

**Reprint
as at 1 April 2009**



**Health and Safety in Employment
Regulations 1995**

(SR 1995/167)

Catherine A Tizard, Governor-General

Order in Council

At Wellington this 21st day of August 1995

Present:

Her Excellency the Governor-General in Council

Pursuant to section 21 of the Health and Safety in Employment Act 1992, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, on the recommendation of the Minister of Labour, hereby makes the following regulations.

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

These regulations are administered by the Department of Labour.

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Regulations

1 Title and commencement

- (1) These regulations may be cited as the Health and Safety in Employment Regulations 1995.
- (2) These regulations shall come into force on 2 October 1995.

2 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Health and Safety in Employment Act 1992

advanced scaffolding includes—

- (a) basic scaffolding:
- (b) suspended scaffolding:
- (c) a barrow ramp:
- (d) a bracket scaffold for tank work and formwork:
- (e) a cantilevered scaffold:
- (f) a catch net:
- (g) a hoist that is cantilevered from a scaffold, has a load limit not exceeding 250 kilograms, and is used for no purpose other than the support of material:
- (h) hung scaffolding, including scaffolding hung from a chain, tube, or wire rope:
- (i) a load platform cantilevered from a scaffold:
- (j) a mast climber:
- (k) a safety net for public protection:
- (l) scaffolding associated with a perimeter safety screen or shutter:
- (m) a sloping platform:

- (n) a spurred scaffold;
- (o) tube and coupler scaffolding, including a covered way or gantry made of tube and coupler scaffolding

agricultural work—

- (a) means work on any farm, being work directly related to the operation of the farm; and
- (b) includes—
 - (i) horticultural work; and
 - (ii) shearing work; and
- (c) includes cooking for any person carrying out any agricultural work; but
- (d) does not include any work on any marine or freshwater farm

basic scaffolding includes—

- (a) a fall arrest system;
- (b) a free-standing modular scaffolding system;
- (c) a gin wheel;
- (d) a rope;
- (e) a static line

breast bench means a machine that is—

- (a) fitted with a circular saw; and
- (b) used to reduce flitches from the log breakdown to smaller dimension timber when the flitches are fed manually past the saw with or without the assistance of horizontal live feed and return rollers

certificate of competence means a certificate of one of the kinds referred to in regulation 27

chief executive means the chief executive of an organisation recognised under regulation 28

construction work—

- (a) means any work in connection with the alteration, cleaning, construction, demolition, dismantling, erection, installation, maintenance, painting, removal, renewal, or repair, of—
 - (i) any building, chimney, edifice, erection, fence, structure, or wall, whether constructed wholly above or below, or partly above and partly below, ground level:

- (ii) any aerodrome, cableway, canal, harbour works, motorway, railway, road, or tramway:
- (iii) any thing having the purpose of drainage, flood control, irrigation, or river control:
- (iv) any distribution system or network having the purpose of carrying electricity, gas, telecommunications, or water:
- (v) any aqueduct, bridge, culvert, dam, earthwork, pipeline, reclamation, reservoir, or viaduct:
- (vi) any scaffolding; and
- (b) includes any work in connection with any excavation, preparatory work, or site preparation carried out for the purposes of any work referred to in paragraph (a); and
- (c) includes any work referred to in paragraph (a) or paragraph (b) carried out underwater, including work on buoys, obstructions to navigation, rafts, ships, and wrecks; and
- (d) includes the use of any materials or plant for the purposes of any work referred to in any of paragraphs (a) to (c); and
- (e) includes any inspection or other work carried out for the purposes of ascertaining whether any work referred to in any of paragraphs (a) to (c) should be carried out; but
- (f) does not include any work in any mine, quarry, or tunnel

current, in relation to a certificate of competence, means a certificate of competence that has been issued under regulation 38 and has not expired or been cancelled or suspended under regulation 41

diving means diving under water where the diver breathes gases at greater than atmospheric pressure; and **diver** has a corresponding meaning

logging—

- (a) means felling trees by manual or mechanical means for the purpose of extracting logs, poles, and posts; and
- (b) includes extracting logs to an area within a forest for processing and loading out

mine has the same meaning as it has in the Health and Safety in Employment (Mining Administration) Regulations 1996

noise includes sound energy of any frequency, whether or not capable of being perceived by the unaided human ear

notifiable work means—

- (a) any restricted work, as that term is defined in regulation 2(1) of the Health and Safety in Employment (Asbestos) Regulations 1998:
- (b) any logging operation or tree-felling operation, being an operation that is undertaken for commercial purposes:
- (c) any construction work of 1 or more of the following kinds:
 - (i) work in which a risk arises that any person may fall 5 metres or more, other than—
 - (A) work in connection with a residential building up to and including 2 full storeys:
 - (B) work on overhead telecommunications lines and overhead electric power lines:
 - (C) work carried out from a ladder only:
 - (D) maintenance and repair work of a minor or routine nature:
 - (ii) the erection or dismantling of scaffolding from which any person may fall 5 metres or more:
 - (iii) work using a lifting appliance where the appliance has to lift a mass of 500 kilograms or more a vertical distance of 5 metres or more, other than work using an excavator, a fork-lift, or a self-propelled mobile crane:
 - (iv) work in any pit, shaft, trench, or other excavation in which any person is required to work in a space more than 1.5 metres deep and having a depth greater than the horizontal width at the top:
 - (v) work in any drive, excavation, or heading in which any person is required to work with a ground cover overhead:
 - (vi) work in any excavation in which any face has a vertical height of more than 5 metres and an average slope steeper than a ratio of 1 horizontal to 2 vertical:

- (vii) work in which any explosive is used or in which any explosive is kept on the site for the purpose of being used:
- (viii) work in which any person breathes air that is or has been compressed or a respiratory medium other than air

overhand planing machine means a machine for planing or smoothing the surface of material by passing it over cutters

plant means plant that is to be used or is used in a place of work

protective clothing means protective clothing that is to be used or is used in a place of work

protective equipment means protective equipment that is to be used or is used in a place of work

quarry has the same meaning as it has in the Health and Safety in Employment (Mining Administration) Regulations 1996

scaffolding—

- (a) means any advanced scaffolding, basic scaffolding, or suspended scaffolding or any framework or structure, of a temporary nature, used or intended to be used—
 - (i) for the support or protection of persons carrying out construction work or work connected with construction work, for the purpose of carrying out that work; or
 - (ii) for the support of materials used in connection with any such work; and
- (b) includes any scaffolding constructed as such and not dismantled, whether or not it is being used as scaffolding; and
- (c) includes any coupling, device, fastening, fitting, or plank used in connection with the construction, erection, or use of scaffolding

shoring means any material that is or can be used to provide effective support for the exposed face of an excavation; and

shored has a corresponding meaning

supplier—

- (a) in relation to plant, includes any person who sells or hires any plant or offers any plant for sale or hire:

- (b) in relation to protective clothing or protective equipment, includes any person who sells or hires any protective clothing or protective equipment or offers any protective clothing or protective equipment for sale or hire

suspended scaffolding includes—

- (a) a boatswain's chair, whether hand-hauled or mechanical:

- (b) a swinging stage, whether hand-hauled or mechanical

tree-felling means felling trees by manual or mechanical means for any purpose—

- (a) other than extracting logs, poles, and posts; but

- (b) including the purposes of—

(i) harvesting firewood commercially:

(ii) land clearance:

(iii) maintaining shelter belts for horticulture:

(iv) maintaining or removing trees in the vicinity of overhead power lines:

(v) managing and caring for trees in the general community:

(vi) silviculture:

(vii) willow layering and any other work in catchment or soil erosion operations

tunnel has the same meaning as it has in the Health and Safety in Employment (Mining Administration) Regulations 1996

wholesome, in relation to water, means complying with the drinking-water standards issued or adopted under section 690 of the Health Act 1956.

Regulation 2 **mine**: substituted, on 12 September 1996, by regulation 33(1)(a) of the Health and Safety in Employment (Mining Administration) Regulations 1996 (SR 1996/220).

Regulation 2 **notifiable work** paragraph (a): amended, on 14 January 1999, by regulation 37 of the Health and Safety in Employment (Asbestos) Regulations 1998 (SR 1998/443).

