

THE UNITED REPUBLIC OF TANZANIA

ACTS SUPPLEMENT**No. 4****11th April, 2003***to the Gazette of the United Republic of Tanzania No. 15 Vol. 84 dated 11th April, 2003*

Printed by the Government Printer, Dar es Salaam, by Order of Government

THE OCCUPATIONAL HEALTH AND SAFETY ACT, 2003

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SCHEDULES

THE UNITED REPUBLIC OF TANZANIA



No. 5 OF 2003

I ASSENT,

BENJAMIN WILLIAM MKAPA,
*President*5TH APRIL, 2003

An Act to repeal the Factories Ordinance; to make provisions for the safety, health and welfare of persons at work in factories and other places of work; to provide for the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with activities of persons at work; and to provide for connected matters

[.....]

ENACTED by the Parliament of the United Republic of Tanzania

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Occupational Health and Safety Act, 2003 and shall come into operation on such date as the Minister may, by notice published in the *Gazette* appoint.

Short title
and
commen-
cement

2.—(1) This Act shall apply to factories and all other work places as defined under this Act unless exempted by the Minister in accordance with the provisions of this Act.

Applica-
tion

(2) In case of any work which would constitute a factory, the provisions of this Act shall apply as if the owner or occupier of the workplace is the occupier of the factory and the persons working there were persons employed in the factory.

(3) Where a place is situated within the close cartilage or precincts forming a factory is solely used for some purpose other than processes carried on in the factory that place shall not be deemed to form part of the factory for the purposes of this Act but shall, if otherwise would be a factory be deemed to be a separate factory.

(4) Any line or siding, not being part of a railway which is used in connection with and for the purposes of a factory if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding shall be deemed to be a separate factory, and the provisions of this Act shall apply as if such different occupiers were jointly the occupiers of the line or siding so deemed to be a factory.

Interpre-
tation 3. In this Act, unless the context otherwise requires -“air receiver” means—

(i) any vessel, other than pipe or coil, or an accessory, fitting or part of a compressor, for containing compressed air and connected to an compressing plant; or

(ii) any fixed vessel or tank for containing compressed air or compressed exhaust gases and used for the purpose of starting an internal combustion engine;

“article” includes any solid, liquid or gas or any combination of them;

“Authority” means the Occupational Safety and Health Authority;

“authorized plant inspector” means any person whether an officer of the Government or not who is authorized by the Chief Inspector to carry out examination and tests and issue a certificate as may be required;

“approved inspection authority” means an inspection authority approved by the Chief Inspector with respect to a particular service;

“bodily injury” means physical or mental injury;

“biological monitoring” means a planned programme of periodic collection and analysis of body fluid, tissues, excreta, or exhaled air;

Act No.30
of 1997

“Board” means the Ministerial Advisory Board established under section 6 of the Executive Agencies Act, 1997;

"building operation" means the construction, structural alteration, repair or maintenance of a building, including re-painting, redecoration and external cleaning of the structure the demolition of a building, and the preparation for and laying the foundation, of an intended building, but does not include any operation which is a civil engineering work within the meaning of this Act;

"certificate of registration" means certificate of registration granted under this Act;

"Chief Inspector" means the chief inspector of factories and other workplaces appointed under section 4 and who shall be the Chief Executive of Occupational Safety and Health Authority appointed under the Executive Agency Act, 1997, and includes the Acting Chief Inspector;

"civil engineering work" includes, operation at bridges, aqueducts, dams, reservoirs, docks, inland navigation, waterworks, sewerage works, steel and reinforcement concrete structures, river works, roads, pipe lines, tunnels and shafts.

"Committee" means a Health and Safety Committee established under section 13;

"compliance licence" means an occupational safety and health compliance licence issued under section 17(3);

"danger" means any injury or damage to persons, property or environment;

"employee" means any person who -

- (a) is employed by or works for an employer and who receives or entitled to receive any remuneration; or
- (b) works under the direction or supervision of an employer or any other person;
- (c) is apprentice;

"employer" means any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him;

"exit medical examination" means medical examination conducted on an employee upon leaving his employment;

"explosives" means any substance capable of releasing energy in a rapid and uncontrolled manner to give rise to explosions;

"factory" means any premises in which persons are employed in any process for or incidental to -

- (a) the making of any article or part of any article; or

- (b) the altering, repairing, ornamenting, finishing, clearing or washing or the breaking up or demolition of any article or
- (c) the adapting for sale of any article, being premises in which or within the close or cartilage or precincts of which the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control; and include:
 - (i) any yard or dry dock, including the precincts thereof; in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken;
 - (ii) any premises in which the business of washing or filling of bottles or containers or packing articles, is carried on incidentally to the purposes of any factory;
 - (iii) any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to transport undertaking or other industrial or commercial locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out;
 - (iv) any premises in which printing or other similar process, or bookbinding is carried on by way of trade or for purposes of gain or incidentally to another business so carried on;
 - (v) any premises in which mechanical power is used in connection with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain;
 - (vi) any premises in which articles are made or prepared incidentally to the carrying on of building operations or civil engineering works;
 - (vii) any premises in which persons are regularly employed in or in connection with the generating of electrical energy for supply by way of trade, or for supply for the purposes of any industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places;
 - (viii) any premises in which mechanical power is used for the purposes of or in connection with a water supply, being premises in which persons are regularly employed;

- (ix) any sewage works in which mechanical power is used and any pumping station used in connection with any sewage works;
- (x) any site in which building or civil engineering works are being carried on;
- (xi) any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the factory or workplace if the persons working there were in the employment of the owner or occupier;
- (xii) any premises belonging to or in the occupation of the Government, or any local authority, where the work carried there is by way of trade, or for the purpose of gain;

“hazard” means a source of or exposure to danger;

“health and safety equipment” means any article or part thereof which is manufactured, provided or installed in the interest or the health or safety of any person, property or environment;

“Inspector” means an occupational safety and health officer in the service of the Government or any other person appointed by the Chief Inspector to be an Inspector for the purpose of this Act;

“lifting tackle” includes chains, Claris hips, rope slings rings, holes, shackles and swivels.

“local authority” has the meaning ascribed for it under the Local Government (District Authorities) Act, 1982 and Local Government (Urban Authorities) Act, 1982;

Act Nos:
7 & 8 of
1982

“machinery” means any article or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to perform work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy.

“maintained” means work maintained in an efficient state in efficient working order and in good repair;

“manual labour” means work ordinarily performed by tradesmen of every type and description, labourers and drivers of all modes of transport, but does not include clerical work or similar occupation;

“maximum permissible pressure” means the pressure specified in the relevant certificate or the pressure specified in the report of the last

- examination;
- "medical surveillance" means a planned programme or specialized examination or periodic examination, which may include clinical examinations, biological monitoring or medical tests of employees by an occupational health practitioner or, an occupational medicine practitioner;
- "Minister" means the Minister responsible for labour;
- "occupational disease" means any disease arising out of or in the course of employment;
- "occupational health" includes occupational hygiene, occupational medicine and biological monitoring;
- "Occupational Health Practitioner" means a health and safety professional with postgraduate training in occupational health;
- "occupational hygiene" means the anticipation, recognition, evaluation and control of conditions arising in or from a workplace, which may cause illness or adverse health effects to persons;
- "Occupational Medicine Practitioner" means a medical doctor with postgraduate training in occupational medicine or occupational health;
- "organism" means any biological agent which is capable of causing illness to persons;
- "plant" includes fixtures, fittings, implements, equipment, tools and appliances, and anything which is used for any purpose in connection with such plant;
- "premises" includes any building, vehicle, vessel, train or aircraft;
- "prime-mover" means an engine, motor or other appliance which provides mechanical energy driven from steam, water, wind, electricity, combustion of fuel or other source;
- "properly used" means used with due regard to any information, instruction or advice supplied by the designer, manufacturer, importer, seller or supplier;
- "register" means a register of factories and workplaces established under section 15 and includes any other register kept in every factory workplace;
- "risk" means the probability that injury of or damage to person, property or environment will occur;
- "safe working pressure" means the pressure specified in the relevant certificate under this Act or the pressure which is specified in the report of the last examination;
- "sanitary convenience" include urinals, water-closets, earth-closets, privies, ash-pits, and any similar conveniences;
- "sell" includes -

- (a) to offer or display for sale or import into Mainland Tanzania for sale; or
- (b) to exchange, donate, lease or offer or display for leasing;
- “steam boiler” means any closed vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure, and includes hot water boiler and any economizer used to heat water being fed to any such vessel, and super-heater used for heating steam;
- “steam container” means any vessel other than a steam pipe or coil with a permanent outlet to the atmosphere or into a space where pressure does to the atmosphere or into a space where pressure does not exceed atmospheric pressure and through which steam is passed at atmospheric pressure or at approximately that pressure for the purpose of heating, boiling, drying, evaporating or other similar purposes;
- “steam receiver” means any vessel or apparatus, other than steam under pressure greater than atmospheric pressure;
- “substance” includes any solid, liquid, vapour, gas or aerosol, or combination thereof;”
- “trade union” means a trade union as defined under the Trade Unions Act, 1998;
- “transmission machinery” means a shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other device by which the motion of a prime mover is transmitted to or received by any machine or appliance;
- “user” means in relation to plant or machinery, means the person who uses plant or machinery for own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of or any person employed in connection with that plant or machinery.
- “worker” means an employee or a self-employed person, and for such purpose an employer or a self-employed person is deemed to be at work during the time that he is in the course of employment.
- “workplace” means any premises or place where a person performs work in the course of his employment;

Act No.
10 of
1998

PART II

ADMINISTRATION

- 4.—(1) The Minister shall appoint the Chief inspector from amongst persons who possess the necessary qualifications, experience and competence to perform the functions under this Act.
- (2) The Chief Inspector appointed under subsection (1) shall

Appoint-
ment and
powers
of Chief
Inspector

Act No.
30 of
1997

perform his functions in accordance with the Executive Agencies Act 1997 and this Act.

(3) Without prejudice to the generality of subsection (2), the functions of the Chief Inspector shall include

- (a) to keep record of publication on health and safety standards which are incorporated in the Regulations, Rules or Orders;
- (b) to keep record of amendments of substitution of any health and safety standard so published;
- (c) to keep and maintain register of factories;
- (d) to keep records and other register of any other matters which need to be registered under this Act;
- (e) to do such other functions as may be required under this Act;
- (f) to make available for inspection by interested persons, any register or extract therefrom.

(4) The Chief Inspector may delegate any power conferred upon him by this Act, to any officer or authorise any such officer to perform any duty assigned to him by this Act.

(5) No delegation of a power under sub-section (4) shall prevent the exercise of that power by the Chief Inspector himself.

(6) The Minister may designate any other officer serving in the authority to act as Chief Inspector during the absence or incapacity or, where no person has been designated as Chief Inspector; until a Chief Inspector is designated.

Appoint-
ment of
inspec-
tors

5. (1) The Chief Inspector may designate any person as an inspector to perform, subject to the control and directions of the Chief Inspector, any or all of the functions assigned to an inspector by this Act.

(2) Every inspector shall be furnished with a certificate of his appointment and when visiting any factory or workplace to which any of the provisions of this Act applies shall, if so required, produce the certificate to the occupier or other person holding a responsible management position at a factory or workplace.

(3) Where an inspector is designated under subsection (1) and performs any function under this Act in the presence of any person affected thereby, the inspector shall on demand by that person produce to him the certificate referred to in subsection (2).

