

**COMPENSATION FOR OCCUPATIONAL INJURIES AND
DISEASES ACT, 1993 (ACT NO 130 OF 1993)**

**REGULATIONS ON CONTACT DERMATITIS FOR THE COMPENSATION
FUND MADE UNDER COMPENSATION FOR OCCUPATIONAL INJURIES
AND DISEASES ACT, 1993**

The Minister of Employment and Labour, after consultation with the Compensation Board, has made the regulations under section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993) in Schedule A. These regulations are published for public comments only.

Interested and affected parties are hereby invited to submit written representations on the proposed Regulations. The aforesaid representations must be marked for the attention of **Mr TH Maphologela** and sent by registered post or emailed or hand delivered within 60 days of publication of this notice to the following addresses:


Compensation Fund
167 Thabo Sehume Street
Pretoria
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OR

PO Box 955
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0001

Email addresses: Kimibly.Makgoba@labour.gov.za or Harry.Maphologela@labour.gov.za

Copies of the Regulations are herewith attached.

A handwritten signature in blue ink, appearing to read 'Nxesi', is written over a horizontal line.

MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 26/03/2020

SCHEDULE A**REGULATIONS ON CONTACT DERMATITIS FOR THE COMPENSATION FUND MADE UNDER THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993****ARRANGEMENT OF REGULATIONS****Pages**

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1. Definitions

In these Regulations, a word or expression to which a meaning has been assigned in the Act or these Regulations bears the meaning so assigned and, unless the context indicates otherwise-

“ADL” means Activities of Daily Living;

“allergen” means a substance that can cause an allergy, or a reaction on the skin or any other organ;

“dermatitis” means inflammation of the skin;

“dermatologist” means a medical doctor who has specialized in skin conditions;

“occupational contact dermatitis or eczema” means a clinically recognised condition of the skin caused entirely or aggravated by conditions in the workplace. Two types of contact dermatitis are generally recognized, namely irritant contact dermatitis and allergic contact dermatitis;

“patch test” means a test that is used to test skin for allergies. Allergens are applied to the skin using patches;

“Regulations” means the Regulations on Contact Dermatitis for the Compensation Fund made under the Compensation for Occupational Injuries and Diseases Act, 1993;

“RPPTR” means Relevant Positive Patch Test Reaction.

2. Diagnosis

The diagnosis of occupational dermatitis shall be made by a medical practitioner based on the following:

- (a) a detailed medical history and the nature and distribution of the skin lesions. A colour photograph must be provided, where available;
- (b) a full history of all occupational risk factors (physical, chemical and biological);
- (c) occupational exposure to a known causative agent of contact dermatitis and a chronological relationship between the dermatitis and the work environment.
- (d) a confirmatory skin test which is mandatory such as the Patch Test.
- (e) the opinion and confirmation of the diagnosis by a dermatologist when the dermatitis is recurrent or resistant to treatment for more than six consecutive weeks.

3. Impairment

- (1) The impairment shall be assessed after removal from exposure or maximum medical improvement has been reached:
- (2) Criteria for rating permanent impairment shall be determined based on the following:
 - (a) Table 8.2. must be used to establish the diagnosis, using objective physical examination and laboratory tests;

- (b) Table 8.3 provides suggestions for physical examination findings and laboratory tests;
- (c) the individual must be placed in the appropriate class based on history, physical examination, and diagnostic findings;
- (d) the impact of the skin disease on ability to perform ADLs must be focused upon;
- (e) a beginning must be made by selecting the middle number of the class; and
- (f) the percentage of time that symptoms are present and the amount of treatment required must be considered.