Regulation 2 **quarry**: substituted, on 12 September 1996, by regulation 33(1)(b) of the Health and Safety in Employment (Mining Administration) Regulations 1996 (SR 1996/220).

Regulation 2 **registered engineer**: revoked, on 1 January 2004, by section 76 of the Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17).

Regulation 2 **tunnel**: substituted, on 12 September 1996, by regulation 33(1)(c) of the Health and Safety in Employment (Mining Administration) Regulations 1996 (SR 1996/220).

Regulation 2 **wholesome**: substituted, on 1 July 2008, by section 19 of the Health (Drinking Water) Amendment Act 2007 (2007 No 92).

3 Relationship between Act and regulations

A person on whom a duty is imposed by these regulations in relation to a particular set of circumstances shall, on the occurrence of those circumstances, comply with that duty, notwithstanding that the Act may impose the same, a similar, or an additional duty on that person in relation to that set of circumstances.

Part 1

General duties of employers

4 Duties in respect of facilities at every place of work

- (1) Every employer shall take all practicable steps to ensure—
 - (a) that facilities of the kinds described in subclause (2) are provided at every place of work under the control of that employer; and
 - (b) that any such facilities are suitable for the purpose for which they are to be used; and
 - (c) that any such facilities are provided in sufficient numbers; and
 - (d) that any such facilities are maintained in good order and condition; and
 - (e) that all employees have access to any such facilities in a way that is convenient to them.
- (2) The facilities referred to in subclause (1) are—
 - (a) toilets;
 - (b) hand-washing facilities;
 - (c) means of leaving the place of work in an emergency;
 - (d) first-aid facilities;
 - (e) facilities for lighting for the purposes of enabling employees to perform their work safely and to move safely about the place of work;
 - (f) ventilation providing either fresh or purified air;

- (g) means for controlling humidity that arises from any work process or activity:
- (h) means for controlling atmospheric conditions, including air velocity, radiant heat, and temperature:
- (i) facilities to enable any atmospheric contaminants to be controlled as closely as possible to their source:
- (j) facilities for treating or carrying off any atmospheric contaminants for the purpose of minimising the likelihood that any atmospheric contaminants will be a cause or source of harm to any employee:
- (k) facilities for employees to have meals during work hours in reasonable shelter and comfort, being facilities that are separate from any plant or materials used in the place of work and that are protected from any atmospheric contaminants, dirt, noise, or any other hazard produced by any work process.

5 Duties in respect of facilities at certain places of work

- (1) Every employer shall take all practicable steps to ensure—
 - (a) that facilities of any of the kinds described in subclause (2) are provided for employees at every place of work under the control of that employer where the work is of such a nature that those facilities are required; and
 - (b) that any such facilities are suitable for the purpose for which they are to be used; and
 - (c) that any such facilities are provided in sufficient numbers; and
 - (d) that any such facilities are maintained in good order and condition; and
 - (e) that all employees have access to any such facilities in a way that is convenient to them.
- (2) The facilities referred to in subclause (1) are,—
 - (a) where the work is of such a nature that employees are reasonably likely to need facilities for washing the body, such facilities:
 - (b) where the work is of such a nature that employees' clothing is reasonably likely to become contaminated or wet, a place in which to change clothes:

- (c) where the work is of such a nature that it is reasonably likely that employees will bring to the place of work clothes that will not be used at work, facilities for keeping such clothes clean and dry:
- (d) where the work is of such a nature that it is reasonable for employees to perform it while seated, facilities for sitting:
- (e) where the work is of such a nature that it is not reasonable for employees to perform it while seated, facilities for sitting that enable employees to take any reasonable opportunity for rest that may occur in the course of the work:
- (f) where the work is of such a nature that it is reasonably likely that any floor will become wet, facilities that prevent employees from becoming wet, whether by way of drainage of any such floor or otherwise.

6 Duty in respect of indisposed employees

- (1) Every employer shall take all practicable steps to ensure that any employee who, at any place of work under the control of that employer, feels indisposed may—
 - (a) rest in facilities provided at the place of work, if the employer decides that that is the appropriate course of action in the circumstances; or
 - (b) leave the place of work, if the employer decides that that is the appropriate course of action in the circumstances.
- (2) Every employer shall take all practicable steps to ensure—
 - (a) that any facilities provided under subclause (1)(a) are—
 - (i) suitable for the purpose for which they are to be used; and
 - (ii) provided in sufficient numbers; and
 - (iii) maintained in good order and condition; and
 - (b) that all employees have access to any such facilities in a way that is convenient to them.

7 Tests for suitability and sufficiency of facilities

- (1) The suitability of any facilities provided in accordance with regulations 4 to 6 shall be determined having regard to—
 - (a) the purpose for which the facilities are provided; and

- (b) the circumstances in which the facilities are provided.
- (2) The sufficiency of the numbers of any facilities provided in accordance with regulations 4 to 6 shall be determined having regard to—
 - (a) the number of employees in the place of work; and
 - (b) the needs of employees in the place of work; and
 - (c) the nature of the place of work; and
 - (d) the nature of any particular hazard in the place of work; and
 - (e) the type or types of work being carried out in the place of work; and
 - (f) whether or not the work is always carried out at the same place of work.

8 Duty in respect of drinking water

Every employer shall take all practicable steps to ensure—

- (a) that drinking water is provided for employees at every place of work under the control of that employer; and
- (b) that any such drinking water is wholesome; and
- (c) that the amount of any such drinking water is sufficient, having regard to the number of employees in the place of work and the nature of the place of work; and
- (d) that all employees have access to any such drinking water in a way that is convenient to them.

9 Duty in respect of cleanliness of place of work

Every employer shall take all practicable steps to ensure that every place of work under the control of that employer is kept in a clean and hygienic state.

Part 2

Duties in relation to management of particular hazards

Duties of all employers in relation to noise at any workplace

10 Application of regulation 11

- (1) In regulation 11, the term **employer** includes—
 - (a) a person who controls a place of work; and

- (b) a principal who controls the place of work at which a contractor or subcontractor works.
- (2) In regulation 11, the term **employee**,—
 - (a) in relation to a person who controls a place of work, means a person working in the place of work; and
 - (b) in relation to a principal, means an employee of a contractor or subcontractor or, if a contractor or subcontractor is an individual, the contractor or subcontractor, being an employee, contractor, or subcontractor doing any work (other than residential work) that the contractor was engaged to do.

11 Noise

- (1) Every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that no employee is exposed to noise above the following levels:
 - (a) a noise exposure level, $L_{Aeq,8h}$, of 85 dB(A); and
 - (b) a peak noise level, L_{peak} , of 140 dB,—
whether or not the employee is wearing a personal hearing protection device.
- (2) For the purposes of subclause (1),—
 - (a) the noise exposure level, $L_{Aeq,8h}$, is the level of the daily noise exposure normalised to a nominal 8-hour day, in dB(A) referenced to 20 micropascals; that is to say, it is the steady noise level that would, in the course of an 8-hour period, cause the same A-frequency-weighted sound energy as that due to the actual noise over the actual working day; and
 - (b) the peak noise level, L_{peak} , is the highest frequency-unweighted peak sound pressure level in the place of work in decibels referenced to 20 micropascals, measured using sound measuring equipment with “P” time-weighting, as specified in the Australian Standard numbered AS 1259.1–1990 and entitled “Sound level meters Part 1: Non-integrating”; and
 - (c) the levels of noise referred to in subclause (1) shall be measured and assessed in accordance with the Aus-

tralian Standard numbered AS 1269–1989 and entitled “Acoustics—Hearing conservation”.

- (3) Where an employer has taken all practicable steps to ensure that no employee at any place of work under the control of that employer is exposed to noise above the levels specified in subclause (1) but has not eliminated the risk that any employee may be exposed to noise above those levels, the employer shall communicate clearly, by way of signs, labelling of machinery, or other appropriate means—
- (a) the fact that noise levels at the place of work are or are likely to be hazardous; and
 - (b) the sort of personal hearing protection device that is suitable to protect against the noise levels; and
 - (c) where such a device may be obtained.

Duties of all employers in relation to some hazards at any workplace

12 Application of regulations 13 to 21

- (1) In regulations 13 to 21, the term **employer** includes a person who controls a place of work.
- (2) In regulations 13 to 17 and 19 to 21, the term **employee**, in relation to a person who controls a place of work, means a person working in the place of work.