(4) No inspector shall publish or disclose to any person the details of

any manufacturing, commercial, working process or any information concerning the affair of any other person, which may come to his knowledge in the course of his duties under this Act, except -

- (a) in so far as is necessary for the purpose of prosecution for an offence;
- (b) to the extent to which it may be necessary for the proper administration of this Act; or
- (c) at the request of a health and safety representative or a health and safety committee entitled thereto.

(5) An inspector shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of the provisions of this Act, and shall give no intimation to the occupier or his representative that a visit of inspection was made in consequence of that complaint.

(6) Any person who—

- (a) is the occupier of a factory or workplace; or
- (b) is directly interested in a factory or workplace or in any process or business carried therein or in a patent connected therewith; or
- (c) is employed in a factory or workplace,

shall not act as an inspector.

6.—(1) An inspector shall, for the purpose of the performance of this Act have powers to do all or any of the following —

Powers of
inspec-
tors

- (a) without prior notice, to enter, inspect and examine, by day or night, a factory or workplace, and every part thereof, when he has reasonable cause to believe that any person is employed therein;
- (b) to enter, inspect, and examine, any place which he has reasonable cause to believe to be a factory or workplace and any part of any building of which a factory or workplace forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used;
- (c) to exercise such other powers as may be necessary to inspect and examine any machinery, plant, or appliance, in a factory or workplace;
- (d) to take with him any assistant or a police officer if he has

reasonable cause to apprehend any serious obstruction in the execution of his duty;

- (c) to require the production of a register, a certificate, notice, a document, an article, any substance, plant or machinery or a part or a sample in pursuance of this Act;
- (f) to inspect, examine and copy any of the documents mentioned under paragraph (e);
- (g) to seize any documents or article mentioned under paragraph (e) if in the opinion of the inspector the seizure may serve as evidence at the trial of any person charged with an offence under this Act;
- (h) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act, are complied with;
- (i) to require any person whom he finds in a factory or workplace to give such information as it is in his powers to give information as to who is the occupier of the factory or workplace;
- (j) to direct any employer, employee, or user including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question that employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;
- (k) to examine any person, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, and to require every such person to sign a declaration of the truth of the matter to which he is so examined:

Provided that, no person shall be required under this provision to answer any question or give any evidence intending or likely to incriminate himself;

- (l) in the case of an inspector who is a registered occupational medicine practitioner, to carry out such medical examinations as may be necessary for the purpose of his duties under this Act; and
- (m) to exercise such other powers as may be necessary for carrying this Act into effect.
- (n) to carry out investigation on any matter under this Act and

to prepare the relevant report.

(2) The occupier of every factory or workplace, his agent and servant shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, the taking of samples, biological monitoring or for the exercise of his powers under this Act in relation to that factory or workplace.

(3) Any person who—

(a) willfully delays an inspector in the exercise of any power under this section; or

(b) fails to comply with the requirements of an inspector under this section;

(c) obstruct an inspector in the execution of his duties, commits an offence and is liable upon conviction to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding three months, or to both such fine and imprisonment.

7.—(1) An inspector may investigate the circumstances of any incident which has occurred at or originated from a factory or workplace or in connection with the use of a plant or machinery which resulted, or in the opinion of the inspector could have resulted, in the injury, illness or death of any person in order to determine whether it is necessary to hold a formal investigation.

Investigations

(2) After completing the investigation under subsection (1), the inspector shall submit a written report, together with all relevant statements, documents and information gathered by him, to the Chief Inspector for further action.

(3) A prescribed fee and all other related expenses for the investigation shall be borne by the owner or occupier of the factory or workplace.

8. —(1) The Chief Inspector, upon receipt of a complaint may, direct an inspector to conduct a formal inquiry into any incident which has occurred at or originated from a factory or workplace or in connection with the use of plant or machinery which has resulted, or in the opinion of the Chief Inspector could have resulted, in the injury, illness or death of any person.

Formal inquiries

(2) The Inspector shall after the conclusion of an inquiry under this

section prepare and submit a report on inquiry to the Chief Inspector for further action.

(3) The Chief Inspector may, after considering the report under subsection (2)

- (a) advise accordingly;
- (b) issue improvement notice;
- (c) issue prohibition notice; or
- (d) refer the matter to court.

(4) The Minister shall upon consultation with the Chief Inspector make rules prescribing procedures for conducting inquiry under this section.

Appeal
against
decision
of
inspector

9.—(1) Any person aggrieved by a decision of the inspector under this Act may appeal against the decision to the Chief Inspector.

(2) Any person who wishes to appeal in terms of subsection (1), shall within thirty days after the inspector's decision lodge an appeal with the Chief Inspector in writing, setting out the grounds of appeal.

(3) The Chief Inspector shall, after he has considered the grounds of the appeal and the inspector's reasons for the decision, confirm or set aside or vary the decision or substitute for that decision any other decision as may be appropriate.

(4) Any person aggrieved by the decision of Chief Inspector under subsection (3) or in the exercise of any power under this Act, may within thirty days appeal against that decision to the Minister.

(5) Where the Minister has received appeal he shall, within thirty days, determine the appeal.

(6) In determining the appeal the Minister may, vary, confirm or otherwise direct the Chief Inspector the manner in which the matter complained of be treated.

Power
of
Inspec-
tor to
pro-
ceedings
before a
Magis-
trate
Court

10.—(1) An inspector may, prosecute, conduct, or defend before a Magistrate's Court any charge, complaint, or any other proceeding arising under this Act, or in the discharge of his duty as an inspector.

(2) It shall not be an objection to the competence of an inspector to give evidence as a witness in any prosecution brought at his instance or conducted by him.

11.—(1) Subject to the provisions of subsection (2) and (3), every employer who has more than twenty employees in his employment at any factory or workplace shall—

Safety
and
health
representatives

- (a) within four months after the commencement of this Act; or
- (b) after commencing business; or
- (c) from such time as the number of employees exceeds four designate in writing for a specified period, a health and safety representatives for that factory or workplace, or for the different sections thereof.

(2) Any employer and his employees or their representatives shall make their own arrangements and procedures for the nomination or election, the term of office; and subsequent designation of health and safety representatives in terms of subsection (1):

Provided that, where such consultation fails, the matter shall be referred to an inspector for arbitration and decision.

(3) Every employee employed in a full-time capacity at a specific factory or workplace and is acquainted with conditions and activities at that factory or workplace or section thereof, shall be eligible for designation as a health and safety representative for that factory or workplace or section;

(4) The number of health and safety representatives at a factory or workplace or section thereof shall—

- (a) in the case of shops and offices be at least one health and safety representative for hundred employees or part thereof;
- (b) in the case of a factory or workplace at least one health and safety representative for every fifty employees or part thereof:

Provided that, those employees performing work at a workplace other than that where they ordinarily report for duty, shall be deemed to be working at the factory or workplace where they so report for duty.

(5) Where an inspector is of the opinion that, the number of health and safety representatives for any factory or workplace or section thereof, including a factory or workplace or a section thereof with four or fewer employees, is inadequate, he may by Notice in writing direct the employer to designate such number of employees as health and safety representatives for that factory or workplace or section thereof as the inspec-

tor may determine in accordance with the arrangements and procedures referred to in subsection (2).

(6) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

Functions
of safety
and
health
representatives

12.—(1) The functions of a health and safety representative appointed for the factory or workplace under this Act shall include —

- (a) to review the effectiveness of health and safety measures;
- (b) to identify potential hazards and major incidents at a factory or workplace;
- (c) to collaborate with his employer, examine the causes of incidents at the factory or workplace;
- (d) to investigate complaints by any employee relating to that employee's health or safety at work;
- (e) to make representations to the employer or a health and safety committee or where such representations are unsuccessful, to an inspector;
- (f) to inspect any document which the employer is required to keep in terms of this Act in so far as is reasonably necessary to perform his functions;
- (g) to accompany an inspector on any inspection;
- (h) to participate in any internal health or safety audit.
- (i) to report accidents, near-misses, injuries, illnesses, deaths and non-compliance to the inspector.

(2) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require for the carrying out of his functions.

Safety
and
Health
Committees

13.—(1) An employer shall in respect of each factory or workplace where two or more health and safety representatives have been designated, establish one or more Committees and, at every meeting of such a Committee, consult with the Committee for the purpose of initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.

(2) The Committee shall consist of such number of members at least one third of whom shall be women as the employer may from time to time determine except that—

- (a) where one Committee has been established in respect of a factory or workplace, all the health and safety representatives for that factory or workplace shall be members of the Committee;
- (b) where two or more Committees have been established in respect of a factory or workplace, each health and safety representative for that factory or workplace shall be a member of at least one of those Committees; and
- (c) the number of persons nominated by an employer on any Committee established in terms of this section shall not exceed the number of health and safety representatives on that Committee.

(3) The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, and shall be members of the Committee for the period of their designation in terms of this section.

(4) The Committee shall hold meetings as often as may be necessary but at least once every three months at a time and place determined by the committee:

(5) An inspector may by notice in writing direct the members of a Committee to hold a meeting at a time and place determined by the inspector.

(6) Where more than ten percent of the employees at a specific factory or workplace has made a written request to an inspector, the inspector may by a written notice direct that such a meeting be held.

(7) The committee shall determine the procedures of the meetings.

(8) The Committee may co-opt one or more persons by reason of a particular knowledge of health or safety matter as an advisory member or as advisory members of the Committee but such member shall not have the right to vote.

(9) If an inspector is of the opinion that the Committees established for any particular factory or workplace is inadequate, he may in writing direct the employer to establish for that factory or workplace such number of Committees as the inspector may determine.

Functions
of Health
and
Safety
Commit-
tees

14.—(1) The Committee —

- (a) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the factory or workplace or any section thereof for which such Committee has been established;
- (b) shall discuss any incident at the factory or workplace or section thereof in which or in consequence of which any person was injured, became ill or died, and may in writing report the incident to an inspector; and
- (c) shall keep record of each recommendation made to an employer in terms of subsection (1)(a) and of any report made to an inspector in terms of subsection (1)(b);
- (d) shall perform such other functions as may be prescribed.

(2) An employer shall take the prescribed steps to ensure that, a Committee complies with the provisions of this Act in the performance of the duties assigned to it under this Act.

PART III

REGISTRATION OF FACTORIES OR WORKPLACES

Register
of facto-
ries and
work-
places

15. There shall be a register of factories and workplaces in which the Chief Inspector shall enter such particulars in relation to every factory and workplace as he may consider necessary for the purpose of this Act.

Registra-
tion of
factories
and work
places

16. —(1) Any person being the owner or occupier of a factory or work place shall, before operating, be required to register such factory or workplace under this Act.

(2) Before any person occupies or uses as a factory or workplace any premises, which were not so occupied or used by him at the commencement of this Act, that person shall apply for the registration of the premises.

Procedure
for regis-
tration

17.—(1) Subject to the provisions of section 16, such person shall send to the Chief Inspector a written application containing the particulars set out in the First Schedule to this Act together with the prescribed registration fees.

(2) Where the Chief Inspector is satisfied that the premises are suitable for use as a factory or workplace he shall register the premises and shall issue to the applicant a certificate of registration in the form set out in the Second Schedule to this Act.

(3) The compliance licence in the form set out in the Third Schedule shall be issued to the occupier of a factory or workplace every twelve months, upon fulfilling occupational health and safety requirements and on payment of the prescribed compliance license fee.

(4) The Minister shall upon consultation with the Minister for Finance, prescribe fees for registration and for compliance referred to in this section.