Table 8-2 Criteria for Rating Permanent Impairment due to Skin Disorders

| IMPAIRMENT CLASS | CLASS 0 | CLASS 1 | CLASS 2 | CLASS 3 | CLASS 4 |
|------------------------|---|---|---|---|--|
| IMPAIRMENT RANGES | 0 | 1%-9% UE | 11%-27% UE | 30%-42% UE | 45%-58% |
| GRADE | | 1 3 5 7 9 (A B C D E) | 11 15 19 23 27 (A B C D E) | 30 33 36 39 42 (A B C D E) | 45 48 51 54 58 (A B C D E) |
| HISTORY ^{a,c} | <p>Skin disorder signs have been present in the past but are currently present <1% of the time^b</p> <p>and</p> <p>no medication is necessary</p> <p>and</p> | <p>Skin disorder signs and symptoms consistent with Table 8-3 are present 1%-30% of the time^b</p> <p>and</p> <p>may intermittently require treatment with topical medications^a</p> <p>and</p> | <p>Skin disorder signs and symptoms consistent with Table 8-3 are present 30%-60% of the time^b</p> <p>and</p> <p>often require treatment with topical or systematic medications</p> | <p>Skin disorder signs and symptoms consistent with Table 8-3 are present 60%-90% of the time^b</p> <p>and</p> <p>require intermittent to constant treatment with topical medications and</p> <p>when signs</p> | <p>Skin disorder signs and symptoms consistent with Table 8-3 are present >90% of the time^b</p> <p>and</p> <p>require treatment with topical or systemic medications on a regular basis^a</p> <p>and</p> <p>There is</p> |

| | | | | | |
|--|---|--|--|--|--|
| | there is essentially no interference with activities of daily living (ADLs) | when signs and symptoms are present, there is minimal interference with ADLs | <i>and</i> when signs and symptoms are present, there is mild interference with ADLs | and symptoms are present, there is moderate interference with ADLs | severe interference with most ADLs to the extent that confinement may be required. All cancers not in remission, other than basal cell carcinoma, automatically receive 58% combined with all other systemic or musculoskeletal impairments or 100% when terminal. |
| PHYSICAL EXAMINATION FINDINGS ^c | | Physical examination findings in accordance with Table 8-3 are present when symptoms are present. When present, the findings (1) do not cover 10% of the body, (2) exclude the face and/or (3) are usually transitory or can be concealed. | Physical examination findings in accordance with Table 8-3 are present when symptoms are present. When present, the findings generally (1) cover 10%-20% of the body but can usually be concealed and/or (2) significantly involve | Physical examination findings in accordance with Table 8-3 are usually present. The findings generally (1) cover 20%-40% of the body and can be at least partially concealed in most social situations and/or (2) involve the entire | Physical examination findings Table 8-3 are present almost all the time. Findings generally cover >40% of the body and are not able to be concealed in most social situations. May move to highest number in class 4 depending on extent |

| | | | | | |
|--|--|--|---|----------------------------|---|
| | | | the face or anterior part of the neck and/or hands. | palmar aspect of the hand. | of involvement, and ability to conceal. |
|--|--|--|---|----------------------------|---|

| DIAGNOSTIC TEST FINDINGS ^c | Diagnostic test findings expected to be positive are either negative or the test or tests have not been performed. For example, for allergic contact dermatitis, class 0 would be assigned if there were no relevant positive patch test reactions (RPPTRs) ^e | Diagnostic test findings expected to be positive are equivocal. For example, for allergic contact dermatitis, class 1 would be assigned for patch test reactions that are equivocal but would be considered relevant if positive. | Diagnostic test findings expected to be positive are positive and in the range of results expected in typical cases of the given diagnosis. For example, for allergic contact dermatitis, class 2 would be assigned if there was at least one RPPTR. ^e | Diagnostic test findings expected to be positive are positive and are somewhat beyond the range of results expected in typical cases of the given diagnosis. For example, for allergic contact dermatitis, class 3 would be assigned for multiple RPPTRs. ^e | Diagnostic test findings expected to be positive are positive and are significantly beyond the range of results expected in typical cases of the given diagnosis. For example, for allergic contact dermatitis, class 4 would be assigned if multiple RPPTRs ^e where present that indicated that the patient must avoid many widespread substance or crucial occupationally related substances. |
|---------------------------------------|--|---|---|--|--|
|---------------------------------------|--|---|---|--|--|

^a Determine the patient's class using the history, focussing on medically documented interference with ADLs. Objective examination findings must have been documented by a physician on at least one occasion to perform a rating.