13 Overcrowding

- (1) Subject to subclause (2), every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer,—
- (a) that no part becomes so crowded with people or things or both as to be hazardous to any employee; and
 - (b) that sufficient space is provided in any room in which work is normally performed to permit reasonable movement without that movement being hazardous to any employee.
- (2) Nothing in this regulation applies to any place of work—
- (a) that is a temporary place of work; or

- (b) that is, or is an integral part of, a structure erected for the purpose of enabling any agricultural work or construction work to be carried out.

14 Containers of liquids

- (1) In this regulation, the term **hazardous container**—
 - (a) means any enclosure, fixed vessel, pit, structure, sump, vat, or other container of a similar kind—
 - (i) that contains any liquid; and
 - (ii) the edge of which is not at least 1 metre above the adjoining floor, ground, or platform; but
 - (b) does not include any drinking trough for animals or any system of water collection, disposal, distribution, or storage.
- (2) Every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that, where there is any hazardous container at that place of work, either—
 - (a) the hazardous container is securely covered; or
 - (b) there is placed around the hazardous container a secure fence that—
 - (i) extends at least 1 metre above the adjoining floor, ground, or platform; and
 - (ii) is in a position that will provide adequate protection for any employee near the hazardous container.

15 Loose but enclosed materials

- (1) In this regulation, the term **material** means material—
 - (a) that consists of or includes solid material in such a form or state, or in pieces or particles so small, that it is capable of subsiding or flowing in such a manner as to trap or engulf any person; and
 - (b) that is enclosed inside a structure.
- (2) Every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that, where any employee may be trapped or engulfed by material, there is provided a safety-belt or safety harness that is—

- (a) suitable for the purpose for which it is to be used; and
- (b) attached to a lifeline or other device; and
- (c) securely fastened at its extremity; and
- (d) attended by another employee who is competent, equipped, and stationed to effect an immediate rescue, if any employee is so trapped or engulfed.

16 Raised objects

Every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that, where any employee is under any thing that has been raised or lifted by any means to enable any work to be done, supports or other devices are so placed or used under the thing that it cannot drop or be lowered while the employee is under it.

17 Cleaning, maintenance, or repair of machinery

- (1) Subject to subclause (2), every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that, where the cleaning, maintenance, or repair of any machinery while the whole or a part of the machinery is moving may cause harm to any employee, the machinery is not cleaned, maintained, or repaired—
 - (a) until every part of the machinery, including any extension or attachment, has been secured against movement, including inadvertent movement; and
 - (b) until every control device has been secured in the inoperative position by the use of locks or lock-out procedures or other equally effective means.
- (2) Every employer shall take all practicable steps to ensure, in relation to any machinery to which subclause (1) applies, that, where it is essential to the process that the machinery performs, or to the procedure for cleaning, maintaining, or repairing the machinery, that the whole or a part of the machinery remains in motion during cleaning, maintenance, or repair,—
 - (a) a procedure is established for the carrying out of the cleaning, maintenance, or repair in a safe manner; and
 - (b) the procedure contains at least the following features:

- (i) no employee who has not been adequately trained for the purpose shall carry out the cleaning, maintenance, or repair:
- (ii) where it is essential that a part of the machinery remains moving, only that part shall be set in motion; and
- (c) the procedure is followed on every occasion to which it applies.

18 Woodworking and abrasive grinding machinery

Where any machinery of a kind listed in column 1 of Schedule 1 is used in a place of work under the control of any employer, that employer shall take all practicable steps to ensure that the machinery is provided with a protective device or apparatus—

- (a) of the kind or kinds listed, opposite the name of that machinery, in column 2 of that schedule; and
- (b) that is suitable for the purpose for which it is to be used.

19 Application of regulation 20

- (1) Subject to subclauses (2) to (6), regulation 20 applies to every self-propelled mobile mechanical plant—
 - (a) upon which any employee rides at a place of work under the control of an employer; and
 - (b) that is provided by that employer.
- (2) Regulation 20 does not apply to the following:
 - (a) any agricultural harvester:
 - (b) any bus:
 - (c) any car:
 - (d) any crane:
 - (e) any drag line:
 - (f) any fork-lift with a telescopic boom:
 - (g) any log hauler:
 - (h) any paving machinery:
 - (i) any power operated elevated work platform:
 - (j) any tractor used in agricultural work:
 - (k) any truck:
 - (l) any van:
 - (m) any machinery that has a mass of 700 kilograms or less:
 - (n) any machinery used in a mine, quarry, or tunnel.

- (3) Regulation 20 does not apply to any self-propelled mobile mechanical plant that has been designed to be used on level ground at all times, if the employer takes all practicable steps to ensure that every employee at every place of work under the control of that employer so uses the self-propelled mobile mechanical plant.
- (4) The Secretary may, by certificate in writing, subject to such conditions, if any, as may be specified in the certificate, exempt from any or all of the provisions of regulation 20—
 - (a) any particular kind of machinery; or
 - (b) any machinery or kind of machinery when used in any particular work or in any particular kind of work,—if satisfied that, having regard to any conditions imposed, the provision or provisions in respect of which the exemption is granted are not reasonably practicable or are not reasonably necessary for the protection of employees using the machinery or, as the case may require, carrying out the work.
- (5) The Secretary may at any time cancel a certificate by which an exemption is granted under subclause (4), if satisfied that it is proper to do so.
- (6) Where the Secretary cancels a certificate under subclause (5), the Secretary shall—
 - (a) determine a date, being a date allowing a reasonable period after the date of the cancellation, after which the certificate shall cease to have effect:
 - (b) where any such certificate has been issued to any particular person, notify that person of the date of the cancellation and the date after which the certificate shall cease to have effect:
 - (c) where any such certificate has not been issued to any particular person, publish by way of a notice in the *Gazette* the date of the cancellation and the date after which the certificate shall cease to have effect.

20 Self-propelled mobile mechanical plant

- (1) Every employer shall take all practicable steps to ensure that every self-propelled mobile mechanical plant to which this regulation applies is fitted with a roll-over protective structure and a seat belt.

- (2) Every employer shall take all practicable steps to ensure—
- (a) that every roll-over protective structure fitted to a self-propelled mobile mechanical plant pursuant to subclause (1) is suitable for the purpose for which it is to be used; and
 - (b) that every seat belt fitted to a self-propelled mobile mechanical plant pursuant to subclause (1) is of a kind, and fitted in a manner, that is suitable for the purpose for which it is to be used; and
 - (c) where the roll-over protective structure fitted to any self-propelled mobile mechanical plant pursuant to subclause (1) is damaged so that its effectiveness is substantially reduced, no employee uses the plant until the structure has been either—
 - (i) replaced; or
 - (ii) restored to a condition approved by the manufacturer or the manufacturer's principal agent in New Zealand, or by a chartered professional engineer (as defined in section 6 of the Chartered Professional Engineers of New Zealand Act 2002) with a qualification in mechanical engineering, as equal in strength and effectiveness to the structure as originally fitted.

Regulation 20(2)(c)(ii): amended, on 1 January 2004, by section 76 of the Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17).

Duty in relation to heights at some workplaces

21 Heights of more than 3 metres

- (1) In this regulation, the term **employer** does not include any employer who employs any employee to carry out any agricultural work in a place of work under the control of that employer.
- (2) Every employer shall take all practicable steps to ensure, in relation to every place of work under the control of that employer, that, where any employee may fall more than 3 metres,—
- (a) means are provided to prevent the employee from falling; and

- (b) any means so provided are suitable for the purpose for which they are to be used.

*Duty in relation to scaffolding in construction
work*

22 Scaffolding

- (1) In this regulation, the term **employer** means—
 - (a) every employer, in relation to every place of work under the control of that employer in which any construction work is carried out; and
 - (b) every person who controls a place of work in which any construction work is carried out.
- (2) Every employer shall take all practicable steps to ensure that, where any construction work cannot be carried out safely without the use of scaffolding,—
 - (a) scaffolding is provided; and
 - (b) the scaffolding so provided is—
 - (i) suitable for the purpose for which it is to be used; and
 - (ii) properly constructed of sound material; and
 - (iii) constructed with a sufficient reserve of strength having regard to the loads and stresses to which it may be subjected; and
 - (iv) sufficient in amount for the purpose for which it is to be used.