(5) Any person who, occupies or uses as a factory, or workplace any premises, without a certificate of registration or compliance licence, commits an offence and upon conviction shall be liable to a fine of not less than one million shillings, and not more than five million shillings or to imprisonment for a term not exceeding twelve months, or to both, and if the contravention in respect of which a person was so convicted is continued, commits a further offence and upon conviction is liable to a fine not exceeding one hundred thousand shillings, for each day on which the offence was continued.

18. Every person who, at the commencement of this Act, occupies a factory or workplace shall, within six months of the commencement of this Act, apply for the registration of the factory or workplace by sending to the Chief Inspector an application for renewal made in the prescribed form and shall contain such particular as may be determined.

Existing
registra-
tion

19.—(1) The Chief Inspector may after consideration of the application for registration grant or refuse to issue a certificate of registration or compliance licence to the applicant.

Grounds
of refusal

(2) Where the Chief Inspector refuses to issue a certificate of registration or compliance license, under subsection (1), he shall state in writing the grounds for the refusal.

Notifica-
tion of
closure or
change of
occupier
or indus-
try

20.—(1) Where an occupier closes a registered factory or work-
place, he shall inform the Chief Inspector that he has closed the factory
or workplace and ceased operation.

(2) Where there is a change of occupier or industry, or process, the
new occupier shall within a period of one month of the change inform
the Chief Inspector in writing of the changes.

Submis-
sion of
factory or
work-
place
drawings

21.—(1) Every person who intends to construct a factory or work-
place or a building appurtenant to a factory or workplace or to alter or
add to any existing factory or workplace building shall, submit drawing
in blue prints or white prints of the intended premises to the Chief In-
spector for approval.

(2) The drawings shall depict, vital sections and elevations; machin-
ery layout plan inscribed in plan showing production process flow, elec-
trical installation, sewage disposal, emergency exits, fire protection plans
and adequate sanitary and welfare facilities with respect to the maxi-
mum number of intended workers in each shift.

(3) On receipt of drawings under subsection (1), the Chief Inspector
may -

- (a) grant approval on payment of the prescribed fee and subject to
terms and conditions as he may determine; or
- (b) refuse to approve the drawings and specify the grounds for
refusal.

Construc-
tion after
approval

22.—(1) Any person who constructs a factory or workplace or build-
ing appurtenant to a factory or workplace after being granted approval,
shall be required to call upon the Chief Inspector for subsequent inspec-
tions of the construction progress.

(2) Any person who —

- (a) constructs a factory or workplace or building appurtenant to a
factory or workplace; or
- (b) install any plant or machinery in an existing building or new
building,

without the approval of the Chief Inspector commits an offence.

23.—(1) Any person who is aggrieved by the decision of the Chief Inspector under the provisions of sections 19 and 21, he may, within thirty days from the date of the decision, send to the Minister and to the Chief Inspector a written notice of his intention to appeal to the Minister and such notice shall state the grounds of the appeal.

Appeal to
the
Minister

(2) On receipt of the written notice, the Minister shall appoint a day and place for the hearing of the appeal, and shall notify the parties concerned.

(3) The Chief Inspector shall be a party in the appeal and shall be entitled to appear and be heard before the Minister at the hearing of the appeal.

(4) The Minister may, on hearing the appeal, confirm, vary or reverse the decision of the Chief Inspector.

PART IV SAFETY PROVISIONS

24.—(1) A thorough pre-placement and periodic occupational medical examination for fitness for employment and for employees shall be carried out by a qualified occupational health physician or where necessary a qualified medical practitioner as may be authorized by the Chief Inspector.

Medical
examina-
tion

(2) There shall be an exit medical examination carried out by a qualified occupational health physician.

(3) In carrying out medical examination under this section, a prescribed fee and all other related expenses shall be borne by the employer.

(4) Any occupational health physician carrying out medical examination and the employer shall maintain the confidentiality of the results of the medical examination.

25. The employer in the factory or workplace shall have the duty to ensure that —

- (a) every flywheel directly connected to a prime mover and every moving part of a prime mover, other than the prime mover mentioned in paragraph (b) of this section, is securely fenced;
- (b) every head and tailrace of water wheels, turbines and every part of electric generators, motor or rotary converter, fly wheels or transmission machinery are securely fenced unless they are safe by position or construction.

Duty to
fence
prime
movers
and
transmis-
sion
machin-
ery

Other machinery

26.—(1) Every dangerous part of all other machinery other than those specified under section 25 shall be securely fenced unless they are safe by position or construction:

Provided that, in so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation performed be securely fenced by means of a fixed guard.

(2) The requirement of subsection (1) shall be deemed to have been complied with if a device is provided which in the opinion of the Chief Inspector satisfactorily protects the operator from coming into contact with that part.

(3) Other parts which shall be securely fenced when they are being processed in lathe or other similar machine, include:

- (a) stock bar projecting beyond the head stock; and
- (b) tube stock in similar circumstance or when being threaded in a screwing.

Safety devices

27.—(1) Efficient devices or appliances shall be provided and maintained in every work place by which power can promptly be cut off from the transmission machinery.

(2) Every machine driven by mechanical power shall be provided with a starting and stopping device, the control of which shall be conveniently situated to the person operating the machine.

(3) Driving belts when not in use shall be allowed to rest or ride on a revolving shaft, which form part of the transmission machinery.

(4) Suitable striking gear or other efficient mechanical appliances shall be provided and maintained and be used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and any such gear or appliances shall be so constructed, placed and maintained so as to prevent the driving-belt from creeping back on the fast pulley.

Provision as to unfenced machinery

28.—(1) In determining whether any part of a machinery is safe by position or by construction to persons employed in the premises:-

- (a) account shall not be taken of any person carrying out, while part

of the machinery is in motion, an examination or lubrication or adjustment shown by examination to be immediately necessary and being an examination lubrication or adjustment which it is necessary to carry out while the part of the machinery is in motion; or

- (b) no account shall be taken of any person carrying out any lubrication or mounting or shipping of belts any part of transmission machinery used in any process being a process where owing to its continuous nature, the stopping of that part would seriously interfere with the carrying on of the process.

(2) The provision of sub-section (1) shall apply where examination, lubrication or other operation is carried out by an adult person approved by the management of a factory or workplace who has received adequate training and has been provided with a close fitting overall having no external pockets.

(3) No person shall be appointed as a machinery attendant unless he has been sufficiently trained in the work entailed and is fully aware of the dangers involved in the operations.

(4) Where any operations under this section are being carried out, another person shall assist the operator and shall ensure that all equipment and other fixtures used are securely fixed in position so as to prevent them from slipping.

29. Every fencing or safety guard shall be of substantial construction, properly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such part are necessarily exposed for examination, lubrication or adjustment which are immediately necessary and all the conditions specified in section 28 are complied with.

Construction and maintenance of fencing

30. No person shall clean any part of a prime mover, transmission machinery or any dangerous part of any machinery while in motion, where the cleaning would expose the person to a risk of injury from any moving part of that machine or an adjacent machine.

Cleaning of machinery

31.—(1) In the case of any machine in a factory intended to be driven by mechanical power:—

Construction and disposal of new machinery

- (a) every set-screw, bolt or key on any revolving shaft, spindle wheel,

or pinion, shall be so sunk, encased or otherwise effectively guarded to prevent danger;

(b) all spur and other toothed friction gearing, which does not require frequent adjustment while in motion shall be encased, unless it is safe by position or construction.

(2) Any person who sells or lets on hire for use in a factory any machine to be driven by mechanical power which does not comply with the requirements of subsection (1), commits an offence and upon conviction is liable to a fine not exceeding two million shillings.

Vessel
contain-
ing
danger-
ous
liquids

32. —(1) Every fixed vessel, sump or pit of which the edge is level with less than one metre above the adjoining ground or platform shall, if it contains any scalding, corrosive or poisonous liquids, either be securely covered or fenced to at least that height or where by reason of the nature of the work neither secure covering nor secure fencing to that height is practicable, all practicable measures shall be taken to prevent any person from falling into the vessel, sump or pit.

(2) A warning notice indicating danger in respect of the plant mentioned in subsection (1) shall be marked on or attached to the plant or otherwise posted close by.

Self
acting
machine

33. — (1) No traversing part of a self-acting machine and no material carried in there shall, if the space on which it runs is a space over which persons are liable to pass, whether in the course of their employment or otherwise, be allowed on their inward or outward traverse to run within one metre from any fixed structure not being part of the machine.

(2) All practicable measures shall be taken by an or otherwise to the person in charge of the machine to ensure that no person employed shall be in the space between any traversing part of a self-acting machine and any fixed part of the machine towards which the traversing part moves on the inward run, except when the machine is stopped with the traversing part on the outward run.

Training,
supervi-
sion and
research

34.—(1) No person shall be employed at any machine or at any process, being a machine or process liable to cause bodily injury or injury to health, unless he has been fully instructed as to the dangers likely to arise in connection with the process or machine and -

(a) has received sufficient training in the operation of the machine or in the process;

(5) Every hoist or lift and every enclosure shall be so constructed as to prevent part of any person or any goods carried in the hoist or lift being trapped between any part of the hoist or lift and any fixed structure or between the counter-balance weight and any other moving part of the hoist or lift.

36.—(1) There shall be marked conspicuously on every hoist or lift the maximum working load which it can safely carry, and no load greater than safe working load shall be carried on any hoist or lift.

Maximum
load of a
hoist or
lift

(2) A person owning a hoist or lift used for carrying person whether with goods or otherwise shall comply with the requirements, that -

- (a) provision and maintenance of efficient automatic devices to prevent over running of the cage or platform;
- (b) every cage is on each side from which access is afforded to a landing be lifted with a gate and every such gate shall be provided with efficient devices to secure it, when persons or goods are in the cage, the cage cannot be raised or lowered unless the gate is closed and will come to rest when the gate is opened;
- (c) in the case of a hoist or lift constructed or reconstructed after the passing of this Act, where the platform or cage is suspended by rope or chain, there shall be at least two ropes or chains separately connected with the cage or platform; and each chain or rope and its attachment shall be capable of carrying the whole weight of the platform or cage and its maximum working load;
- (d) provision and maintenance of efficient devices which will support the platform or cage with its maximum working load in the event of the breakage of the rope or chains or any of their attachments.

(3) The provisions of subsection (2) shall not apply where a hoist or lift is not operated by mechanical power.

(4) Every hoistway or liftway inside a building constructed after the coming into operation of this Act, and which passes through two or more floors shall be completely enclosed with fire fighting resisting material and all means of access to the hoist or lift shall be fitted with fire resisting doors.

(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process;

(2) It shall be the responsibility of the employer upon consultation with the Chief Inspector to ensure that –

- (a) all exposed workers are instructed on the hazards prevailing in their workplace;
- (b) safety measures are taken to avoid injury; and
- (c) training is provided at least once in every two years.

(3) The Chief Inspector shall, subject to the general direction of the Minister undertake or promote studies and research to identify hazards in the working environment and develop innovative ways of dealing with occupational safety and health problems.

(4) The results of the studies or research carried out under subsection (3) shall be made public and be used for promoting occupational safety and health.

**Hoists
and lifts**

35.—(1) Every hoist or lift shall be of sound mechanical construction, good material and adequate strength and shall be properly maintained.

(2) Every hoist or lift shall be thoroughly examined at least once in every period of six months by a person authorised by the Chief Inspector by a certificate in writing and a report of the result of every examination shall be made on a prescribed form containing prescribed particulars signed by the authorised plant inspector and within fourteen days shall be entered in or attached to the register.

(3) Every hoistway or liftway shall be efficiently protected by a substantial enclosure fitted with gates, so as to prevent any person falling down or coming into contact with any moving part of the hoist or lift when the cages are shut.