^b Scars are present permanently, and thus the time element is not used as part of the rating.

^c Any facial scarring should be graded according to Table 11-5 and then combined with other impairments from this chapter when applicable.

^d The category of Diagnostic Test Findings is not applied to scars. If no diagnostic tests are

necessary or expected to be positive, then use number obtained after assessing physical examination findings as final impairment rating. Patch test reactions graded as having definite, probable, possible, or past relevance should all be considered to be RPPTRs (see Section 8.1b for a discussion of assigning relevance to patch

Skin Impairment Evaluation Summary

Table 8-3 Skin Impairment Evaluation Summary

| Disorder | History, Including Selected Relevant Symptoms | Examination Record | Assessment of Skin Function | End-Organ or System Damage | Diagnosis | Degree of Impairment |
|---------------------------------|---|---|---|---|---|----------------------|
| Dermatitis ^{15, 26-29} | Duration, location, itch, redness, nail or pigment change Episode of superimposed Infection Progression and remission factors, response to therapy, side effect from therapy Atopy childhood eczema Effect on work, hobbies, etc. | Papules, papule vesicular Erythema, serous discharge, crusting, edema, scale, lichenified or thickened plaques % of skin surface involved, hand, foot, face involvement | Clinical presentation and history Biopsy (may not be necessary) Patch testing only positive in allergic contact dermatitis) | Exfoliative erythroderma, atopy, rhinitis, asthma | Atopic, Allergic, irritant contact Acute, subacute, chronic Urticaria, photosensitive, Seborrheic, exfoliative, stasis, hand and foot, nummular | See Table 8.2 |

4. Compensation Benefits

- (1) Payment for temporary total disablement shall be made for as long as such disablement continues, but not for a period exceeding 24 months.
- (2) If total impairment score is zero to three (i.e. permanent disablement less than or equal to 30%), permanent disablement shall be determined and a lump sum shall be paid in terms of the Act.

- (3) If total impairment score is more than three (i.e. permanent disablement is higher than 30%), a pension shall be paid in terms of the Act.

5. Medical Benefits

- (1) Medical costs shall be provided for a period of 24 months from the date of diagnosis or longer, if in the opinion of the Commissioner, further medical costs would reduce the extent of the disablement.
- (2) Medical costs shall cover the costs of diagnosis of occupational contact dermatitis and any necessary treatment provided by any medical practitioner as well as the costs of chronic medication in the sensitized individuals.
- (3) Medical costs shall also be provided for episodes of acute on chronic flare-ups. The Commissioner shall decide on the need for, the nature and sufficiency of medical costs to be supplied.

6. Death Benefits

Death benefits payable are—

- (a) reasonable burial expenses payable in terms of the Burial Expenses Policy; and
- (b) widow's and dependent's pensions payable, where applicable, if the employee dies as a result of occupational contact dermatitis.

7. Reporting

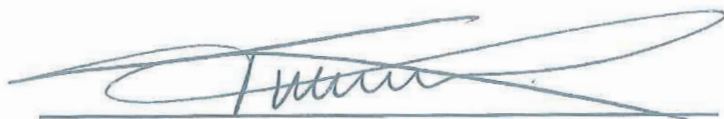
The following documentation must be submitted to the Compensation Fund or the employer individually liable or the licensee concerned:

- (a) Employer's Report of an Occupational Disease (W.CL.1);
- (b) Notice of an Occupational Disease and Claim for Compensation (W.CL.1 4);
- (c) an affidavit by the employee (W.CL.305) if an employer cannot be traced or the employer fails to timeously submit the Employer's report of an Occupational Disease (W.CL.1);
- (d) Exposure History (W.CL. 110) or an appropriate employment history that may include any information that may be helpful to the Compensation Commissioner, such as Material Safety Data Sheets, risk assessment or environmental hygiene reports. The causal agent(s) must be confirmed;
- (e) First Medical Report in respect of an Occupational Disease (W.CL.22)
- (f) skin patch test results;

- (g) results of acceptable special medical tests or investigations carried out by the medical practitioner;
- (h) Progress Medical Report (W.CL.26) for each consultation;
- (i) Final Medical Report in respect of an Occupational Disease (W.CL.26) or the Dermatological report when the employee's condition has reached maximum medical improvement including colour photographs of affected areas; and
- (j) In case of death, a death certificate and a BI1663 (notification of death) must be submitted. Alternatively, a death certificate accompanied by a detailed medical report on a practice letterhead on the cause of death should be submitted.