*Duties in relation to excavations in construction
work*

23 Application of regulations 24 and 25

- (1) In regulations 24 and 25, the term **employer** means—
 - (a) every employer, in relation to every place of work under the control of that employer in which any construction work is carried out; and
 - (b) every person who controls a place of work in which any construction work is carried out.
- (2) In regulations 24 and 25, the term **employee**,—
 - (a) in relation to an employer of the kind described in sub-clause (1)(a), means an employee of that employer; and

- (b) in relation to a person of the kind described in subclause (1)(b), means a person working in the place of work.

24 Excavations with face more than 1.5 metres high

- (1) Subject to subclause (2), every employer shall take all practicable steps to ensure that, where any face of any excavation is more than 1.5 metres high, that face is shored.
- (2) Subclause (1) does not apply where—
 - (a) the face is cut back to a safe slope; or
 - (b) the material in the face is of proven good standing quality under all reasonably foreseeable conditions of work and weather; or
 - (c) by reason of the nature of the work and the position of any employee in the vicinity, there is no danger to any employee; or
 - (d) the provision of shoring is impracticable or unreasonable by reason of the nature of the work and the employer takes all practicable steps to ensure that other precautions are taken to make the face as safe as possible in the circumstances.
- (3) Every employer shall take all practicable steps to ensure that any shoring used in any excavation at the place of work—
 - (a) consists of materials that are suitable for the purpose for which they are to be used, of sound quality, and adequate in strength for the particular use; and
 - (b) has bracings, jacks, and struts that are securely held to prevent accidental displacement, and packings and wedges that are held by nails or spikes; and
 - (c) is placed in a proper manner by an experienced person under competent supervision; and
 - (d) is not altered, dismantled, or interfered with except on the instructions of the employer or a representative of the employer.

25 Excavations of hazardous depth

- Every employer shall take all practicable steps to ensure, where any excavation is—
- (a) readily accessible to any person; and

- (b) likely to collect or retain water of such a depth as to constitute a danger to any person,—
that—
- (c) any such excavation is covered or fenced, when no employee is in the immediate vicinity to prevent access to it by any person; and
- (d) any such excavation created in the course of the work is covered, fenced, or filled at the completion of the work.

Notification of particular hazardous work

26 Notification

- (1) In this regulation, the term **employer** includes a person who controls a place of work.
- (2) Subject to subclause (4), every employer who intends to commence any notifiable work or any work that will at any time include any notifiable work shall take all practicable steps to lodge notice of that intention in accordance with this regulation.
- (3) A notice required to be lodged under subclause (2) shall—
 - (a) be lodged at an office that deals with occupational safety and health matters, being the nearest such office of the Department to the place where the work is to be carried out; and
 - (b) be in writing; and
 - (c) be given at least 24 hours before the time at which the employer intends to commence the work; and
 - (d) contain the following particulars—
 - (i) the nature and location of the work; and
 - (ii) the name, address, and contact details of the employer; and
 - (iii) the intended date of commencement of the work; and
 - (iv) the estimated duration of the work.
- (4) It shall not be necessary for any employer to comply with subclause (2) before commencing any construction work or tree-felling operation necessary to deal with an emergency arising from—

- (a) damage caused by any earthquake, explosion, fire, flood, lightning, rain, slip, storm, or washout; or
- (b) the blockage or breakdown of any drain or sewer; or
- (c) the blockage or breakdown of any distribution system or network for electricity, gas, telecommunications, or water.

Part 3 Certificates of competence

27 Certificates of competence

- (1) The following kinds of certificates of competence may be issued under regulation 38:
 - (a) a certificate of competence as a diver:
 - (b) *[Revoked]*
 - (c) a certificate of competence as a powder-actuated tool operator:
 - (d) a certificate of competence as a scaffolder.
- (2) A certificate of competence as a diver shall authorise the holder to dive in any category of diving specified in the certificate.
- (3) *[Revoked]*
- (4) A certificate of competence as a powder-actuated tool operator shall authorise the holder to operate any powder-actuated tool—
 - (a) of a kind specified in the certificate; and
 - (b) in any category of construction work specified in the certificate.
- (5) A certificate of competence as a scaffolder shall authorise the holder to erect, maintain, repair, or dismantle 1, some, or all of the following types of scaffolding:
 - (a) basic scaffolding:
 - (b) advanced scaffolding:
 - (c) suspended scaffolding.

Regulation 27(1)(b): revoked, on 16 October 2003, by regulation 3 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

Regulation 27(3): revoked, on 16 October 2003, by regulation 3 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

*Application, issue, renewal, cancellation, and
suspension*

28 Secretary may recognise organisations

- (1) The Secretary may, on being satisfied that it is appropriate to do so, recognise any organisation as an organisation that may issue certificates of competence of all kinds or of a particular kind.
- (2) The Secretary may, on being satisfied that it is appropriate to do so, withdraw recognition, in relation to certificates of competence of all kinds or of a particular kind, from any organisation recognised under this regulation.
- (3) Where the Secretary has recognised any organisation, or withdrawn recognition from any organisation, under this regulation, the Secretary shall publish a notice to that effect in the *Gazette*.

29 Application for certificate of competence to be made to chief executive or Secretary

- (1) An application for a certificate of competence shall be made—
 - (a) to the chief executive of an organisation that has been recognised by the Secretary under regulation 28 as an organisation that may issue certificates of the kind to which the application relates, by lodging the application at the head office of the organisation; or
 - (b) if no such organisation has been recognised, to the Secretary, by lodging the application at any office—
 - (i) that deals with occupational safety and health matters; and
 - (ii) that is an office of the Department.
- (2) Every application made under subclause (1) for which a fee is prescribed in Schedule 2 shall be accompanied by the fee so prescribed.

30 Application to contain evidence

An application for a certificate of competence shall contain evidence of the matters referred to in regulation 31.

31 Requirements of applicants

An applicant for a certificate of competence shall—

- (a) fulfil the requirements of regulation 32(a) to (d) or regulation 34(a) to (c) or regulation 35(a) to (d), as the case may require; and
- (b) be physically and mentally able to perform any task that it is reasonable to expect the holder of such a certificate to perform; and
- (c) be of good character and reputation.

Regulation 31(a): amended, on 16 October 2003, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

32 Requirements of diver

An applicant for a certificate of competence as a diver shall—

- (a) have a thorough knowledge of the principles and practices of diving; and
- (b) have a thorough knowledge of the practices that must be followed to enable diving to take place safely; and
- (c) have had suitable recent training, including suitable recent experience, in diving; and
- (d) be medically fit for diving.

33 Requirements of construction blaster

[Revoked]

Regulation 33: revoked, on 16 October 2003, by regulation 5 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

34 Requirements of powder-actuated tool operator

An applicant for a certificate of competence as a powder-actuated tool operator shall—

- (a) have a thorough knowledge of the operation of powder-actuated tools; and
- (b) have a thorough knowledge of the practices that must be followed to enable powder-actuated tools to be operated safely; and
- (c) have had suitable recent training, including suitable recent experience, in the operation of powder-actuated tools.

35 Requirements of scaffolder

An applicant for a certificate of competence as a scaffolder shall—

- (a) have a thorough knowledge of the use or uses to which the type or types of scaffolding in respect of which the applicant seeks a certificate may be put; and
- (b) have a thorough knowledge of the erection, maintenance, repair, and dismantling of the type or types of scaffolding in respect of which the applicant seeks a certificate; and
- (c) have a thorough knowledge of the practices that must be followed to enable scaffolding of the type or types in respect of which the applicant seeks a certificate to be used, erected, maintained, repaired, and dismantled safely; and
- (d) have had suitable recent training, including suitable recent experience, in the use, erection, maintenance, repair, and dismantling of scaffolding of the type or types in respect of which the applicant seeks a certificate.

