

A BILL

To

Amend the Air Pollution Control Ordinance to prohibit the use, supply, import and transshipment of asbestos or asbestos containing material; to make related amendments to the Factories and Industrial Undertakings (Asbestos) Regulation; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Air Pollution Control (Amendment) (No. 2) Ordinance 2013.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for the Environment by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

Amendments to Air Pollution Control Ordinance (Cap. 311)

3. Section 2 amended (interpretation)

Section 2, definition of *asbestos containing material*—

Repeal

“more than 1% asbestos by weight”

Substitute

“asbestos.”

4. Section 28 amended (powers of entry and inspection, etc.)

(1) Section 28(1)(da), after “being”—

Add

“asbestos or”.

(2) Section 28(1)(db), after “contain”—

Add

“asbestos or”.

(3) Section 28(1)(ic), after “contain”—

Add

“asbestos or”.

(4) Section 28(1)(iiib), after “contain”—

Add

“asbestos or”.

(5) Section 28(1)(iva), after “chimneys”—

Add

“, asbestos”.

5. Section 78 substituted

Section 78—

Repeal the section

Substitute

“78. Defences

(1) It is a defence for a person charged under section 77 in respect of any work in the premises or any part of the premises if the person establishes that—

(a) the person carried out the work, or caused or permitted the work to be carried out, in an emergency situation that did not permit the person to comply with that section without risk to human life or serious disruption to a public service; or

(b) the person did not know and could not have reasonably known of the presence of asbestos containing material in the premises or that part of the premises at the time when the person carried out the work, or caused or permitted the work to be carried out.

- (2) The person is taken to have established a fact that needs to be established for the defence if—
- (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

6. Part X heading added

After section 79—

Add

“Part X

**Ban on Use, Supply, Import and Transhipment of
Asbestos etc.”.**

7. Section 80 substituted

Section 80—

Repeal the section

Substitute

**“80. Ban on use, supply, import and transhipment of asbestos or
asbestos containing material**

- (1) Subject to sections 82 and 83, a person must not—
- (a) use, supply, import or tranship asbestos or asbestos containing material; or
 - (b) cause or permit the use, supply, import or transhipment of asbestos or asbestos containing material.

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- (2) A person who contravenes subsection (1)(a) or (b) commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.
- (3) For subsection (1), if a person imported asbestos or asbestos containing material that—
- (a) is consigned on a through bill of lading or a through air waybill from a place outside Hong Kong to another place outside Hong Kong;
 - (b) is or is to be removed from the vessel, vehicle or aircraft on which it was imported; and
 - (c) is or is to be—
 - (i) returned to the same vessel, vehicle or aircraft before being exported; or
 - (ii) transferred to another vessel, vehicle or aircraft before being exported,the person tranships the asbestos or asbestos containing material.
- (4) For subsection (3)(c), it does not matter whether the asbestos or asbestos containing material—
- (a) is or is to be directly transferred between those vessels, vehicles or aircrafts; or
 - (b) is to be landed in Hong Kong after its importation and stored pending exportation.
- (5) In subsection (1)—
- supply** (供應) includes—
- (a) supply without consideration;
 - (b) offer or expose for supply;
 - (c) sell, or offer or expose for sale; and
 - (d) hire out, or offer or expose for hiring out;

use (使用), in relation to asbestos or asbestos containing material, means—

- (a) affixing, applying, spraying or installing asbestos or asbestos containing material on or in any premises;
- (b) adding, mixing or inserting asbestos or asbestos containing material to, with, into any material, substance, product or article for manufacturing or producing any product or substance; or
- (c) wrapping any material, substance, product or article with asbestos or asbestos containing material.”.

8. Sections 81 to 84 added

After section 80—

Add

“81. Defence for offence under section 80

- (1) It is a defence for a person charged under section 80(2) for an article if the person establishes that at the time of the alleged offence the person did not know and could not have reasonably known that the article is asbestos or asbestos containing material.
- (2) The person is taken to have established a fact that needs to be established for the defence if—
 - (a) there is sufficient evidence to raise an issue with respect to the fact; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.

82. Non-application of section 80

- (1) Section 80 does not prohibit a person from importing or transshipping, or causing or permitting the import or transshipment of, asbestos or asbestos containing material that is goods in transit.
- (2) For subsection (1), it is presumed, in the absence of evidence to the contrary, that the asbestos or asbestos containing material is not goods in transit.
- (3) Section 80 does not prohibit a person from supplying, importing or transshipping, or causing or permitting the supply, import or transshipment of, asbestos containing material that is proprietary Chinese medicine—
 - (a) registered under section 121(2) of the Chinese Medicine Ordinance (Cap. 549);
 - (b) deemed under section 128(2) of that Ordinance to be registered; or
 - (c) exempted under section 158(5) of that Ordinance from the application of section 119 of that Ordinance.
- (4) Section 80 does not prohibit an exempted person for a proprietary Chinese medicine from supplying or importing, or causing or permitting the supply or import of, asbestos containing material that is the proprietary Chinese medicine.
- (5) Section 80 does not prohibit a person from using asbestos or asbestos containing material in work carried out in an industrial undertaking.
- (6) In this section—

exempted person (豁免人士) means a person or an institution that is exempted under section 158(1) of the Chinese Medicine Ordinance (Cap. 549) from the application of section 119 of that Ordinance in relation to a proprietary Chinese medicine;

goods in transit (過境貨品) means goods that—

- (a) are brought into Hong Kong solely for being taken out of Hong Kong; and
- (b) remain at all times on the vessel, vehicle or aircraft that brought the goods into Hong Kong;

industrial undertaking (工業經營) has the meaning given by section 2(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59), but does not include an undertaking or agricultural operation to which that Ordinance does not apply under section 2(3) of that Ordinance;

proprietary Chinese medicine (中成藥) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).