8. Claims Processing

- (1) The Commissioner shall consider and adjudicate upon the liability of all claims.
- (2) The medical officers employed by the Compensation Fund are responsible for the medical assessment of a claim and for the confirmation of the acceptance or rejection of a claim.



MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR

DATE: 26/03/2020



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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Eng: Adv. S Netshitomboni
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Date: 06 December 2019

Mr T Lamati
The Director-General
Department of Employment and Labour
Private Bag X117
PRETORIA
0001

For Attention: Mr Harry Maphologela (Harry.Maphologela@labour.gov.za)

Dear Mr Lamati

REGULATIONS ON CONTACT DERMATITIS FOR THE COMPENSATION FUND MADE BY THE MINISTER UNDER THE COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993: YOUR UNNUMBERED E-MAIL OF 14 OCTOBER 2019

BACKGROUND

1.1 The Department of Employment and Labour (hereinafter referred to as "the Department"), has requested us to scrutinise the form, format, legality and constitutionality of the draft Regulations to be made under section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993).

1.2 The Department further informs us that the Regulations are technical in nature and we need not concern ourselves with the technical nature thereof as the Department's medical personnel has attended to the technical issues.

1.3 We have commented on the Regulations and proposed certain amendments directly on the electronic copy of the Regulations attached hereto.

SUMMARY OF REGULATIONS

2. Ad Regulation 1

2.1. Regulation 1 provides for definitions.

Ad Regulation 2

2.2. Regulation 2 provides for the diagnosis of occupational dermatitis made by a medical practitioner.

Ad Regulation 3

2.3. Regulation 3 provides for assessment of impairment after removal from exposure or maximum medical improvement has been reached.

Ad Regulation 4

2.4. Regulation 4 provides for payment of temporary disablement for as long as such disablement continues, but for a period not exceeding 24 months.

Ad Regulation 5

2.5. Regulation 5 provides for provision of medical costs for a period of 24 months from the date of diagnosis or longer if in the opinion of the Commissioner, further medical costs would reduce the extent of disablement.

Ad Regulation 6

2.6. Regulation 6 provides for death benefits payable for reasonable burial expenses terms of the Burial Expenses Policy.

Ad Regulation 7

2.7. Regulation 7 provides for the documents to be submitted to the Compensation Fund or the employer individually liable or the licensee concerned.

Ad Regulation 8

Regulation 8 provides for the process by the Commissioner to adjudicate upon the liability of all claims.

NATURE OF POWER TO MAKE REGULATIONS

3. The delegation of legislative power to the Executive by Parliament is important and necessary for effective law-making and implementation. In **Executive Council, Western Cape Legislature, and Others v President of the Republic of South Africa and Others 1995 (4) SA 877 (CC)**, the Constitutional Court ["CC"], per Chaskalson P (as he then was), stated the following with regard to the need for Parliament to delegate its law-making powers to the Executive.

"[51] The legislative authority vested in Parliament under section 37 of the Constitution is expressed in wide terms - "to make laws for the Republic in accordance with this Constitution." In a modern state detailed provisions are often required for the purpose of implementing and regulating laws, and Parliament cannot be expected to deal with all such matters itself. There is nothing in the Constitution which prohibits Parliament from delegating subordinate regulatory authority to other bodies. The power to do so is necessary for effective law-making. It is implicit in the power to make laws for the country and I have no doubt that under our Constitution parliament can pass legislation delegating such legislative functions to other bodies. There is, however, a difference between delegating authority to make subordinate legislation within the framework of a statute under which the delegation is made, and assigning plenary legislative power to another body, including, as section 16A does, the power to amend the Act under which the assignment is made."