36 Investigations by chief executive or Secretary

- (1) For the purpose of investigating whether an applicant for a certificate of competence is a person to whom regulation 31 applies, the chief executive or the Secretary, as the case may be, may—
 - (a) request the applicant to supply information on relevant matters; and
 - (b) request any person who the chief executive or the Secretary believes is able to provide relevant information to provide information on relevant matters.
- (2) A request under subclause (1)—
 - (a) shall specify those matters on which the chief executive or the Secretary, as the case may be, seeks information; and
 - (b) may be made from time to time.
- (3) The applicant shall supply information on such matters as may be specified in a request made under subclause (1)(a).
- (4) Any person to whom a request is made under subclause (1)(b) shall supply information on such matters as may be specified

in the request, if the person holds that information or can reasonably be expected to obtain it.

- (5) Every person shall have the same privileges in relation to the giving of information to the chief executive or the Secretary, as the case may be, as witnesses have in any court.
- (6) No person shall be liable to prosecution for any offence against any enactment by reason of that person's compliance with any requirements of the chief executive or the Secretary, as the case may be, under this regulation.

37 Use of information

For the purpose of determining whether an applicant is a person to whom regulation 31 applies, the chief executive or the Secretary, as the case may be, may take into account any information received in response to the exercise of the powers conferred by regulation 36.

38 Chief executive or Secretary to issue certificate of competence

- (1) A chief executive or the Secretary, as the case may require, to whom an application for a certificate of competence is made shall issue the certificate of competence sought in the application, if he or she is satisfied—
 - (a) that the application was made in accordance with regulations 29 and 30; and
 - (b) that the applicant is a person to whom regulation 31 applies.
- (2) Where a chief executive or the Secretary, as the case may require, refuses to issue any certificate of competence, he or she shall supply to the applicant a statement of the reasons for the refusal.

39 Secretary to determine duration

- (1) The Secretary shall from time to time determine the period for which each kind of certificate of competence, issued after a date to be determined by the Secretary, shall remain in force.
- (2) The Secretary may determine different periods for different kinds of certificates of competence.

- (3) A certificate of competence expires at the close of the day that concludes the period that applies to certificates of competence of that kind.
- (4) Every certificate of competence shall show on its face the date on which it expires.

40 Renewal of certificate of competence

- (1) An application for the renewal of a certificate of competence shall—
 - (a) be made before the day on which the certificate expires; and
 - (b) be accompanied by the fee, if any, prescribed in Schedule 2; and
 - (c) be made—
 - (i) where the certificate was issued by an organisation recognised under regulation 28, to the chief executive of that organisation; or
 - (ii) where the Secretary has withdrawn recognition from the organisation that issued the certificate or where the organisation has ceased to exist, to the chief executive of any organisation recognised under regulation 28 whose functions are substantially similar to those of the organisation that issued the certificate or to the Secretary; or
 - (iii) where the certificate was issued by the Secretary, to the Secretary.
- (2) Where the Secretary has, after the date on which a certificate of competence was issued, recognised an organisation under regulation 28 as an organisation that may issue certificates of competence, the Secretary shall transfer to the organisation any application for a renewal of any certificate of competence that that organisation may issue.
- (3) Where an application is made in accordance with this regulation, the certificate of competence to which the application relates shall be renewed, unless the person to whom the application is made or transferred cancels or suspends the certificate under regulation 41.
- (4) A certificate of competence may be renewed before or after the day on which the certificate expires, but in each case the

renewed certificate shall be in force from the commencement of the day following that day.

- (5) Subclauses (3) and (4) of regulation 39 apply to a certificate of competence renewed under this regulation.

41 Cancellation or suspension of certificate of competence

- (1) The person who issued a certificate of competence shall cancel the certificate if he or she is satisfied on reasonable grounds that the holder has died.
- (2) The person who issued a certificate of competence shall cancel the certificate if, after giving the holder an opportunity to be heard, he or she is satisfied on reasonable grounds—
- (a) that the certificate was issued in error; or
 - (b) that the holder's application for the certificate contained any false information or evidence; or
 - (c) that the holder either never has been or is no longer a person to whom regulation 31 applies.
- (3) The person who issued a certificate of competence shall cancel the certificate or suspend the certificate for such period as he or she thinks fit if, after giving the holder an opportunity to be heard, he or she is satisfied on reasonable grounds—
- (a) that the holder has been so negligent in carrying out any task that the holder of the certificate could reasonably be expected to perform to a reasonable standard that the life of any person has been or could have been endangered; or
 - (b) that the holder has shown himself or herself unfit to be the holder of the certificate by the improper manner in which he or she has carried out any task that the holder of the certificate could reasonably be expected to perform in a proper manner.
- (4) In this regulation, the term **person who issued a certificate of competence** includes a person to whom an application under regulation 40 is made or transferred.

42 Replacement of certificate of competence

- (1) An application for a duplicate of a certificate of competence shall—

- (a) be accompanied by the fee, if any, prescribed in Schedule 2; and
 - (b) be made—
 - (i) where the certificate was issued by an organisation recognised under regulation 28, to the chief executive of that organisation; or
 - (ii) where the Secretary has withdrawn recognition from the organisation that issued the certificate or where the organisation has ceased to exist, to the chief executive of any organisation recognised under regulation 28 whose functions are substantially similar to those of the organisation that issued the certificate or to the Secretary; or
 - (iii) where the certificate was issued by the Secretary, to the Secretary.
- (2) Where the Secretary has, after the date on which a certificate of competence was issued, recognised an organisation under regulation 28 as an organisation that may issue certificates of competence, the Secretary shall transfer to the chief executive of that organisation any application for a duplicate of any certificate of competence that that organisation may issue.
- (3) Where the person to whom an application is made or transferred under this regulation is satisfied that a certificate of competence has been lost or destroyed, that person shall issue a duplicate of that certificate.

43 Register

- (1) Every organisation recognised under regulation 28 and the Department shall keep a register of the individuals to whom the chief executive or the Secretary, as the case may be, has issued a certificate of competence.
- (2) Every register kept under subclause (1) shall show—
- (a) the full name of the holder:
 - (b) the kind of certificate the holder holds:
 - (c) the date on which the certificate expires:
 - (d) in relation to a certificate that has been suspended, the date on which the suspension took effect and the date on which the suspension ends:

- (e) in relation to a certificate that has been cancelled, the date of cancellation.

Regulation 43(2)(e): added, on 12 September 1996, by regulation 33(2) of the Health and Safety in Employment (Mining Administration) Regulations 1996 (SR 1996/220).

44 Appeal to District Court

- (1) An appeal may be made to a District Court by—
 - (a) an applicant who is dissatisfied with a refusal to issue a certificate of competence under regulation 38;
 - (b) a holder of a certificate of competence who is dissatisfied with a refusal to renew the certificate of competence under regulation 40;
 - (c) a holder of a certificate of competence who is dissatisfied with the cancellation or suspension of the certificate of competence under regulation 41;
 - (d) a holder of a certificate of competence who is dissatisfied with a refusal to issue a duplicate of that certificate under regulation 42.
- (2) Part 9 of the District Courts Rules 1992 (SR 1992/109) applies to an appeal brought under subclause (1).
- (3) The decision of the District Court on any appeal brought under subclause (1) shall be final.

45 Fees inclusive of goods and services tax

The fees prescribed by Schedule 2 are inclusive of goods and services tax under the Goods and Services Tax Act 1985.

46 Transitional provisions relating to certificates of competence

- (1) This regulation applies to—
 - (a) a certificate of competency granted under the Construction Regulations 1961; or
 - (b) a certificate as a powder-powered tool operator granted under the Construction Regulations 1961; or
 - (c) a certificate of registration as a construction diver issued under the Construction Regulations 1961—

that would have been in force at the commencement of these regulations but for the revocation of the Construction Regulations 1961.

- (2) Where a person holds a certificate to which this regulation applies, that person may, before 2 October 1996, make an application under regulation 40 as if that certificate had been in force at the commencement of these regulations and as if—
- (a) a certificate of competency as a scaffolder were a certificate of competence as a scaffolder issued under these regulations:
 - (b) a certificate of competency as a construction blaster were a certificate of competence as a construction blaster issued under these regulations:
 - (c) a certificate as a powder-powered tool operator were a certificate of competence as a powder-actuated tool operator issued under these regulations:
 - (d) a certificate of registration as a construction diver were a certificate of competence as a diver issued under these regulations;—
- and the provisions of these regulations shall apply accordingly.
- (3) For the avoidance of doubt, it is hereby declared that, where a person holds a certificate to which this regulation applies and that person does not, before 2 October 1996, make an application under regulation 40, that certificate shall have no force or effect on and from 2 October 1996.