(4) The cage of a hoist or lift shall be lifted with efficient interlocking or other devices to ensure that the cage cannot be opened except when the cage or platform is at the landing and that the cage or platform cannot be moved away from the landing until the cage is closed.

(5) For the purpose of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage and its direction of movement is restricted by a guide.

37.—(1) Chain, ropes and any other lifting tackle, shall not be used unless it is of good construction, of sound and suitable material, adequate strength for the work intended to do, free from patent defect and shall be properly maintained.

Chain,
ropes and
lifting
tackles

(2) A table showing the safe working loads of every kind and size of chain, rope or any other lifting tackle in use, and, in the case of a multiple sling, the safe working load at different angles of the legs, shall be posted in the store in which the gear is kept, or in other prominent position.

(3) No chain, rope or any other lifting tackle not shown in the table mentioned under subsection (2) shall be used.

(4) The provisions of subsections (1), (2) and (3) shall not apply in relation to any lifting gear if the safe working load or in the case of multiple slings the safe working load at different angles of the legs is plainly marked on it.

38.—(1) All chains, ropes and other lifting tackle in use shall be thoroughly examined by an authorised plant inspector at least once in every period of six months or at such greater intervals as the Chief Inspector may authorise.

Examina-
tion of
chains,
ropes and
lifting
tackles

(2) The report of the result of every examination shall -

- (a) be made on the prescribed form, and contain the prescribed particulars including particulars of the safe working load;
- (b) be entered in or attached to the register within fourteen days of the completion of the examination;
- (c) be signed by the authorized plant inspector.

(3) No chain, rope, or any other lifting gear, except a fibre rope or fibre rope sling, shall be taken into use in any place where this Act applies for the first time in that place unless it has been tested and thoroughly examined by authorised plant Inspector and a certificate of that test and examination specifying the safe working load and signed by the Inspector, has been obtained and is available for inspection.

(4) Every chain and any other lifting tackle except a rope sling shall be annealed at least once in every twelve months, or in the case of chains or slings of 12 mm or smaller, or chains used in connection with molten metal or molten slag, once in every six months, unless it is of a class of description exempted by the Chief Inspector on the ground that it is of such material or so constructed that it cannot be subjected to heat treatment without risk of damage.

(5) No chain, rope or lifting tackle of any type and description shall be loaded beyond the safe-working load shown under section 40(2) except by authorised plant inspector for the purpose of testing.

Cranes
and other
lifting
machines

39.—(1) No person shall use a crane or any other lifting machine unless—

(a) all working parts of the gear whether fixed or movable including the anchoring or fixing appliances of every lifting machine, is of good mechanical construction, sound material and adequate strength for the work it is required to do;

(b) unless the crane or lifting machine has been properly maintained, tested and thoroughly examined by the manufacturers or by an authorised Plant Inspector in respect of a new lifting machine and thereafter periodically tested and examined by an authorised Plant Inspector and a certificate or report in prescribed forms of such tests and examinations specifying the safe working loads and signed by the manufacturers or by the authorised Plant Inspector has been obtained and kept available for inspection,

(2) All parts of the crane or any other lifting machine shall be thoroughly examined at least once in every period of twelve months by an authorised Plant Inspector.

(3) All rails on which a travelling crane moves and every track on which a carriage of a transport runway moves, shall be of proper size and adequate strength and shall have an even running surface and those rails or track shall be properly laid, adequately supported or suspended, and properly maintained.

40.—(1) There shall be plainly marked on every lifting machine the safe working load or loads thereof, except that in the case of a jib crane so constructed that the safe working load may be varied by the raising or lowering of the jib, there shall be attached thereto either an automatic indicator of safe working loads or a table indicating the safe working loads at corresponding inclinations of the jib or corresponding radii of the load.

Maximum
working
load

(2) No person shall load a crane or other lifting machine beyond the safe working load as marked or indicated under subsection (1), except for the purpose of a test.

(3) Where any person is employed or working at or near the wheel track of an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six meters from the place where the person is working or employed.

(4) No lifting machine shall be operated except by a trained and competent person, except that it shall be permissible for that machine to be operated by a person who is under the direct supervision of a qualified person for the purpose of training;

(5) No person under eighteen years of age shall be employed to operate any lifting machine driven by mechanical power or to give signals to the operator of any such machine.

41. A register, containing the particulars set out in the Fourth Schedule to this Act, shall be kept in every factory or workplace with respect to all chains, ropes or any other lifting tackle, (except fibre rope slings) to which sections 35, 37 and 39 apply, and with respect to all lifting machines to which section 40 applies.

Register
of chains,
ropes
other lift
tackles,
cranes
and other
lifting
machines

42. —(1) The owner of hoist or lift, cranes and other lifting machines, chains, ropes and other lifting tackles shall within thirty days before the next examination of the lifting machines and lifting tackles notify the Chief Inspector of the plants due for inspection.

Reporting
on plants
due for
inspec-
tion

(2) The Chief Inspector shall upon payment of prescribed fee, instruct the authorised plant inspector to carry out the examination and tests, as may be required.

(3) The owner of a hoist or lift, cranes and other lifting machines chains, ropes and other lifting tackles shall after major maintenance or alterations notify the Chief Inspector for the examination of the same before operation or being used again.

Safe
means of
access
and safe
working
place

43.—(1) The owner or occupier of the factory or workplace shall have the duty to ensure that:

- (a) all floors, steps, stairs, ladders, covers and gangways are constructed of sound material and properly maintained;
- (b) all openings in floors are to be securely fenced, or when not in use shall be kept covered;
- (c) there are maintained and safe means of access to every place at which any person has at any time to work;
- (d) a handrail is provided -
 - (i) for every staircase in a structure affording a means of exit from, if the staircase has an open side,
 - (ii) for every staircase having two open sides and shall be maintained on both sides;
- (e) sufficient clear and unobstructed space shall be maintained at every machine or plant while in motion to enable the work to be carried out without unnecessary risk;
- (f) every teagle opening or similar doorway used for hoisting or lowering goods or materials, are securely fenced, and are provided with a secure hand-hold on each side of the opening or doorway.

(2) Where any person is to work at a place from which he is liable to fall at a distance of more than three meters, unless the place is one which affords secure foothold and, where necessary, secure handhold means shall be provided so far as is reasonable practicable by fencing or otherwise for ensuring safety of any such person.

(3) Fencing shall be properly maintained and shall be kept in position except where the hoisting or lowering of goods or material is being carried on at the opening or doorway.

44.—(1) Where work has to be done inside any chamber, tank, vat, pit or other confined space, in which dangerous fumes are liable to be present —

- (a) the confined space shall be provided with adequate means of egress for persons entering or working therein; and
- (b) no person shall enter the confined space for any purpose unless the following requirements are complied with:—
 - (i) all practicable steps shall be taken to remove any fumes which may be present and to prevent any ingress of fumes and, unless it has been ascertained by a suitable test that the space is free from dangerous fumes, the person entering shall wear a belt to which there is securely attached a rope of which the free end is held by a person outside; or
 - (ii) the person entering wears a suitable breathing apparatus;
- (c) suitable breathing apparatus and a suitable reviving apparatus and suitable belts and ropes shall be provided and maintained so as to be readily accessible; and
- (d) a sufficient number of the persons employed in the factory shall be trained and practiced in the use of such apparatus and in the method of restoring respiration.

Precaution where dangerous fumes are liable to be present

(2) Without prejudice to the requirements in subsection (1), a person shall not enter or remain in any tank, chamber, vat, pipeline, or any similar confined space for any purpose unless—

- (a) it has been sufficiently cooled by ventilation or is made safe to work in;
- (b) the person ensured of a supply of air adequate for respiration and to render harmless any dangerous fumes; or
- (c) he is wearing a suitable breathing apparatus.

45.—(1) Where, in connection with any grinding, grading, sieving or similar process giving rise to dust, gas or vapour which is liable to explode on ignition, the owner of the factory or workplace shall take all practicable measures to ensure:

- (a) the prevention of explosion by enclosure of the plant or process;
- (b) the removal or prevention of the accumulation of dust, gas or vapour; and
- (c) the exclusion or effective enclosure of all possible sources of ignition.

Precautions in respect to explosive or inflammable dust, gas vapour or substance

(2) Where there is dust, gas or vapour in any plant or process which is liable to explode on ignition, all practicable measures shall be taken to restrict the spread and effects of such explosion by the provision of chokes, baffles and vents, or other effective measures, unless the plant is constructed to withstand the pressure likely to be generated by an explosion,

(3) No plant, tank, or vessel which contains or has contained any explosive or inflammable substance be subject to any operation which involves the application of heat, unless all practicable measures have been taken to remove the substance and any fumes arising or to render them non-explosive or non-inflammable.

(4) Where any tank, plant or vessel has been subjected to any operation, no explosive or inflammable substance shall be allowed to enter the plant, tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) Subject to the provisions of subsection (3), if any person is required to work or enter any plant, tank or vessel which has any explosive or inflammable substance, a permit to work shall be provided and signed by the employer that the tank, plant or vessel is safe to enter or work in it.

(6) Any employer who fails to comply with the provisions of subsection (5), commits an offence and upon conviction is liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Steam
boilers

46.—(1) Every steam boiler and all its fittings and attachments shall be of good construction, sound material, adequate strength and free from patent defect and shall be properly maintained.

(2) Every steam boiler shall have fitted to it —

(a) a suitable safety valve, separate from and incapable of being isolated by any stop-valve which shall be so adjusted to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure and shall be fixed directly to, or as close as practicable to, the boiler;

- (b) an efficient stop-valve connecting the boiler to the steam pipe;
- (c) an accurate steam pressure gauge connected to the steam space and readily visible to the boiler attendant, which shall indicate the steam pressure in the boiler in pounds per square inch or kilogram per square centimeter or in bar, and have marked on it, in a distinctive colour the maximum permissible working pressure of the boiler;
- (d) one or two water gauges of transparent material or other type approved by the Chief Inspector to show the water level in the boiler, and, if the gauge is of a glass tubular type and the working pressure in the boiler exceeds forty pounds per square inch or three kilograms per square centimeter, the gauge shall be provided with an efficient guard which shall not obstruct the reading of the gauge.
- (e) where there is more than one boiler installed, a plate bearing a distinctive number shall be affixed to each boiler;
- (f) a means of attaching a test pressure gauge;
- (g) an efficient fusible plug and suitable means of giving low and higher water alarm:

Provided that, paragraph (b) shall not apply in respect of economizers and paragraphs (c), (d), (e), (f) and (g) shall not apply with respect to either economizers or superheaters.

(3) For the purpose of subsection (2), a lever valve shall not be deemed an efficient safety valve unless the weight is securely locked on the lever in the correct position.

(4) Every steam boiler attendant shall be properly instructed in the use of the boiler plant of which he is in charge and shall pass the boiler attendant test set by the Authority or any other recognised institution.

(5) No person shall enter or be in any steam boiler, which is one of a range of two or more steam boilers unless -

- (a) all inlets through which steam or hot water might otherwise enter the boiler from any other part of the range are disconnected from that part;
- (b) all valves controlling such entry are closed and securely locked and, where the boiler has a blow down pipe in common with one or more other boilers or delivering into a common blow down sump, the blow down valve on each boiler is so constructed that

it can only be opened by a key which is used for that set of blow down valves and is the only one in use.

(6) No work shall be allowed in any boiler furnace or boiler fuel unless it has been sufficiently cooled by ventilation or otherwise to make the work safe for persons employed there.