4. The power to make regulations is a public power that must be exercised subject to the Constitution and the law. In **Affordable Medicine Trust and Others v Minister of Health and Others 2006 (3) SA 247 (CC)** the CC stated the following:

"[48] Our constitutional democracy is founded on, among other values, the '[s]upremacy of the constitution and the rule of law.'¹ The very next provision of the Constitution declares that the 'Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid.' And to give effect to the supremacy of the Constitution, courts "must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency".² This commitment to the supremacy of the Constitution and the rule of law means that the exercise of all public power is now subject to constitutional control.

[49] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law.³ The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution.⁴ It entails that both the legislature and the executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.'⁵ In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of public power."⁶

Therefore in exercising the power to make regulations, the authorised functionary has to comply with the Constitution, which is the supreme law, and the empowering provisions.. If, in making regulations the functionary exceeds the powers conferred by the empowering provisions, the functionary acts *ultra vires* (beyond the powers) and in breach of the doctrine of legality.

Section 97 of the Act

5. Section 97 of the Act provides as follows:

"(1) The Minister may make regulations, after consultation with the Board, regarding-

- (a) the place of meeting and the procedure to be followed at any meeting of the Director-General and assessors or at any proceedings in terms of this Act with which the assessors are concerned, or at any investigation in terms of this Act;
- (b) subject to section 76, the fees payable to medical practitioners or chiropractors in respect of services rendered in terms of this Act;
- (c) the procedure to be followed in paying assessments and fines to the Director-General;

- (d) the persons to whom, the places where and the manner in which payment of assessments in terms of this Act shall be made;
 - (e) the determination of the amount and the conditions and manner of payment of benefits to assessors or classes of assessors;
 - (f) the disposal of moneys payable in terms of this Act to any person other than the Director-General and not claimed within the prescribed period by the person entitled thereto;
 - (g) any matter which shall or may be prescribed by regulation in terms of this Act;
 - (h) any other matter, whether or not connected with any matter mentioned in paragraphs (a) to (g), which he may deem necessary or expedient to prescribe in order to further the objects and purposes of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different classes of employers and employees and of different areas, and the Minister may, after consultation with the Board, in respect thereof differentiate in such manner as he or she may deem expedient.
- (3) Any person who contravenes or fails to comply with any regulation made under subsection (1) shall be guilty of an offence and liable on conviction to a fine, or imprisonment for a period not exceeding six months."

From section 97(1) of the Act it is clear that the Minister does not have the express authority to make regulations dealing with work-aggravated asthma or with specific occupational diseases. Therefore, in order to make the draft Regulations the Minister must be so authorised by paragraph (g) or (h) of subsection (1) of section 97 of the Act.

Minister's power to make the draft Regulations in terms of section 97(1)(g) of the Act

6.1 The Minister is authorised to make regulations in terms of section 97(1)(g) of the Act if another section in the Act authorises him to make regulations relating to the subject matter dealt with in that section. There are many sections in the Act which, when read with section 97(1)(g) of the Act, authorise the Minister to make regulations. However, there are none that authorise him or her to make regulations regarding occupational diseases. Therefore, we are of the opinion that the Minister cannot make the draft Regulations in terms of section 97(1)(g) of the Act.

Minister's power to make the draft Regulations in terms of section 97(1)(h) of the Act

6.2. In view of our conclusion in paragraph 6.1 above it must be determined whether the Minister is authorised to make the draft Regulations in terms of section 97(1)(h) of the Act. This section makes it clear that the "objects and purposes" of the Act must be determined before the question whether the Minister has the power in terms of section 97(1)(h) of the Act to make the draft Regulations can be addressed. In **Road Accident Fund v Makwetlane** 2005 (4) SA 51 (SCA), (hereinafter referred to as "the **Makwetlane** case") the Court discussed the power of the Minister of Transport to make regulations to "achieve or promote the objects" of the Road Accident Fund Act, 1996 (Act No. 56 of 1996) and remarked as follows at pp. 58-59:

