations (1) and (2) shall not apply to work carried out in a laboratory for the purposes only of research.

Health records and medical surveillance.

21.(1) Subject to regulation 3(2), every employer shall ensure that—

- (a) a health record, containing particulars approved by the competent authority, relating to each of his employees who is exposed to asbestos is maintained; and
- (b) 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) Subject to regulation 3(2), every employer shall ensure that each of his employees who are exposed to asbestos is under adequate medical surveillance by a relevant doctor.

(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 a certificate to the employer and employee stating—

- (a) that the employee has been so examined; and
- (b) 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 competent authority with copies of such personal health records as the competent authority may require; and
- (c) if he ceases to trade, notify the competent authority forthwith in writing and make available to the competent authority 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 risk assessment;
- (c) review any measure taken to comply with regulation 10 taking into account any advice given by a relevant doctor or by the competent authority;
- (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 competent authority.

Washing and changing facilities.

22.(1) Every employer shall ensure that, for any of his employees who is exposed or liable to be exposed to asbestos, there be provided—

- (a) adequate washing and changing facilities;

- (b) where he is required to provide protective clothing, adequate facilities for the storage of—
 - (i) that protective clothing, and
 - (ii) personal clothing not worn during working hours; and
 - (c) where he is required to provide respiratory protective equipment, adequate facilities for the storage of that equipment.
- (2) The facilities provided under sub-regulation (1) for the storage of—
- (a) personal protective clothing;
 - (b) personal clothing not worn during working hours; and
 - (c) respiratory protective equipment,

shall be separate from each other.

Storage, distribution and labelling of raw asbestos and asbestos waste.

23.(1) Every employer who undertakes work with asbestos shall ensure that raw asbestos or waste which contains asbestos is not—

- (a) stored;
- (b) received into or despatched from any place of work; or
- (c) distributed within any place of work, except in a totally enclosed distribution system,

unless it is in a sealed receptacle or, where more appropriate, sealed wrapping, clearly marked in accordance with sub-regulations (2) and (3) showing that it contains asbestos.

- (2) Raw asbestos shall be labelled in accordance with the provisions of Schedule 1.
- (3) Waste containing asbestos shall be labelled—
 - (a) where the Transport of Dangerous Goods Act 2001 and the Transportable Pressure Equipment Regulations 2003 apply, in accordance with that Act and those Regulations; and

- (b) in any other case in accordance with the provisions of Schedule 1.

PART 3

PROHIBITIONS AND RELATED PROVISIONS

Interpretation of prohibitions.

24.(1) In this Part—

“asbestos cement” means a material which is predominantly a mixture of cement and chrysotile and which when in a dry state absorbs less than 30% water by weight;

“asbestos spraying” means the application by spraying of any material containing asbestos to form a continuous surface coating;

“extraction of asbestos” means the extraction by mining or otherwise of asbestos as the primary product of such extraction, but shall not include extraction which produces asbestos as a by-product of the primary activity of extraction;

“supply” means supply by way of sale, lease, hire, hire-purchase, loan, gift or exchange for a consideration other than money, whether (in all cases) as principal or as agent for another; and

“use” in relation to asbestos or any product to which asbestos has intentionally been added means—

- (a) putting asbestos or any product to which asbestos has intentionally been added to use for the first time; or
- (b) putting asbestos or any product to which asbestos has intentionally been added which has been in use before to a new use.

(2) Any prohibition imposed on any person by this Part shall apply only to acts done in the course of a trade, business or other undertaking (whether for profit or not) carried on by him.

(3) Any prohibition imposed by this Part on the importation into Gibraltar, or on the supply or use of asbestos shall not apply to the importation, supply or use of asbestos solely for the purposes of research, development or analysis.

(4) Where in this Part it is stated that asbestos has intentionally been added to a product or is intentionally added, it will be presumed where—

- (a) asbestos is present in any product; and

- (b) asbestos is not a naturally occurring impurity of that product, or of any component or constituent thereof,

that the asbestos has intentionally been added or is intentionally added, as the case may be, subject to evidence to the contrary being adduced in any proceedings.

Prohibitions of exposure to asbestos.

25.(1) No person shall undertake asbestos spraying or working procedures that involve using low-density (less than 1g/cm³) insulating or soundproofing materials which contain asbestos.

(2) Every employer shall ensure that no employees are exposed to asbestos during the extraction of asbestos.

(3) Every employer shall ensure that no employees are exposed to asbestos during the manufacture of asbestos products or of products containing intentionally added asbestos.