Examina-
tion of
steam
boiler and
fittings

47.—(1) Every steam boiler and all its fittings and attachments shall be thoroughly examined by an authorised plant inspector at least once in every period of twelve months and also after an extensive repair:

Provided that, the authorised plant inspector may specify in writing a period exceeding twelve months but not exceeding sixteen months within which the next examination is to be made.

(2) Any examination under subsection (1) shall consist of an examination of the boiler when cold and the interior and exterior have been prepared in the prescribed manner, except in the case of an examination of an economiser or superheater, when under normal steam pressure.

(3) The examination under steam pressure shall be made as soon as possible after the examination of the boiler when cold and the authorised plant inspector shall see that the safety valve is so adjusted and set to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.

(4) An authorized plant inspector shall within, fourteen days of completion of the examination prepare and sign a report in respect of the result for each examination.

(5) The report under subsection (4) shall be made in the prescribed form containing particulars of the maximum permissible working pressure, and such terms and conditions to be observed by the owner of the factory or work place.

(6) No person shall —

- (a) take into use in any factory for the first time in that factory steam boiler which has been used previously unless it has been examined and reported in accordance with this section;

(9) Any person who, requires an examination of a steam receiver and the certificate referred to in subsection (8) from an authorised plant inspector shall notify the Chief Inspector and on payment by him of the prescribed fee, the Chief Inspector shall instruct the authorised plant inspector to carry out the examination and necessary tests.

(10) Every steam container shall be properly maintained so as to ensure that the outlet is at all times kept open and free from obstruction.

49.—(1) Every air receiver shall —

- (a) have distinctly marked on it the safe working pressure;
- (b) in the case of a receiver connected with an air compressor, either be so constructed as to withstand safety with the maximum pressure which can be obtained in the compressor, or be fitted with an efficient reducing valve or other efficient device to prevent the safe working pressure of the receiver being exceeded;
- (c) be fitted with an efficient safety valve adjusted to allow air to escape as soon as safe working pressure is exceeded;
- (d) be fitted with an accurate pressure gauge indicating the pressure in the receiver in pound per square inch or kilogram per square centimeter;
- (e) be provided with a suitable manhole, handhole, or other means, which will allow the interior to be thoroughly cleaned;
- (f) where more than one receiver is in use in the factory or workplace bear a distinctive number by which it can be recognised.

Air
receivers

(2) For the purpose of the provisions of subsection (1) relating to safety valves and pressure gauges, any set of air receivers supplied with air through a single feed pipe may be treated as one receiver:

Provided that, in a case where an efficient reducing valve or other suitable device to prevent the safe working pressure being exceeded is required to be fitted this subsection shall not apply unless the valve or appliance is fitted, on the single feed pipe.

(3) Every air receiver and its fittings shall —

- (a) be of good mechanical construction and be properly maintained;
- (b) be thoroughly cleaned internally and examined at least once in every period of twelve months.

- (4) In the case of a receiver of solid drawn construction —
- (a) the authorized plant inspector may specify in writing a period exceeding twelve months but not exceeding twenty-four months within which the next examination has to be made;
 - (b) if it is so constructed that the internal surface cannot be thoroughly examined, an efficient hydraulic test of the receiver shall be carried out in lieu of the internal examination.
- (5) Every such examination and test shall be carried out by the authorised plant inspector and the report of the result of every such examination and test shall —
- (a) be made in the prescribed form containing the prescribed particulars, including particulars of the safe working pressure;
 - (b) be entered in or attached to the register; and
 - (c) be signed by the authorised plant inspector.
- (6) Any occupier of a factory or workplace who requires an examination of an air receiver to be carried out by an approved plant inspector, shall notify the Chief Inspector who shall instruct the authorised plant inspector to carry out the examination upon payment of prescribed fee.
- (7) The provisions of this section shall apply to any air receiver forming part of a machine plant or equipment on a ship or on a locomotive or other rolling stock used on any railway.

Preven-
tion of
fire

50.—(1) The employer shall have the duty to ensure that—

- (a) factories or workplaces are provided and maintained in an accessible position, and there is a supply of fire extinguishing equipment which shall be adequate and suitable having regard to the fire risk involved;
- (b) all stocks of inflammable materials shall be kept in either a fire resistant store or in a safe place outside any building;
- (c) that the store not placed as to endanger the means of escape from the place of work or any part thereof in an event of a fire occurring in the store;
- (d) adequate means of escape in case of fire for the persons employed therein having regard to the fire risk involved in each case and all means of escape shall be properly maintained and kept free from obstruction;

- (e) the contents of every room in which persons are employed shall be so placed or disposed that there is a free passage-way for all persons employed in the room to the means of escape;
- (f) while a person is within a factory or workplace for the purpose of employment or for meals, the doors of the factory or workplace, and any room therein which the person is employed, and any doors which afford a means of exit from any building or from any enclosure in which the factory or workplace is situated, is not locked or fastened in such a manner that they cannot be easily or immediately opened from the inside;
- (g) in the case of any building constructed or converted for use as a factory or workplace, after the coming into operation of this Act, all doors affording means of exit from the factory or workplace, except in the case of sliding doors is constructed to open outward;
- (h) every hoistway or liftway inside a building constructed after the coming into operation of this Act is completely enclosed with fire resisting materials, and all means of access to the hoist or lift shall be fitted with doors constructed of fire resisting materials:

Provided that, any hoistway or liftways shall be enclosed at the top only by some material easily broken by fire or be provided with a vent at the top.

- (i) every window, door, or other exit affording means of escape in case of fire or giving access thereto except the means of exit in ordinary use, is distinctively marked by a notice printed in red letters on a white background and all notices are in such form and in English and Swahili and any other language as the inspector may direct;
- (j) ensure that all persons employed are familiar with the means of escape, and the routine to be followed in case of fire;
- (k) in any factory where more than twenty workers are employed in the same building and explosive or inflammable materials are stored or processed, effective measures are made for giving morning drills in case of fire.

(2) Where more than twenty persons are employed in a factory or workplace in which explosives or inflammable material are stored or processed, the occupier shall inform the Chief Inspector for purposes of carrying out a survey of the means of escape provided.

(3) The Chief Inspector shall have the duty to ensure that every factory or work places inspected annually to ascertain whether there is, or has been any contravention of any of the provisions of fire safety measures as provided for under this section.

Powers of
inspectors
to make
orders

51. —(1) Where an employer —

- (a) performs any act; or
- (b) requires or permit an act to be performed; or
- (c) proposes to perform an act or require an act to be performed,

which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person, the inspector may in writing prohibit that employer in a prescribed form set out in the Eighth Schedule to this Act from continuing or commencing with the performance or proposal of that act.

(2) Where a user of a plant or machinery uses or proposes to use any plant or machinery, in a manner or in circumstances which in the opinion of an inspector threatens or is likely to threaten the health or safety of any person within the vicinity thereof, the inspector may in writing prohibit that user from continuing or commencing with the use of that plant or machinery in that manner or circumstances, as the case may be.

(3) An inspector may in writing prohibit an employer from requiring or permitting an employee or any employee belonging to a category of employees specified in the prohibition to be exposed in the course of his employment for a longer period than the period specified in the prohibition, to any article, substance, organism or condition which in the opinion of an inspector threatens or is likely to threaten the health or safety of that employee or the employee belonging to that specified category of employees, as the case may be.

(4) The prohibition imposed under subsection (1), (2) and (3) may at any time be revoked in writing by an inspector if arrangements to the satisfaction of the inspector have been made to dispose of the threat which gave rise to the imposition of the prohibition.

(5) In order to enforce a prohibition imposed under subsection (1) or (2), an inspector may block, bar, barricade or fence off that part of the factory or workplace, plant or machinery to which the prohibition applies, and no person shall interfere with or remove the blocking, bar, barricade or fence.

(6) Where an inspector is of the opinion that, the health or safety of any person at a workplace or factory or in the course of his employment or in connection with the use of plant or machinery is threatened on account of the refusal or failure of an employer or a user, as the case may be, to take reasonable steps in the interest of that person's health or safety, the inspector may in writing direct that employer or user to take such steps as are specified in the direction within a specified period by serving him with an improvement notice in a prescribed form as set out in the Seventh Schedule to this Act.

(7) Where an inspector is of the opinion that, an employer or user has failed to comply with any provision of a regulation or order applicable to him, the inspector may in writing direct that employer or user to take within a period specified in the direction such steps in the inspector's opinion are necessary to comply with that provision, and are specified in the direction given in the improvement notice.

(8) A period contemplated in subsection (6) or (7) may at any time be extended by an inspector to the attention of the health and safety representatives and employees concerned.

(9) An employer shall forthwith bring the contents of a prohibition, direction or notice under this section to the attention of the health and safety representatives and employees concerned.

(10) In the event of a contravention of an improvement notice or a prohibition notice in relation to a factory or served on the occupier by an inspector under subsection (1) or (2) of this section, the occupier or owner of the factory or workplace commits an offence and on conviction is liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both such fine or imprisonment.

(11) Where the contravention under subsection (10) is continued the occupier or owner of the factory or workplace commits a further offence and is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both, for each day on which the offence continues.

(12) Any occupier or owner of an industrial premises aggrieved by notice served under sub-section (1) or (2) of this section may apply to a

Magistrate's Court for the order to be set aside or varied and on that application the inspector shall be entitled to be heard and the order shall continue to remain in force until it is set aside or varied by the court.

Power of
court to
make
order as
to
danger-
ous
condi-
tions and
practices

52.—(1) Where on complaint by an inspector, a Magistrate's Court is satisfied that:—

- (a) any part of the ways, works, machinery or plant in use in a factory or workplace is in a dangerous condition or is so constructed or placed that it cannot be used without risk of bodily injury; or
- (b) any process or anything is or has been done in any factory or workplace in such a manner as to cause risk or bodily injury, the court may, make an order —
 - (i) to prohibit the use of that part of the ways, works, machinery, or if it is capable of repair or alterations, prohibit its use until it is duly repaired or altered;
 - (ii) to require the occupier of the factory or workplace to take such steps as may be specified in the order for remedying the danger complained of.

(2) Where a complaint is or has been made under subsection (1), the court may, on an *ex-parte* application by the inspector, and on receiving evidence that the use of any such part of the ways, works, machinery, or plant, or as the case may be, the carrying of any processes or work or the doing of anything in such a manner involves the risk of serious bodily injury, make an interim order prohibiting, either absolutely or subject to conditions, the use, carrying on or doing thereof until the earliest opportunity for hearing and determining the complaint.

(3) Any person who contravenes an order of the court made under this section in relation to any factory or workplace, commits an offence and upon conviction is liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

(4) Where the contravention in respect of which any person is so convicted under subsection (3) is continued, that person commits a further offence and is liable to a fine not exceeding one hundred thousand shillings for each day to which the offence continues or to imprisonment of term not exceeding six months.

53.—(1) A Magistrate's Court may, by order prohibit the operation of the factory or workplace as soon as practicable on complaint by an inspector, and on being satisfied that any factory or workplace or part thereof is in such work so constructed or placed, that any process or work carried on therein cannot be so carried without danger to the safety, health and welfare of the persons employed.

Power of court to make orders as to dangerous factory or workplace

(2) An order made by a Magistrate's Court under this section may -

- (a) prohibit the carrying on of any process or work either indefinitely, or until such steps have been taken, as may be specified in the order, to enable the process of work to be carried on with due regard to safety, health and welfare of person employed;
- (b) be revoked or varied on the application by way of complaint of the occupier or owner of the factory or workplace:

Provided that, on any such application the inspector concerned shall be entitled to be heard.