"Section 26 empowers the Minister to make regulations in order to achieve or promote the objects of the Act. It does not confer authority on him to traverse terrain outside that limited scope and ambit. All regulations promulgated by the Minister must thus be reasonably necessary to achieve those objects and goals. It is indeed so that the possibility of fraud is greater in cases where the identity of the driver or owner of the vehicle in question has not been established, as it would usually be difficult for the RAF to secure evidence to dispute a claim (see *Mbatha* at 718H). Stricter requirements would thus be justified in unidentified vehicle cases. It follows that regulations designed to eliminate fraud and facilitate proof of legitimate claims, falling as it does within the Minister's power to regulate, would be permissible. No other reason has been suggested for such a requirement and I can think of none. That legitimate end, may not, however, be achieved by means that sweep too broadly. ...

The Constitution places significant restraints upon the exercise of public power. It is a requirement of the rule of law that the exercise of public power should not be arbitrary. It follows that the exercise by the Minister of the regulatory power conferred upon him had to be rationally related to the purpose for which the power was granted - rationality being the minimum threshold requirement. (See *Pharmaceutical Manufacturers* paras [85] and [86].) Conduct that fails to pass that threshold requirement would fall below the standards set by our Constitution and would therefore be unlawful." (Our underlining.)

We are of the opinion that in view of the underlined remarks in the **Makwetlane** case, quoted above, the following deductions can be made regarding the Minister's power to make regulations in terms of section 97(1)(h) of the Act:

- (a) Section 97(1)(h) of the Act limits the power of the Minister to making regulations that relate to the achievement of the objects and purposes of the Act.
- (b) The regulations made under section 97(1)(h) of the Act must be rationally connected to the objects and purposes of the Act.

Objects and purposes of the Act

7. The Act does not contain a section that clearly sets out the objects and purposes thereof. Therefore, it is necessary to determine the objects and purposes of the Act by considering it as a whole. In **Minister of Justice and Constitutional Development and Others v Southern Africa Litigation Centre and Others** 2016 (3) SA 317 (SCA) the Court remarked as follows at p 356:

"But I mention it because it illustrates the importance, in the context of the interpretation of the Implementation Act, of construing it in a way that accords with and gives effect to the spirit, purport and objects of the Bill of Rights.

[89] The starting point in the interpretational exercise is the long title of the Implementation Act, which describes its purposes." (Our underlining.)

From the underlined remarks of the Court, quoted above, it is clear that the long title of a statute is an important source of information regarding the objects and purposes of that statute. The long title of the Act provides as follows:

"To provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith."

The first part of the long title states the purpose of the Act in clear terms. The second part of the long title provides that it is also the purpose of the Act to provide for matters connected to the compensation of employees for disablement or death caused by occupational injuries or diseases sustained or contracted by them in the course of their employment. Dermatitis is listed in item 2.2.1 of Schedule 3 as an occupational disease. We are of the opinion that regulations regarding the occupational diseases for which compensation may be claimed is a matter connected to the main purpose of the Act. Consequently, the Minister is authorised in terms of section 97(1)(h) of the Act to make regulations dealing with occupational diseases for which an employee may claim compensation in terms of the Act.

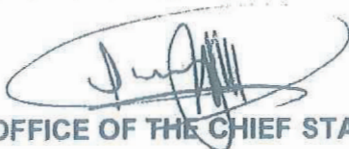
OFFICIAL LANGUAGES

8. We are of the opinion that the Regulations must be published in at least two official languages as required by section 6(3) of the Constitution of the Republic of South Africa, 1996.

CONCLUSION

9. Subject to the above comments and the suggested changes made on the text of the draft Regulations, we are of the opinion that the draft Regulations are authorised by section 97 of the Act.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'S Netshomboni', is written over a faint, circular official stamp or watermark.

OFFICE OF THE CHIEF STATE LAW ADVISER
S NETSHITOMBONI/ J NURSE/ B MAKHENE