Part 4

Duties in relation to certificates of competence

Duties of employers in relation to divers

47 Application of regulations 48 and 49

- (1) In regulations 48 and 49, the term **employer** includes a person who controls a place of work.
- (2) In regulations 48 and 49, the term **employee** in relation to a person who controls a place of work, means a person working in the place of work.

48 Diver

- (1) Every employer shall take all practicable steps to ensure that every employee who dives in the course of that employee's work is the holder of a current certificate of competence as a diver, being a certificate that authorises the holder to dive in the category of diving in which the employee is diving.
- (2) Nothing in this regulation prevents an employee training to become the holder of a certificate of competence as a diver from diving, in the course of that employee's work, under the direct supervision of the holder of such a certificate, being a current certificate that authorises the holder to dive in the category of diving in which the employee is diving.

49 Duty in respect of medical fitness of diver

Notwithstanding anything in regulation 48, every employer shall take all practicable steps to ensure that every employee who dives in the course of that employee's work is, at the time of so diving, medically fit for diving.

*Duties of employers in relation to construction
work*

50 Application of regulations 52 and 53

- (1) In regulations 52 and 53, the term **employer** means—
 - (a) every employer, in relation to every place of work under the control of that employer in which any construction work is carried out; and
 - (b) every person who controls a place of work in which any construction work is carried out, including, in relation to regulation 52, every person who owns any powder-actuated tool operated in any place of work in the course of construction work.
- (2) In regulations 52 and 53, the term **employee**,—
 - (a) in relation to an employer of the kind described in subclause (1)(a), means an employee of that employer; and
 - (b) in relation to a person of the kind described in subclause (1)(b), means a person working in the place of work.

Regulation 50 heading: amended, on 16 October 2003, by regulation 6(1) of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

Regulation 50(1): amended, on 16 October 2003, by regulation 6(2) of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

Regulation 50(2): amended, on 16 October 2003, by regulation 6(2) of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

51 Construction blaster

[Revoked]

Regulation 51: revoked, on 16 October 2003, by regulation 7 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

52 Powder-actuated tool operator

- (1) Every employer shall take all practicable steps to ensure that every employee who, in the course of carrying out construction work, operates a powder-actuated tool is the holder of a current certificate of competence as a powder-actuated tool operator, being a certificate that authorises the employee to operate the kind of tool being operated in the kind of work being carried out.
- (2) Nothing in this regulation prevents an employee training to become the holder of a certificate of competence as a powder-actuated tool operator from operating, in the course of carrying out construction work, a powder-actuated tool under the direct supervision of a holder of such a certificate, being a current certificate that authorises the holder to operate the kind of tool being operated by the employee in the kind of work being carried out by the employee.

53 Scaffolder

- (1) Every employer shall take all practicable steps to ensure that every employee who, in the course of carrying out construction work, erects, maintains, repairs, or dismantles scaffolding (being scaffolding any part of which is 5 metres or more above the ground) is the holder of a current certificate of competence with respect to—
 - (a) basic scaffolding, where the scaffolding being erected, maintained, repaired, or dismantled is basic scaffolding;or

- (b) advanced scaffolding, where the scaffolding being erected, maintained, repaired, or dismantled is advanced scaffolding; or
 - (c) suspended scaffolding, where the scaffolding being erected, maintained, repaired, or dismantled is suspended scaffolding.
- (2) Nothing in this regulation prevents an employee training to become the holder of a certificate of competence as a scaffolder from erecting, maintaining, repairing, or dismantling scaffolding (being scaffolding any part of which is 5 metres or more above the ground), in the course of carrying out construction work, under the direct supervision of the holder of such a certificate, being a current certificate that authorises the holder to erect, maintain, repair, or dismantle scaffolding of the type that the employee is erecting, maintaining, repairing, or dismantling.

Part 5

Duties in relation to young persons

Duties of employers to young persons

54 Employment of young persons

- (1) Subject to subclause (2), every employer shall take all practicable steps to ensure that no employee under the age of 15 years works in any area at a place of work under the control of that employer—
- (a) at any time when goods are being prepared or manufactured for trade or sale in that area;
 - (b) at any time when any construction work is being carried out in that area;
 - (c) at any time when any logging operation or tree-felling operation is being carried out in that area;
 - (d) at any time when any work is being carried out in that area that is likely to cause harm to the health and safety of a person under the age of 15 years.
- (2) Subclause (1) does not apply to any area if an employee under the age of 15 years works at all times—
- (a) in any office in that area; or

- (b) in any part of that area used only for selling goods or services.

55 Injurious tasks

Every employer shall take all practicable steps to ensure that no employee under the age of 15 years is required to lift any weight or to perform any task at any place of work under the control of that employer, where lifting the weight or performing the task would be likely to be injurious to the employee's health.

56 Machinery

Every employer shall take all practicable steps to ensure that no employee under the age of 15 years, at any place of work under the control of that employer,—

- (a) works at or with any machinery; or
- (b) assists with work at or with any machinery.

57 Tractors and self-propelled mobile mechanical plant

(1) In this regulation, the term **vehicle** means—

- (a) any tractor; and
- (b) any self-propelled mobile mechanical plant, other than a car, a truck, a motorcycle, or machinery that has a mass of 700 kilograms or less.

(2) Every employer shall take all practicable steps to ensure that no employee under the age of 15 years, while in any place of work under the control of that employer,—

- (a) drives any vehicle; or
- (b) rides upon any vehicle while it is drawing any implement; or
- (c) rides upon any vehicle while any implement is attached to it; or
- (d) rides upon any implement (not being a sled or trailer designed or adapted exclusively or principally for the carriage of passengers or of goods) drawn by or attached to any vehicle.

58 Night employment

Every employer shall take all practicable steps to ensure that no employee under the age of 16 years works, at any place of work under the control of that employer, between the hours of 10 pm on any day and 6 am on the next day, unless the employee's employment is in all respects in accordance with an approved code of practice relating to the employment of people under the age of 16 years between those hours in work of the kind the employee is doing.

Duties of principals to young persons

Heading: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58A Application of regulations 58B to 58F

- (1) Regulations 58B to 58E apply to a principal who engages a person under the age of 15 years as a contractor to do any work (except residential work).
- (2) Regulation 58F applies to a principal who engages a person under the age of 16 years as a contractor to do any work (except residential work).

Regulation 58A: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58B Engaging young persons as contractors

- (1) A principal to whom this regulation applies must take all practicable steps to ensure that the contractor does not work in any area at a place of work that is under the control of that principal—
 - (a) at any time when goods are being prepared or manufactured for trade or sale in that area:
 - (b) at any time when construction work is being carried out in that area:
 - (c) at any time when any logging operation or tree-felling operation is being carried out in that area:
 - (d) at any time when work is being carried out in that area that is likely to cause harm to the health and safety of a person under the age of 15 years.

- (2) However, subclause (1) does not apply to any area if the contractor works at all times—
- (a) in an office in that area; or
 - (b) in any part of that area used only for selling goods or services.

Regulation 58B: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58C Injurious tasks

A principal to whom this regulation applies must take all practicable steps to ensure that the contractor is not required to lift any weight or to perform any task at any place of work under the control of that principal, if lifting the weight or performing the task would be likely to be injurious to the contractor's health.

Regulation 58C: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58D Machinery

A principal to whom this regulation applies must take all practicable steps to ensure that the contractor does not, at any place of work under the control of that principal,—

- (a) work at or with any machinery; or
- (b) assist with work at or with any machinery.

Regulation 58D: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58E Tractors and self-propelled mobile mechanical plant

- (1) A principal to whom this regulation applies must take all practicable steps to ensure that the contractor does not, while in any place of work under the control of that principal,—
- (a) drive any vehicle; or
 - (b) ride upon any vehicle while it is drawing any implement; or
 - (c) ride upon any vehicle while any implement is attached to it; or
 - (d) ride upon any implement (other than a sled or trailer designed or adapted exclusively or principally for the

carriage of passengers or of goods) drawn by or attached to any vehicle.