(3) Where any process or work is carried on in a factory or workplace or part of a factory or workplace in contravention of any order of court made under this section, the occupier of the factory or workplace commits an offence and on conviction is liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(4) Where the contravention in respect to which any person is so convicted is continued, that person commits a further offence and is liable to a fine not exceeding one hundred thousand shillings for each day on which the offence continues or to an imprisonment for a term not exceeding three months.

PART V

HEALTH AND WELFARE PROVISIONS

54.—(1) The employer shall ensure that adequate supply of clean, safe and wholesome drinking water is provided and maintained and is readily accessible to all persons employed on the premises.

Supply of drinking water

(2) A supply of drinking water which is not laid on shall be contained in suitably covered vessels and shall be renewed daily.

(3) All practical measures shall be taken to prevent the water and vessels from contamination; and the drinking water supply, whether laid on or not, shall, in such case as an inspector may direct, be clearly indicated in Swahili and English.

(4) All containers or vessels containing harmful liquids or which are used to contain harmful liquids shall not be used for storing drinking water.

Sanitary
convenience

55.—(1) Sufficient and suitable sanitary conveniences shall be provided for persons employed in a factory or workplace and shall be maintained and kept clean and effective provision shall be made for lighting the sanitary convenience.

(2) Where persons of both sex are or are intended to be employed, the sanitary conveniences shall afford separate accommodation for persons of each sex.

(3) For every number of females or males the provision of sanitary conveniences shall be one toilet for every twenty five persons or part thereof up to one hundred one additional urinal for males shall be provided in excess of forty persons.

(4) Sanitary conveniences shall be made separately for disabled employees.

Washing
facilities

56.—(1) There shall be provided and maintained for the use of all persons employed adequate and suitable facilities for washing which shall be kept in a clean and orderly condition.

(2) At least one wash basin, including hot water where necessary, shall be provided together with soap and means of drying for every fifteen persons employed.

(3) There shall be provided shower baths in the proportion of one unit for every ten persons employed and the shower baths shall have individual cubicles and be provided with suitable screens.

Accom-
modation
for
clothing

57.—(1) There shall be provided and maintained for the use of all persons employed adequate and suitable accommodation for clothing not worn during working hours.

(2) Separate changing rooms for each sex equipped with individual clogging clothes facilities shall be provided and properly maintained.

58.—(1) There shall be provided and maintained a first aid box or cupboard to the prescribed standard and the first aid box or cupboard shall be distinctively marked "FIRST AID" having only appliances or stocks of first aid equipment.

(2) Each first aid box or cupboard shall be placed under the charge of a responsible person who has received first aid training from a recognized institute and who shall always be readily available during working hours.

(3) A notice shall be affixed in every work room stating the name of the person in charge of the first aid box or cupboard provided in that section of the works.

(4) Where an injured person requires further medical attention, as the case may be, a reliable and suitable means of transport shall be provided to transfer the injured person to the nearest medical facility.

59. There shall be provided and maintained for the use of all workers whose work is carried while standing, suitable seats to enable them to take advantage of any rest period which may occur in the course of their employment.

PART VI

SAFETY SPECIAL PROVISIONS

60. Every factory or workplace where activities carried out involve hazardous processes or hazardous equipment or use of hazardous chemicals substances, likely to result in adverse health effects to people or serious damage to property or environment in case of accidents, the employer shall ensure that —

(a) risk assessment annually or any other time when the need for the risk assessment deems necessary is done by an approved inspection authority;

(b) evidence of the risk assessment is furnished

Removal
of dusts or
fumes

61.—(1) In any factory or workplace which is in connection with any process carried on, there are given off any dusts or fumes or other impurities of such a character and to such extent as to be likely to be injurious or offensive to the persons employed or any substantial quantity of dust of any kind, the employer shall ensure that —

- (a) all practicable measures are taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent it accumulating in any workroom;
- (b) exhaust appliance is provided and maintained, as near as possible to the point of origin of the dust or fume or other impurities, to prevent them entering the air of the workroom.
- (c) no stationary internal combustion engine is used in a factory or workplace unless provision is made on conducting the exhaust gases from the engine outside the factory or workplace and above roof level.
- (d) no person is allowed to feed or drink in any workroom where poisonous or injurious substances used is capable of giving rise to dusts and fumes.

(2) The Minister may, make rules and regulations prescribing standards for the emission level.

Provision
of
protective
equip-
ment

62. Where in any factory or workplace, workers are employed in any process involving exposure to any injurious or offensive substance or environment, effective protective equipment shall be provided and maintained by employer for the use of the persons employed.

Protec-
tion of
eyes in
certain
processes

63. In the case of any of the processes specified in the Fifth Schedule to this Act, the employer shall -

- (a) ensure suitable goggles or effective screens are provided to protect the eyes of the persons employed in the process;
- (b) where electric arc welding is carried on, ensure effective measures are taken, by screening or otherwise to prevent all persons employed or other persons being exposed to the electric arc flash.

64.— (1) An inspector may, at any time after informing the employer of the undertaking —

Power to
take
samples
and
measure-
ments

(a) take for analysis biological samples of workers exposed to hazardous substances samples of any substance used or intended to be used in a factory or workplace, being a substance in respect of which he suspects is in contravention of any regulation made under this Act or which he thinks may prove on analysis to be likely to cause adverse health effects to persons employed;

(b) take measurements and photographs, of any substance, machinery, material, building, or any process by video shooting which he thinks may be useful in subsequent legal proceedings under this Act.

(2) The employer or any other responsible person may at the time when a sample is taken, and on providing the necessary appliances, require the inspector to divide the sample into three parts, to mark and seal or fasten up each part in such a manner as its nature permits and -

(a) deliver one part to the occupier, or any other responsible person of the factory or workplace;

(b) retain one part for future comparison;

(c) submit one part to the Government Chemist whose analysis shall be final.

(3) A certificate signed by the Government Chemist as to the result of an analysis of a sample shall in any proceedings under this Act be admissible as evidence of the matters stated therein, but either party may require the person by whom the analysis is made to be called as a witness before the court.

(4) No person shall publish or disclose to any person the results of an analysis made under this section except in so far as is necessary for the purpose of a prosecution for an offence under this Act.

65. Every person who employs persons in agricultural activities shall be under the obligation to ensure that no employee is exposed to—

Safety or
health of
agricul-
tural
activities

- (a) hazardous machinery and equipment; or
- (b) harmful animals and insects; or
- (c) infectious agents, or allergens; or
- (d) hazardous chemicals; or
- (e) hazardous environments while doing work as agricultural worker.

PART VII

HAZARDOUS MATERIALS AND PROCESSES

Safety of
electrical
installa-
tions and
apparatus

66.—(1) All electrical apparatus, fittings and conductors shall be sufficient in size and power for the work they are meant for and shall be so constructed, installed, protected, worked and maintained so as to prevent danger so far as is reasonably practicable.

(2) Every factory or workplace using electricity shall be inspected annually by an authorized electrical inspector and a certificate shall be issued upon payment of a prescribed fee.

(3) The owner or occupier of a factory or workplace is obliged to report to the Chief Inspector one month before the expiry of a previous certificate.

Toxic
materials
to be
used as a
last resort

67.—(1) Toxic materials or substances shall only be used where the use of a non-toxic material or substance is not reasonably practicable.

(2) Without prejudice to subsection (1), where toxic materials or substances are present or used, the number of employees exposed to risk shall be kept to a minimum and where there is a recognized antidote, supplies shall be kept readily available.

(3) In any premises where operations to which the provisions of this Act apply, nothing shall be done to, or in connection with toxic materials except, under an efficient exhaust draught system and it shall be so constructed, placed and maintained as to prevent the escape into the air of toxic materials of such a character and to such an extent as to be liable to be a danger to the health of employed persons.

(4) Where there is a risk that a toxic material or substance may be ingested, no employee shall eat, drink or smoke in any workroom or other place where the material or substance is being handled.

(5) Without prejudice to any other requirement for washing facilities, where there is a risk to health from contamination of the surface of the body, facilities shall be provided and maintained for such washing facilities to be conveniently situated near the place where the toxic material or substance is used.

(6) In case where toxic materials or substances are manufactured, handled, used or stored, the Chief Inspector may serve upon the occupier, or employer a notice requiring him to—

- (a) provide additional bathing facilities including showers where practicable; or
- (b) arrange for periodical medical examination by a recognized health institution; or
- (c) provide additional protective clothing.

68. Where dangerous or corrosive liquids are used, there shall be provided and maintained for use, in case of an emergency —

- (a) adequate and readily accessible means of drenching with water for any employee who becomes splashed with such liquids; and
- (b) sufficient and suitable means of flushing or irrigating the eyes conveniently situated and clearly indicated by a distinctive sign which is visible at all times.

Drenching facilities for emergency cases

69.—(1) Where ammonia, chlorine, carbon dioxide or other asphyxiant or irritant gas or vapour is present or liable to be present, then the owner or occupier of a factory or work place shall take all practicable measures to ensure that the gas or vapour does not present a danger to the health of the employee either by locating the plant elsewhere or by ventilation or otherwise.

Protection of workers from exposure to asphyxiant or irritants

(2) Breathing apparatus or other equipment of a type approved by the Chief Inspector shall be provided and maintained and kept readily available for use to effect a rescue or to make the premises or operations safe.

70.—(1) Effective measures shall be taken, so far as is practicable, to restrict the extent to which workers may be exposed to ionizing or non ionizing radiations in the course of their employment.

Workers not to be exposed to ionizing, radiations etc

(2) No employee shall be exposed to ionizing or non ionizing radiations for more than is reasonably necessary for the purpose of work, and in any case, everything practicable shall be done to minimize the exposure.

(3) The provisions of subsection (2) shall apply to cases where employees are subject to vibrations including ultrasonic vibrations.

Prohibition
of work not
adapted to
workers

71. No employer shall cause his employees to carry out work that is not adapted to their physical and cognitive capabilities and limitations.

Medical
examina-
tion or
supervi-
sion in
certain
processes

72. Where it appears to the Minister that in any factory or workplace—

(a) cases of illness have occurred of which there is reason to believe that the illness may be due to the nature of a process or other conditions of work; or

(b) there may be risk of injury to the health of the workers in the factory or workplace by reason of any process from any substance or material used or handled,

the Minister may require the medical supervision or medical examination of the persons, or any class of persons, employed.

PART VIII

CHEMICAL PROVISIONS

General
precau-
tions in
handling
chemicals

73.—(1) The employer shall ensure that preventive, administrative and technical measures are taken to prevent or reduce the contamination of the work and environment to the lowest possible level, whenever possible, hazardous substances shall be replaced by harmless or less harmful substances.

(2) Operations likely to result in contamination of the work environment by hazardous substances shall be isolated from the remainder of the premises so as to reduce the number of people exposed.

(3) Any process involving a significant risk of exposure to very hazardous substances shall, as far as is reasonably practicable be performed within an enclosed system so as to prevent any contact between the hazardous substance and persons.

(4) Any direct contact with hazardous substances shall as far as is reasonably practicable be avoided by the use of automatic processes or by remote control systems.

(5) Every duly authorized and adequately trained worker shall participate in dangerous operations and their training shall be upgraded at suitable intervals.

(6) Where circumstances make it necessary for a worker to enter an atmosphere contaminated by a harmful concentration of a hazardous substance, the worker shall be made fully aware of the hazards and be provided with and wear appropriate protective equipment.

(7) The employer shall have the duty to ensure proper disposal of all chemical containers and chemical residues in such a way that it shall not cause harm to human health and environment.