(4) In the case of chrysotile only, the prohibition in sub-regulation (3) is subject to the exception in Schedule 2.

Prohibition of the importation of asbestos.

26.(1) Subject to sub-regulation (3), no person shall import into Gibraltar any asbestos or any product to which asbestos has intentionally been added.

(2) A person who contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) In the case of chrysotile only, the prohibition in sub-regulation (1) is subject to the exception in Schedule 2.

Prohibition of the supply of asbestos.

27.(1) Subject to sub-regulation (2), no person shall supply, other than solely for the purpose of disposal, asbestos or any product to which asbestos has intentionally been added.

(2) In the case of chrysotile only, the prohibition in sub-regulation (1) is subject to the exception in Schedule 2.

Prohibition of the use of asbestos.

28.(1) Subject to sub-regulations (2) to (3), no person shall use, except in the course of any activity in connection with its disposal, asbestos or any product to which asbestos has intentionally been added.

(2) No person shall use, except in the course of any activity in connection with its disposal—

- (a) asbestos cement;
- (b) any board, panel or tile, all or part of which has been painted with paint containing chrysotile; or
- (c) any board, panel or tile, all or part of which has been covered in a textured finishing plaster used for decorative purposes and containing chrysotile.

(3) In the case of chrysotile only, the prohibition in sub-regulation (1) is subject to the exception in Schedule 2.

Labelling of products containing asbestos.

29.(1) Subject to sub-regulation (2), no person shall supply under an exception in Schedule 2 or an exemption granted pursuant to regulation 31 a product which contains asbestos unless that product is labelled in accordance with the provisions of Schedule 1.

(2) Where a component of a product contains asbestos, it shall be sufficient compliance with this regulation if that component is labelled in accordance with the provisions of Schedule 1 except that where the size of that component makes it impossible for a label to be fixed to it neither that component nor the product need be labelled.

Additional provisions in the case of exceptions and exemptions.

30. Where under an exception in Schedule 2 or an exemption granted under regulation 31—

- (a) 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 the work is carried out is reduced to as low a level as is reasonably practicable; and
- (b) a manufacturing process which gives rise to asbestos dust is carried out in a building, the employer shall ensure that any part of the building in which the process is carried out is—
 - (i) so designed and constructed as to facilitate cleaning; and

- (ii) is equipped with an adequate and suitable vacuum cleaning system which shall, where reasonably practicable, be a fixed system.

PART 4*MISCELLANEOUS***Exemption certificates.**

31.(1) Subject to sub-regulation (4), the competent authority may, by a certificate in writing, exempt any person or class of persons or any product containing asbestos or class of such products from all or any of the requirements or prohibitions imposed by regulations 4, 11, 12, 20, 21(5) to (7) and 26 and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

(2) Subject to sub-regulation (4), the competent authority may, by a certificate in writing, exempt any person or class of persons or any product containing asbestos or class of such products from the prohibitions imposed by regulations 27(1) and 28(1) and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

(3) Subject to sub-regulation (4), the competent authority may exempt emergency services from all or any of the requirements or prohibitions imposed by regulations 7 and 8 and any such exemption may be granted subject to conditions and to a limit of time and may be varied or revoked by a further certificate in writing at any time.

(4) The competent authority shall not grant any exemption under sub-regulation (1),(2) or (3) unless having regard to the circumstances of the case and in particular to—

- (a) the conditions, if any, which it proposes to attach to the exemption; and
- (b) any other requirements imposed by or under any enactments which apply to the case,

it is satisfied that the health or safety of persons who are likely to be affected by the exemption will not be prejudiced in consequence of it.

Revocation and savings.

32.(1) The Control of Asbestos at Work Regulations are revoked.

(2) Any record or register required to be kept under the Regulations revoked by sub-regulation (1) shall, notwithstanding that revocation, be kept in the same manner and for the same period as specified in those Regulations as if these Regulations had not been made,

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except that the competent authority may approve the keeping of records at a place or in a form other than at the place where, or in the form which, records were required to be kept under the Regulations so revoked.

Defence.

33. In any proceedings for an offence consisting of a contravention of Part 2 of these Regulations, it shall be a defence for any person to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of that offence.