- (2) This regulation is subject to regulation 61.
- (3) In this regulation, **vehicle** means—
 - (a) any tractor; and
 - (b) any self-propelled mobile mechanical plant, other than a car, a truck, a motorcycle, or machinery that has a mass of 700 kilograms or less.

Regulation 58E: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

58F Night work

A principal to whom this regulation applies must take all practicable steps to ensure that the contractor does not work, at any place of work under the control of that principal, between the hours of 10 pm on any day and 6 am on the next day, unless the contractor's work accords in all respects with an approved code of practice relating to the engagement of people under the age of 16 years between those hours in work of the kind the contractor is doing.

Regulation 58F: inserted, on 1 April 2009, by regulation 4 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

Duties of other persons to young persons

59 Presence of young persons

- (1) Subject to subclause (2), every person who controls a place of work shall take all practicable steps to ensure, in relation to every place of work under the control of that person, that no person under the age of 15 years is present in any area at the place of work—
 - (a) at any time when goods are being prepared or manufactured for trade or sale in that area;
 - (b) at any time when any construction work is being carried out in that area;
 - (c) at any time when any logging operation or tree-felling operation is being carried out in that area;
 - (d) at any time when any work is being carried out in that area that is likely to cause harm to the health and safety of a person under the age of 15 years.

- (2) Subclause (1) does not apply to any area if any person under the age of 15 years is at all times—
- (a) in any part of that area to which the public generally has access; or
 - (b) under the direct supervision of an adult in that area; or
 - (c) on a guided tour of that area; or
 - (d) in any office in that area; or
 - (e) in any part of that area used only for selling goods or services.

60 Tractors and self-propelled mobile mechanical plant

- (1) In this regulation,—

vehicle means—

- (a) any tractor; and
- (b) any self-propelled mobile mechanical plant, other than a car, a truck, a motorcycle, or machinery that has a mass of 700 kilograms or less

youth means a person under the age of 15 years.

- (2) Subject to regulation 61, every person in control of a place of work shall take all practicable steps to ensure that no youth, while in any place of work under the control of that person,—
- (a) drives any vehicle; or
 - (b) rides upon any vehicle while it is drawing any implement; or
 - (c) rides upon any vehicle while any implement is attached to it; or
 - (d) rides upon any implement (not being a sled or trailer designed or adapted exclusively or principally for the carriage of passengers or of goods) drawn by or attached to any vehicle.

*Exception from certain duties relating to
tractors*

Heading: inserted, on 1 April 2009, by regulation 5 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

61 Exception for tractors

Regulations 58E(1) and 60(2) do not apply where—

- (a) the youth is over the age of 12 years; and

- (b) a tractor is being used in connection with agricultural work; and
- (c) the youth—
 - (i) has been fully trained in the safe operation of the tractor and the safe use of any implement that is being drawn by or is attached to the tractor; or
 - (ii) is being trained in the safe operation of the tractor or the safe use of any implement that is being drawn by or is attached to the tractor.

Regulation 61: amended, on 1 April 2009, by regulation 6 of the Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376).

Part 6

Duties in relation to agricultural employees' accommodation

62 Application of this Part

- (1) In this Part, the term **employer** includes—
 - (a) a person who controls a place of work; and
 - (b) a principal who controls the place of work at which a contractor or subcontractor works.
- (2) In this Part, the term **employee** includes,—
 - (a) in relation to a person who controls a place of work, a person working in the place of work; and
 - (b) in relation to a principal, an employee of a contractor or subcontractor or, if a contractor or subcontractor is an individual, the contractor or subcontractor, being an employee, contractor, or subcontractor doing any work (other than residential work) that the contractor was engaged to do.

63 Accommodation and general facilities for agricultural employees

- (1) The facilities to which this regulation applies are—
 - (a) toilets:
 - (b) washing facilities:
 - (c) sleeping facilities:
 - (d) lighting in all rooms:
 - (e) ventilation in all rooms:

- (f) heating facilities:
 - (g) refrigeration facilities:
 - (h) rubbish disposal facilities:
 - (i) laundry facilities:
 - (j) furniture:
 - (k) drinking water.
- (2) Every employer who employs any employee to carry out any agricultural work shall take all practicable steps—
- (a) to ensure that any such employee lives in accommodation—
 - (i) that is made of permanent materials; and
 - (ii) that is maintained in good order and condition; and
 - (iii) that contains or has access to facilities of the kinds to which this regulation applies; and
 - (b) to ensure that any facilities of the kinds referred to in paragraphs (a) to (j) of subclause (1), in the accommodation or to which the accommodation has access, are—
 - (i) suitable for the purposes for which they are to be used; and
 - (ii) sufficient in number or amount; and
 - (iii) maintained in good order and condition; and
 - (c) to ensure that any drinking water, in the accommodation or to which the accommodation has access, is—
 - (i) wholesome; and
 - (ii) sufficient in amount.
- (3) An employer's duty under subclause (2) applies to any accommodation, whether provided by the employer or the employee, and to any facilities, whether in accommodation provided by the employer or in accommodation provided by the employee.

64 Cooking facilities or meals for agricultural employees

Every employer who employs any employee to carry out any agricultural work and who provides accommodation for that employee shall take all practicable steps—

- (a) either—
 - (i) to provide all meals to that employee; or
 - (ii) to provide cooking and eating facilities in the accommodation provided; and

- (b) to ensure that any facilities provided under paragraph (a)(ii) are—
 - (i) suitable for the purposes for which they are to be used; and
 - (ii) sufficient in number or amount; and
- (c) to maintain any facilities provided under paragraph (a)(ii) in good order and condition.

Part 7

Duties of designers, manufacturers, and suppliers

65 Sufficient compliance with certain duties in this Part

- (1) The Secretary may, from time to time, grant recognition to any document containing requirements relating to the duties imposed by any of the following provisions of these regulations:
 - (a) regulation 66(1):
 - (b) regulation 67(1) or (2):
 - (c) regulation 68(1):
 - (d) regulation 69(1), (2), or (3).
- (2) On granting recognition to a document under subclause (1), the Secretary shall publish a notice in the *Gazette*—
 - (a) specifying the title of the document and the provision or provisions to which the requirements in the document relate; and
 - (b) stating that the document has been granted recognition under subclause (1).
- (3) The Secretary may, at any time, withdraw a recognition granted under subclause (1) and, on doing so, shall publish a notice in the *Gazette* to that effect.
- (4) It shall, for all purposes, be sufficient compliance with a provision to which subclause (1) refers if the designer, manufacturer, or supplier, as the case may be, takes all practicable steps to comply with the requirements in a document—
 - (a) that contains requirements relating to the duties imposed by that provision; and
 - (b) that is the subject of a current recognition granted under subclause (1).

- (5) For the purposes of subclause (4)(b), a document shall be deemed, in the absence of evidence to the contrary, to be the subject of a current recognition granted under subclause (1) if its title is specified in a *Gazette* notice published under subclause (2) and no *Gazette* notice notifying the withdrawal of that recognition has been published under subclause (3).

Plant

66 Duties of designers of plant

- (1) Every designer of plant shall take all practicable steps—
- (a) to design any plant in accordance with applicable ergonomic principles, including (without limitation) any such principles in relation to the placement of any power control; and
 - (b) to design any plant in such a way that, if the plant is—
 - (i) manufactured in accordance with the design; and
 - (ii) used for the purpose for which it was designed; and
 - (iii) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—there is no likelihood that the plant will be a cause or source of harm to any person, or the likelihood that the plant will be such a cause or source of harm is minimised as far as is practicable.
- (2) Every designer of plant shall take all practicable steps to ensure that every manufacturer of the plant receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
- (a) the use for which the plant has been designed; and
 - (b) how to install, adjust, use, clean, maintain, repair, and dismantle the plant in accordance with the designer's instructions; and
 - (c) any other matters about which the manufacturer needs information from the designer in order to be able to carry out the manufacturer's duties under regulation 67.