83. Exemption from section 80

- (1) On application, the Authority may exempt a person from a prohibition imposed under section 80(1) if the Authority considers that the exemption—
 - (a) is warranted; and
 - (b) would be unlikely to lead to a health risk to the community.
- (2) The Authority—
 - (a) may impose any condition subject to which the exemption is granted; and
 - (b) may withdraw the exemption at any time.

- (3) If the person fails to comply with a condition of the exemption, the person commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months.

84. Seizure etc. of asbestos or asbestos containing material following conviction under section 80

- (1) If a person is convicted of an offence under section 80(2), the Authority or an authorized officer may—
- (a) seize, remove, destroy or otherwise dispose of the asbestos or asbestos containing material connected with the offence; or
 - (b) by notice require the person to remove, destroy or otherwise dispose of the asbestos or asbestos containing material within the time and in the manner specified in the notice.
- (2) If the person fails to comply with a requirement in the notice—
- (a) the person commits an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for 6 months;
 - (b) the Authority or an authorized officer may, without further notice, seize, remove, destroy or otherwise dispose of the asbestos or asbestos containing material connected with the offence; and
 - (c) the person is liable to the Government for any costs incurred under paragraph (b) (including the transportation and storage costs of the asbestos or asbestos containing material).
- (3) The costs under subsection (2)(c) are recoverable as a civil debt due to the Government.”.
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Part 3

Related Amendments to Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 sub. leg. AD)

9. Section 12 amended (protective equipment zone)

Section 12(2)—

Repeal paragraph (a).

10. Section 21 repealed (prohibitions, etc.)

Section 21—

Repeal the section.

11. Sections 21A to 21D added

Before Part VI—

Add

“21A. Ban on asbestos spraying

The proprietor of an industrial undertaking must not undertake asbestos spraying in the industrial undertaking.

21B. Ban on using asbestos insulation

The proprietor of an industrial undertaking must not use in the industrial undertaking asbestos insulation for thermal, acoustic or other insulation (including fire protection).

21C. Ban on working with amphibole asbestos

(1) The proprietor of an industrial undertaking must not carry out work with amphibole asbestos in the industrial undertaking.

- (2) Subsection (1) does not prohibit the proprietor from removing or disposing of amphibole asbestos that was in use before 1 September 1997.

21D. Ban on working with chrysotile

- (1) The proprietor of an industrial undertaking must not carry out work with chrysotile in the industrial undertaking.
- (2) Subsection (1) does not prohibit the proprietor from removing or disposing of chrysotile that was in use before Part 3 of the Air Pollution Control (Amendment) (No. 2) Ordinance 2013 (of 2013) comes into operation.”.

12. Section 23 amended (offences by proprietors)

- (1) Section 23—

Re-number the section as section 23(1).

- (2) Section 23(1)—

Repeal

“, 20 or 21”

Substitute

“or 20”.

- (3) After section 23(1)—

Add

- “(2) A proprietor who, without reasonable excuse, fails to comply with section 21A, 21B, 21C or 21D commits an offence and is liable to a fine of \$200,000 and to imprisonment for 6 months.”.
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Explanatory Memorandum

The object of this Bill is to amend the Air Pollution Control Ordinance (Cap. 311) (*principal Ordinance*) to prohibit the use, supply, import and transshipment of asbestos, or asbestos containing material, as defined in section 2 of the principal Ordinance. The Bill also makes related amendments to the Factories and Industrial Undertakings (Asbestos) Regulation (Cap. 59 sub. leg. AD) (*Regulation*) to tighten up the control on the use of asbestos in industrial undertakings.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 amends the definition of *asbestos containing material* in section 2 of the principal Ordinance by removing the requirement that the material must contain more than 1% asbestos.
4. Clause 4 amends section 28(1)(da), (db), (ic), (iiib) and (iva) of the principal Ordinance by making the provisions applicable to asbestos or asbestos containing material instead of solely to asbestos containing material.
5. Clause 5 replaces section 78 of the principal Ordinance with a new section containing a defence provision in line with the new section 81.
6. Clause 6 adds a new Part X heading to the principal Ordinance. That Part contains provisions banning the use, supply, import and transshipment of asbestos or asbestos containing material.
7. Clause 7 replaces section 80 of the principal Ordinance with a new section to provide for the ban on using, supplying, importing and transshipping asbestos or asbestos containing material. In particular, the new section 80(5) provides for the definitions of *supply* and *use*.

8. Clause 8 adds the following provisions to the principal Ordinance—
 - (a) new section 81—providing a defence for a defendant charged under the new section 80(2) by putting the evidential burden on the defendant to prove that the defendant had no knowledge of the existence of asbestos or asbestos containing material; and
 - (b) new section 82—providing for the circumstances to which the ban does not apply; and
 - (c) new section 83—providing that the Authority, as defined in section 2 of the principal Ordinance, may exempt a person from the ban; and
 - (d) new section 84—providing that if a person is convicted of an offence under the new section 80(2), the Authority or an authorized officer may seize, remove, destroy or otherwise dispose of the asbestos or asbestos containing material connected with the offence, or require that person to do so.
9. Clause 9 repeals section 12(2)(a) of the Regulation to require the designation of a protective equipment zone for work with chrysotile.
10. Clause 11 adds a new section 21D to the Regulation that bans the proprietor of an industrial undertaking from carrying out work with chrysotile in the industrial undertaking.
11. Clause 12 amends section 23 of the Regulation by raising the maximum penalty for offences related to the ban on using asbestos in industrial undertakings.