74.—(1) It shall be the duty of the manufacturer or importer of the chemical to provide to the employer in respect of hazardous chemicals, chemical safety data sheets containing detailed essential information regarding their identity, supplier, classification, hazards, safety precautions and emergency procedures.

Provision
of
chemical
data
sheets

(2) A copy of the chemical safety data sheet for each product shall be forwarded to the Chief Inspector.

75.—(1) Every employer shall ensure that:

- (a) the packages of a hazardous chemical when delivered is labeled and that an appropriate chemical safety data sheet for the chemical has been delivered to the factory or workplace;
- (b) a list or register of these data sheets is kept at the factory or workplace; prior to the handling of chemicals,
- (c) prior to the handling of chemicals, copies of chemical safety data sheets and of the list of data sheets are given to the workers concerned or their representatives who shall be available for consultation at any time.

Labeling
of
hazard-
ous
chemicals

(2) The employer shall have the duty to ensure that all chemical containers maintain their original labels and quality in terms of color, text and graphics.

76.—(1) Every supplier, manufacturer and importer of equipment shall ensure that machines, process plants, instruments and vehicles are designed and supplied to the user in such a manner and with such information, that their operation and use contribute as little as possible to the

Duty of
suppliers,
manufac-
turers as
regards
equip-
ment

contamination of the work environment, and that they present as far as is reasonably practicable, no health hazard to workers during production operations, maintenance work and other activities.

(2) Every supplier of hazardous substance, whether a manufacturer, importer or distributor of hazardous substances shall ensure that: —

- (a) all chemicals are classified based on their characteristics including toxic, chemical or physical, corrosive and irritant properties; and allergenic and sensitizing, carcinogenic, teratogenic and mutagenic effects as well as their effects on the reproductive system;
- (b) the containers of all hazardous substances are marked to indicate the identity to enable persons handling or using them to recognize and distinguish them when receiving and when using them, so that they can be used safely;
- (c) the containers of all hazardous substances are labeled in a uniform manner with a legible durable label, easily understandable by workers and other persons;

PART IX

OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

Acts or
omissions
by employ-
ees or
agents

77.—(1) Where an employee does or omits to do any act which it would be an offence for the employer or a user in terms of this Act, unless it is proved that —

- (a) in doing or omitting to do that act the employee was acting without the connivance or permission of the employer or any such user;
- (b) it was not under any condition or in any circumstance within the scope of the authority of the employee to do or omit to do any act, whether lawful or unlawful, of the character of the act or omission charged; and
- (c) all reasonable steps were taken by the employer or any such user to prevent any act or omission of the kind in question,

the employer or any such user shall be presumed to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, in itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* in the case of an agent of any employer or user, except if the parties have agreed in writing to the arrangements and procedures between them to ensure compliance by the agent of the provisions of this Act.

(3) Where any employee or agent of any employer or user does or omits to do an act which it would be an offence in terms of this Act for the employer or any such user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer or user.

(4) Where any employee or agent of the Government commits or omits to do an act which would be an offence in terms of this Act, had he been the employee or agent of an employer other than the Government and had such employer committed or omitted to do that act, he shall be liable to be convicted and sentenced in respect thereof as if he were such an employer.

(5) Any employee or agent referred to in subsection (3) may be so convicted and sentenced in addition to the employer or user.

(6) Where the employee or agent of an employer is convicted of an offence consisting of a contravention of section 99, the court shall, when making an order under section 80, make such an order against the employer and not against that employee or agent.

78.—(1) Any person who —

- (a) contravenes any provision of this Act, regulations or of any rule or order made under this Act;
- (b) intentionally or recklessly interfere with or misuse anything which is provided in the interest of health or safety, commits an offence.

Offences

(2) Where the occupier of a factory or workplace avails himself of any special exception allowed under this Act and fails to comply with any of the conditions attached to the exception, he shall be deemed to have contravened the provisions of this Act.

(3) Where an offence under this Act is committed by a company, co-operative society or other body of persons and it is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any chairman, director, manager, secretary or other officer of the company, co-operative society or other body of persons, that chairman, director, manager, secretary or other officer shall be deemed to have committed an offence and shall be liable to be proceeded against and punished in accordance with this Act.

(4) Where an employer is convicted of an offence consisting of a contravention of a provision of section 94, the court convicting him shall inquire into and determine the amount which contrary to the said provision was deducted from the sum contracted to be paid by him to an employee concerned.

Penalty for offences for which no express penalty is provided

79.—(1) Any person who commits an offence under this Act for which no express penalty is provided shall be liable to a fine not less than five million shillings, or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) Where the contravention in respect of which a person was so convicted is continued after the conviction, that person shall be guilty of a further offence and shall be liable to a fine not exceeding one hundred thousand shillings for each day on which the contravention is continued.

Power of Court to order cause of contravention to be remedied

80.—(1) Where the occupier or owner of a factory or workplace is convicted of an offence under this Act, the court may in addition to or instead of imposing any penalty, order the occupier or owner within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application extend the time so specified.

(2) Where an order is made under subsection (1), the occupier or owner shall not be liable under this Act in respect of the continuation of the contravention during the time allowed by the court, but if, after the expiration of that time as originally specified or extended by a subsequent order, and the order is not complied with, the occupier or owner upon conviction shall be liable to a fine not exceeding one hundred thousand shillings for each day on which the non-compliance continues.

81.—(1) Where any person is killed, or suffers serious bodily injury, in consequence of the occupier or owner of a factory or workplace having contravened any provision of this Act or of any regulation, rule or order made thereunder, the occupier or owner of the factory or workplace shall without prejudice to any other penalty, be liable to a fine of not less than ten million shillings or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Penalty in
case of
death or
injury

(2) In the case of injury to health, the occupier or owner shall not be liable to a penalty under this section unless the injury was caused directly by the contravention.

(3) The occupier or owner shall not be liable to a penalty under this section if a charge against him under this Act in respect of the act or default by which the death or injury was caused has been heard and dismissed before the death or the injury occurred.

82. Any person who —

- (a) forges any certificate required by this Act or any regulation, order or rule made under this Act; or
- (b) gives or signs any such certificate knowing it to be false in any material particular; or
- (c) knowingly utters or makes use of any such certificate so forged, or false; or
- (d) knowingly utters or makes use of, as applying to any person, any such certificate which does not so apply; or
- (e) impersonates any person named in any such certificate; or
- (f) falsely pretends to be an inspector; or
- (g) willfully connives at any forging, counterfeiting, giving, sign-

Forgery of
certificates,
false en-
tries and
declaration

- ing, uttering, making use, impersonating or pretending as; or
- (h) willfully makes a false entry in any register, notice, certificate, or document required by, under, or for the purpose of this Act or any regulation, rule or order made under this Act to be kept or served or sent; or
 - (i) willfully makes or signs a false declaration required by, under or for the purpose of this Act or any regulation, rule or order made under this Act; or
 - (j) knowingly makes use of any such false entry or declaration.

commits an offence under this Act, and shall be liable upon conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

Penalty on persons actually committing offences for which occupier is liable

83. Where an act or default for which an occupier or owner of a factory or workplace is liable under this Act, is caused by the act or default of some agent, servant, worker or other person, the agent, servant, worker or other person commits an offence and is liable to the like penalty as if he were the occupier or owner.

Proof of certain facts

84.—(1) Where in any legal proceedings under this Act it is proved that any person was present on or in any premises, that person shall, unless the contrary is proved, be presumed to be an employee.

(2) In the absence of satisfactory proof of age, the age of any person shall, in any legal proceedings in terms of this Act, be presumed to be that stated by an inspector to be in his opinion the probable age of the person.

(3) Any person having an interest who is dissatisfied with that statement of opinion made under subsection (2) may, at his own expense, require that the person whose age is in question appear before and be examined by a surgeon, and a statement contained in a certificate by a surgeon who examined that person as to what in his opinion is the probable age of that person shall, but for the purpose of the said proceedings, be conclusive proof of the age of that person.

(4) In any legal proceedings under this Act, any entry contained in any book or document kept by any employer or user or by his employee

or mandatory or found on or in any premises occupied or used by that employer or user or and any copy or reproduction of any such statement or entry shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by that employer or user or by any employee or mandatory of that employer or user within the scope of his authority.

(5) Where in any legal proceedings under this Act, it is proved that any untrue statement or entry is contained in any record kept by any person, he shall be presumed, until the contrary is proved, willfully to have falsified that record.

(6) Where at the trial of any person charged with the contravention of section 98 it is proved that the accused sold or marketed any article, substance, plant, machinery or health and safety equipment contemplated in that section, it shall be presumed, until the contrary is proved, that such article, substance, plant did not at the time of its sale or marketing comply with the requirements.

(7) Where at any trial —

(a) any document purporting to be a certificate or statement by an approved inspection authority and in which it is alleged that the article, substance, plant, machinery or health and safety equipment forming the subject of the charge complies with the requirements prescribed in respect thereof or with any particular standard;

(b) records to be kept by a Health and Safety Committee in terms of section 14, including any document purporting to be certified by an inspector as a true extract from any such records,

shall on their mere production by any person at any legal proceedings be admissible as evidence of the fact stated herein.

85.—(1) Where the occupier or owner of a factory or workplace is charged with an offence under this Act, he shall be entitled, upon a charge duly made by him and on giving to the prosecution not less than three days notice in writing of his intention, to have any other person whom he charges as the actual offender, whether or not that person is his agent or servant brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or owner of the factory or workplace proves to the satisfaction of the court —

Power of
occupier
or owner
to exempt
himself
from
liability
on
convic-
tion of
actual
offender

- (a) that he has used all due diligence to enforce compliance with this Act and of any relevant regulation, order or rule made under this Act; and
- (b) that the other person had committed the offence in question without his consent, convenience, or willful default, the other person shall be convicted of the offence, and the person so convicted shall, in the discretion of the court, be liable to pay any costs incidental to the proceedings.

(2) Where it is made to appear to the satisfaction of an inspector at the time of discovering an offence —

- (a) that the occupier or owner, of the factory or workplace has used all due diligence to enforce compliance with this Act and of any relevant regulation, order or rule made under this Act by which person the offence has been committed; and
- (b) that it has been committed without the consent, connivance, or willful default of the occupier or owner of the factory or workplace; and in contravention of his orders, the inspector shall proceed against the person who he believes to be the actual offender without first proceeding against the occupier or owner of factory.

Proceedings
against
persons
other
than
occupiers
or owners

86. Where, under this Act, any person is substituted for the occupier or owner of a factory or workplace with respect to any provisions of this Act, any order, summons, notice or proceeding, for the purpose of any of those provisions, shall be served on or taken in relation to that person.

Prosecution of
offences

87.—(1) Every offence under this Act shall be prosecuted, in a Resident Magistrate Court or a District Magistrate Court presided over by a Resident Magistrate.

(2) In any proceedings under this Act, it shall be sufficient in the charge to allege that the factory or workplace is a factory or workplace within the meaning of this Act and to state the name of the ostensible occupier or, where the occupier is a firm the title of the firm.

(3) The burden of proving that the premises are not a factory or workplace or that the occupier specified in the charge is not the occupier of the factory or workplace shall lie upon the person alleging such fact.

(4) Where any offence is committed under this Act by reason of a failure to make an examination, enter a report, or do any other thing, at or within the time specified by this Act, or regulation, or rule, or order made under this Act, the offence shall be deemed to continue until the examination is made, or the report entered, or the other thing done, as the case may be.