67 Duties of manufacturers and suppliers of plant

- (1) Every manufacturer and supplier of plant shall take all practicable steps to ensure that any plant manufactured by that manufacturer or supplied by that supplier is so designed that, if the plant is—
- (a) manufactured in accordance with the design; and
 - (b) used for the purpose for which it was designed; and
 - (c) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—
- there is no likelihood that the plant will be a cause or source of harm to any person, or the likelihood that the plant will be such a cause or source of harm is minimised as far as is practicable.
- (2) Every manufacturer and supplier of plant shall take all practicable steps to ensure that any plant manufactured by that manufacturer or supplied by that supplier is so manufactured and tested that, if the plant is—
- (a) used for the purpose for which it was designed; and
 - (b) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—
- there is no likelihood that the plant will be a cause or source of harm to any person, or the likelihood that the plant will be such a cause or source of harm is minimised as far as is practicable.
- (3) Every manufacturer of plant shall take all practicable steps to ensure that every supplier of the plant receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
- (a) the use for which the plant has been designed; and
 - (b) how to install, adjust, use, clean, maintain, repair, and dismantle the plant in accordance with the designer's instructions; and
 - (c) any other matters about which the supplier needs information from the manufacturer in order to be able to carry out any duty of the supplier under this regulation.
- (4) Every supplier of plant shall take all practicable steps to ensure that every purchaser or hirer of the plant receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—

- (a) the use for which the plant has been designed; and
- (b) how to install, adjust, use, clean, maintain, repair, and dismantle the plant in accordance with the designer's instructions; and
- (c) any other matters about which the purchaser or hirer needs information from the supplier in order to be able to carry out any duty of the purchaser or hirer under the Act or these regulations.

Protective clothing and protective equipment

68 Duties of designers of protective clothing and protective equipment

- (1) Every designer of protective clothing or protective equipment shall take all practicable steps—
 - (a) to design any protective clothing or protective equipment in accordance with applicable ergonomic principles; and
 - (b) to design any protective clothing or protective equipment in such a way that, if the clothing or equipment is—
 - (i) manufactured in accordance with the design; and
 - (ii) used for the purpose for which it was designed; and
 - (iii) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—
it will give adequate protection from the harm against which it is intended to protect.
- (2) Every designer of protective clothing or protective equipment shall take all practicable steps to ensure that every manufacturer of the protective clothing or equipment receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
 - (a) the use for which the clothing or equipment has been designed; and
 - (b) how to install, adjust, use, clean, maintain, repair, and dismantle the clothing or equipment in accordance with the designer's instructions; and

- (c) any other matters about which the manufacturer needs information from the designer in order to be able to carry out the manufacturer's duties under regulation 69.

69 Duties of manufacturers and suppliers of protective clothing and protective equipment

- (1) Every manufacturer and supplier of protective clothing or protective equipment shall take all practicable steps to ensure that any such clothing and equipment manufactured by that manufacturer or supplied by that supplier is designed in such a way that, if the clothing or equipment is—
 - (a) manufactured in accordance with the design; and
 - (b) used for the purpose for which it was designed; and
 - (c) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—it will give adequate protection from the harm against which it is intended to protect.
- (2) Every manufacturer and supplier of protective clothing or protective equipment shall take all practicable steps to ensure that any such clothing or equipment manufactured by that manufacturer or supplied by that supplier is so manufactured and tested that, if the clothing or equipment is—
 - (a) used for the purpose for which it was designed; and
 - (b) installed, adjusted, used, cleaned, maintained, repaired, and dismantled in accordance with the designer's instructions,—it will give adequate protection from the harm against which it is intended to protect.
- (3) Every manufacturer and supplier of protective clothing or protective equipment shall take all practicable steps to ensure that any such clothing or equipment manufactured by that manufacturer or supplied by that supplier is, to the extent that is practicable, permanently marked with comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
 - (a) the use for which the clothing or equipment has been designed; and

- (b) how to install, adjust, use, clean, maintain, repair, and dismantle the clothing or equipment in accordance with the designer's instructions.
- (4) Every manufacturer of protective clothing or equipment shall take all practicable steps to ensure that every supplier of any such clothing or equipment receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
 - (a) the use for which the clothing or equipment has been designed; and
 - (b) how to install, adjust, use, clean, maintain, repair, and dismantle the clothing or equipment in accordance with the designer's instructions; and
 - (c) any other matters about which the supplier needs information from the manufacturer in order to be able to carry out any duty of the supplier under this regulation.
- (5) Every supplier of protective clothing or protective equipment shall take all practicable steps to ensure that every purchaser or hirer of any such clothing or equipment receives comprehensive and comprehensible information, including, where relevant, detailed instructions, about—
 - (a) the use for which the clothing or equipment has been designed; and
 - (b) how to install, adjust, use, clean, maintain, repair, and dismantle the clothing or equipment in accordance with the designer's instructions; and
 - (c) any other matters about which the purchaser or hirer needs information from the supplier in order to be able to carry out any duty of the purchaser or hirer under the Act or these regulations.

Part 8 Offences

70 Offences

- (1) The provisions to which this regulation applies are regulations 4(1), 5(1), 6, 8, 9, 11(1), 11(3), 13(1), 14(2), 15(2), 16 to 18, 20, 21(2), 22(2), 24(1), 24(3), 25, 26(2), 48(1), 49, 52(1),

53(1), 54(1), 55, 56, 57(2), 58, 59(1), 60(2), 63(2), 64, and 66 to 69.

- (2) The provisions referred to in subclause (1) are hereby declared to be provisions to which section 50 of the Act (which provides that every person who fails to comply with a provision to which that section is declared to apply commits an offence, and is liable on summary conviction to a fine) applies.

Regulation 70(1): amended, on 16 October 2003, by regulation 8 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

Schedule 1

r 18

**Protective devices or apparatus for
woodworking or abrasive grinding
machinery**

Type of machinery	Protective device or apparatus
Breast bench	Correctly fitted riving knife Stick for removing waste from the bench top
Circular saw bench	Push stick
Circular saw used for ripping	Correctly fitted riving knife
Crosscut circular saw	A limiting device to prevent the saw moving beyond the edge of the bench nearest the operator An adequate device to prevent the saw from rebounding Where operated by hand, adequate handholds
Edger	Either— (a) anti-kickback fingers; or (b) any other device to prevent kickback— fitted on the operator's side of the feed roller
Hand-held abrasive grinding machine	A control switch that requires constant pressure by the operator
Overhead planing machine	Cylindrical cutter block A strong, efficient, and easily adjusted cover for the part of the cutter block that is behind the fence
Power hand tool circular saw	A control switch that requires constant pressure by the operator
Routing machine	Jig or routing board equipped with safe handholds, unless— (a) the material is secured to the working table and moved by mechanical means; or (b) the material is sufficiently large to provide safe handholds
Thicknessing machine	Anti-kickback device
Vertical spindle moulding machine	Spike or push stick

Where the nature of the work being done is such that it is impracticable to provide a guard for the spindle and cutter, either—

- (a) a jig so designed and constructed as to hold the material being moulded and having suitable handholds to afford the operator a firm grip; or
- (b) an automatic feeding device

Where the machine is not constructed in such a way as to render safe the spindle and cutter at the rear of the fence, a suitable cover for the spindle and cutter at the rear of the fence

Any machine operated by a foot control pedal

Either—

- (a) an effective cover having sufficient clearance for the operator's foot; or
- (b) an effective locking device

Schedule 2

rr 29(2), 40(1), 42(1), 45

Fees for issue, renewal, and replacement of certificates of competence

Kind of certificate	Issue	Renewal or replacement
Diver	\$90.00	\$56.25
Scaffolder	\$90.00	\$56.25

Schedule 2: amended, on 16 October 2003, by regulation 9 of the Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257).

Bob MacFarlane,
Acting for Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 August 1995.

Contents

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Notes**1 General**

This is a reprint of the Health and Safety in Employment Regulations 1995. The reprint incorporates all the amendments to the regulations as at 1 April 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Health and Safety in Employment Amendment Regulations 2008 (SR 2008/376)

Health (Drinking Water) Amendment Act 2007 (2007 No 92): section 19

Health and Safety in Employment Amendment Regulations 2003 (SR 2003/257)

Chartered Professional Engineers of New Zealand Act 2002 (2002 No 17): section 76

Health and Safety in Employment (Asbestos) Regulations 1998 (SR 1998/443): regulation 37

Health and Safety in Employment (Mining Administration) Regulations 1996 (SR 1996/220): regulation 33

Reprinted as at
1 April 2009

**Health and Safety in Employment
Regulations 1995**

Notes