SCHEDULE 1

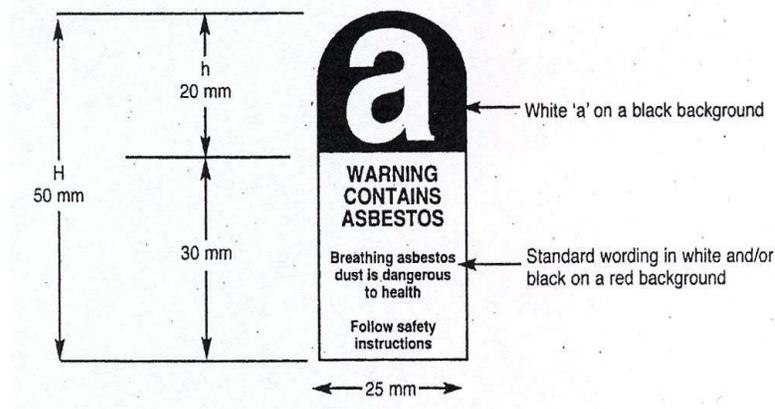
Regulations 13(4), 23(2) and (3)
and 29(1) and (2)

**LABELLING OF RAW ASBESTOS, ASBESTOS WASTE AND
PRODUCTS CONTAINING ASBESTOS**

1.(1) Subject to sub-paragraphs (2) and (3), the label to be used on—

- (a) raw asbestos (together with the labelling required under the Transport of Dangerous Goods Act 2001 and the Transportable Pressure Equipment Regulations 2003);
- (b) asbestos waste, when required to be so labelled by regulation 23(3); and
- (c) products containing asbestos, including used protective clothing to which regulation 13(2) applies,

shall be in the form and in the colours of the following diagram and shall comply with the specifications set out in sub-regulations 2 and 3.



(2) In the case of a product containing crocidolite, the words “contains asbestos” shown in the diagram shall be replaced by the words “contains crocidolite/blue asbestos”.

(3) Where the label is printed directly onto a product, a single colour contrasting with the background colour may be used.

2. The dimensions in millimetres of the label referred to in paragraph 1(1) shall be those shown on the diagram in that paragraph, except that larger measurements may be used, but in that

case the dimension indicated as H on the diagram shall be 40% of the dimension indicated as H.

3. The label shall be clearly and indelibly printed so that the words in the lower half of the label can be easily read, and those words shall be printed in black or white.

4.(1) Where a product containing asbestos may undergo processing or finishing it shall bear a label containing safety instructions appropriate to the particular product and in particular the following instructions–

“operate if possible out of doors in a well-ventilated place”;

“preferably use hand tools or low speed tools equipped, if necessary, with an appropriate dust extraction facility. If high speed tools are used, they should always be so equipped”;

“if possible, dampen before cutting or drilling”; and

“dampen dust, place it in a properly closed receptacle and dispose of it safely”.

(2) Additional safety information given on a label shall not detract from or contradict the safety information given in accordance with sub-paragraph (1).

5.(1) Labelling of packaged and unpackaged products containing asbestos in accordance with the foregoing paragraphs shall be effected by means of–

(a) an adhesive label firmly affixed to the product or its packaging, as the case may be;

(b) a tie-on label firmly attached to the product or its packaging, as the case may be; or

(c) direct printing onto the product or its packaging, as the case may be.

(2) Where, in the case of an unpackaged product containing asbestos, it is not reasonably practicable to comply with the provisions of sub-paragraph (1) the label shall be printed on a suitable sheet accompanying the product.

(3) Labelling of raw asbestos and asbestos waste shall be effected in accordance with sub-paragraph (1)(a) or (c).

(4) For the purposes of this Schedule but subject to sub-paragraph (5), a product supplied in loose plastic or other similar wrapping (including plastic and paper bags) but no other

packaging, shall be treated as being supplied in a package whether the product is placed in such wrapping at the time of its supply or was already so wrapped previously.

(5) No wrapping in which a product is placed at the time of its supply shall be regarded as packaging if any product contained in it is labelled in accordance with the requirements of this Schedule or any other packaging in which that product is contained is so labelled.

SCHEDULE 2

Regulations 25(4), 26(3), 27(2) and 28(3)

**EXCEPTIONS TO THE PROHIBITIONS ON THE IMPORTATION,
SUPPLY AND USE OF CHRYSOTILE**

Where it is not practicable for an employer to substitute for chrysotile 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 chrysotile, regulations 25(3), 26(1), 27(1) and 28(1) shall not apply to—

- (a) diaphragms for use in electrolytic cells in existing electrolysis plants for chlor-alkali manufacture;
- (b) chrysotile, or products to which chrysotile has intentionally been added, required solely for the manufacture of the products described in paragraph (a) above.