88.—(1) The Chief Inspector may, if satisfied that any person has committed an offence under this Act or under any regulations made under this Act, by order, compound such offences by requiring such person to make payment of a sum of money except that —

Powers to
com-
pound
offences

- (a) such sum of money shall not be less than one hundred thousand shillings; and
- (b) the Chief Inspector shall give a receipt to the person from whom he or she receives such sum of money.

(2) The Chief Inspector may by Order published in the *Gazette* delegate to any inspector the powers under subsection (1) and the provisions of this section shall apply in the same way to the performance by any other inspector of the function so delegated to him.

(3) Where an offence is compounded in accordance with the provisions of subsection (1) and proceedings are brought against the offender for the same offence, it shall be a good defence for the offender to prove to the satisfaction of the court that the offence with which the offender is charged has been compounded under subsection (1).

(4) Any person who is aggrieved by any order made under subsection (1), may, within thirty days of that order to every such appeal as if it were an appeal against a sentence passed by a Magistrate's court in the exercise of its original jurisdiction.

PART X

MISCELLANEOUS PROVISIONS

89.—(1) There shall be kept or posted in a prominent position in every factory or workplace —

- (a) the prescribed abstract of this Act;
- (b) a notice of the address of the Chief Inspector and of the nearest labour office;

Posting
of
abstract
of Act,
Rules and
Notices

- (c) printed copies of any rules made under this Act which are in force in the factory or workplace, or the prescribed abstracts of such rules;
- (d) every other notices and document required by this Act to be posted in the factory or workplace.

(2) All documents referred to under subsection (1) shall be in English and Swahili and in such other language as an inspector may direct and, if a form has been prescribed for any document it shall be posted in that form.

Register

90.—(1) There shall be kept in every factory or workplace the prescribed register, and there shall be entered in or attached to that register —

- (a) the certificate of registration of the factory or workplace;
- (b) every other certificate issued in respect of the factory or workplace by the Chief Inspector under the provisions of this Act;
- (c) the prescribed particulars as to the washing, white-washing or color washing, painting or vanishing of the factory;
- (d) the prescribed particulars as to every accident and case of occupational disease occurring in the factory or workplace of which notice is required to be sent to the Chief Inspector under the provisions of any law in force in the United Republic;
- (e) all reports and particulars required by any other provisions of this Act to be entered in or attached to the register; and
- (f) such other matters as may be prescribed.

(2) The occupier of a factory or workplace shall submit to an inspector such extracts from the register as the Inspector may require for the purpose of the execution of his duties under this Act.

Preservation of registers and records

91. The register and every other register or record kept in pursuance of this Act shall be kept available for inspection by an inspector for thirty years, or such shorter period as may be prescribed by the Chief Inspector for any class or description of register or record, after the date of the last entry in the register or record.

Periodical return of persons employed or any other matters

92. The occupier of any factory or workplace to which any of the provisions of this Act applies, shall, if so required send to the Chief Inspector, at such intervals as required, a correct return showing the number of persons employed in the factory or workplace and shall give other particulars as to such other matters as may be required.

93.—(1) Every person employed in a factory or workplace to which any provisions of this Act apply shall be required to use the means or appliance provided for securing of health, safety or welfare.

Duties of
employed
persons

(2) No person employed in any factory or workplace to which any provisions of this Act apply shall —

- (a) willfully interfere with or misuse any means, appliance, convenience or other things provided for securing the health, safety or welfare of the person employed therein;
- (b) willfully and without any reasonable cause do anything likely to endanger himself or any other person.

(3) Any person who contravenes the provisions of this section commits an offence and shall be liable on conviction to a fine of not less than one hundred thousand shillings or imprisonment for a term not exceeding three months.

94. The occupier of a factory or workplace shall not, in respect of anything to be done or provided by him in pursuance of this Act, make any deduction from the sum contracted to be paid by him to any person employed, or receive, or allow any person in his employment to receive, any payment from any such person.

Prohibition of
deductions
from
wages

95.—(1) It shall be the duty of every employer or occupier to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees and rehabilitation of affected employees.

General
duties of
employ-
ers or
occupiers
or self
employed
persons

(2) Without prejudice to the generality of an occupier's duty under subsection (1), the matters to which that duty extends include in particular —

- (a) the provision and maintenance of plant and systems of work that are safe and without risks to health;
- (b) arrangements for ensuring safety and absence of risks to health in connection with the production, processing, use, handling, storage and transport of articles and substances;
- (c) the provision of such instruction, training and supervision as is necessary to ensure the health and safety at work of his employees;
- (d) the maintenance of any place of work under the occupier's control, in a condition that it is safe and without risks to health, and the provision and maintenance of means of access to and egress from it are safe and without such risks;

- (e) the provision and maintenance of a working environment for his employees that is safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work;
 - (f) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;
 - (g) establishing those hazards to the health or safety of persons attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in the business;
 - (h) establishing precautionary measures to be taken with respect to the work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;
 - (i) not to permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless the precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;
 - (j) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;
 - (k) enforcing such measures as may be necessary in the interest of health and safety;
 - (l) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and
 - (m) causing all employees to be informed regarding the scope of their authority.
- (3) It shall be the duty of every occupier factory or workplace —
- (a) to consult with his employees or their representatives with a view to the making and maintenance of arrangements which will enable the occupier and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees and checking the effectiveness of such measures;

- (b) except in such cases as may be prescribed, to prepare and as often as may be appropriate to revise a written statement of the health and safety objectives to be aimed at as regards work and of the arrangements in operation for achieving those objectives, and to bring the statement and any revision of it to the notice of all his employees;
- (c) conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be directly affected that their health or safety is not at risk; and
- (d) to use the best practicable means —
 - (i) to prevent the emission into the environment from the premises of noxious or offensive gases and of smoke, solid, liquid wastes and dust; or
 - (ii) to render any such emission from the premises of any such gases, or of any smoke, solid, liquid wastes or dust, harmless and unoffensive.

(4) Every employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not exposed to hazards that affect their health or safety.

(5) Without derogating from any specific duty imposed on an employer by this Act, every employer shall —

- (a) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to health and safety attached to:
 - (i) any work which he has to perform;
 - (ii) any article or substance which he has to produce, process, use, handle, store or transport; and
 - (iii) any plant or machinery which he is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;
- (b) inform in writing the health and safety representatives concerned of inspections, investigations or formal inquiries of which he has been notified by an inspector, and of any application for exemption made by the employer under this Act;
- (c) inform in writing the health and safety representatives as soon as

reasonably practicable of the occurrence of an incident in the factory or workplace or section of the factory or workplace for which the representative has been designated.

(6) Every self-employed person shall conduct his undertaking in such a manner as to ensure that, himself and any other person who may be directly affected by his activities are not exposed to hazards that affect their health or safety.

Prepara-
tion of
policy

96. Every employer who has more than four employees in his employment in any factory or workplace shall have the duty -

- (a) to prepare a written policy on the protection of health and safety of employees and description of the organization for implementing the policy;
- (b) to prepare guidelines concerning the implementation of the contents of the policy;
- (c) to display a copy of the policy at any conspicuous area within the factory or workplace.
- (d) to distribute copies of policy and guidelines to all employees.

General
prohibi-
tions

97.—(1) The Minister may by notice in the *Gazette* declare that no employer shall —

- (a) require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out which in the opinion of the Minister is an activity which threatens or is likely to threaten the health or safety of an employee belonging to that category of employees;
- (b) require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;
- (c) require or permit any employee to perform any work in connection with the carrying out of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the health or safety of an employee;

(d) require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and

(e) require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on, or in any premises where an article or substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is an article or substance which threatens or is likely to threaten the health or safety of an employee.

(2) The Minister shall, before he publishes a notice under subsection (1), cause a draft of his proposed notice to be published in the *Gazette* and any newspaper circulating within the area and at the same time invite interested persons to submit to him in writing, within a specified period, comments and representations in connection with the proposed notice.

(3) A notice made under subsection (1) may at any time be amended or withdrawn by a like notice.

98. Subject to the provisions of section 106, if any requirement, including any health and safety standard in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner that article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.

Sales of
certain
articles
prohibited

99.—(1) It shall be the duty of every employee while at work —

(a) to take reasonable care for the health and safety of himself and of any other person who may be affected by his actions or omissions at work;

General
duties of
employees
at
work

(b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with;

- (c) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by any person authorized by his employer, in the interest of health or safety;
- (d) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable he shall report the situation to his employer or to the health and safety representative of the factory or workplace or section thereof, who shall subsequently report it to the employer; and
- (e) if he is involved in any incident which may affect his health or which has caused an injury, he shall report the incident to his employer or to any other person authorized by the employer, or to his health and safety representative, as soon as practicable but not later than the end of the particular shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible in which case he shall report the incident as soon as practicable thereafter.

(2) Where the employer fails to rectify the situation or to make any appropriate measures as reported under paragraph (d) of subclause (1), the employee shall have the right to report the matter to the inspector.

Chief
Executive
Officer
charged
with
certain
duties

100. — (1) Every Chief Executive Officer shall ensure that the duties of his employer as contemplated in this Act, are properly discharged.

(2) Without derogating from his responsibility or liability in terms of subsection (1), a Chief Executive Officer may assign any duty contemplated in subsection (1), to any person under his control, who shall act subject to the control and directions of the Chief Executive Officer.

(3) For the purpose of subsection (1), the head of any Ministry, Department or Agency shall be deemed to be the Chief Executive Officer of that Ministry, Department or Agency.

Notifica-
tion of in-
cidents or
occupa-
tional dis-
eases

101.—(1) Each incident occurring at the factory or workplace or arising out of or in connection with the activities of persons at a factory or,

(2) Without prejudice to subclause (1), the employer may, where the employee is unable to work by reason of his health condition, terminate that employee in accordance with the procedure as laid down under the Security of Employment Act, 1964."

Act No.
62 of
1964

103.—(1) The Chief Inspector may by notice published in the *Gazette* or a certificate, exempt from any of the requirement of provisions of this Act any factory, workplace or any class or type of steam boiler, steam receiver, steam container, air receiver or any other machinery to which he is satisfied that such provision cannot reasonably be applied.

Exemption by
the Chief
Inspector

(2) The exemption granted under subsection (1) shall be subject to such terms and conditions as may be contained in the notice or certificate granting exemption.

104.—(1) In any public emergency, the Minister may, for such period and on such conditions as may be determined by him, exempt -

Power to
exempt in
case of
public
emergency

- (a) any workplace or factory;
- (b) any category of workplaces or factories;
- (c) any employer or user;
- (d) any category of employers or users,

With respect to any matter, from any or all of the provisions of this Act or the provisions of a notice or direction issued under this Act.

(2) An exemption granted under subsection (1) shall -

- (a) in the case of the exemption of a particular factory or a particular employer or user, be granted by issuing to that workplace or factory of that employer or user a certificate of exemption in which his name, scope, period and conditions of the exemption are specified;
- (b) in the case of the exemption of a category of workplace or factory or a category of employers or of a category of such users, be granted by the publication in the *Gazette* of a notice in which the category is described and the scope, period and conditions of the exemption is specified:

(3) The Minister may grant exemption -

- (a) to an organization of employers or an organization of users in accordance with the requirements of either paragraph (a) or paragraph (b) of subsection (2).
- (b) from any health and safety standard incorporated in the regulations made under this Act, in any manner which he may deem expedient.

(4) A certificate of exemption made under sub-section (2)(a) and a notice made under subsection (2)(b) may at any time be amended or withdrawn by the Minister.

Delegation of powers and assignment of functions

105.— (1) The Minister may delegate any power conferred upon him under this Act to an officer except the power to make Regulations, Rules, Order and Notices under this Act.

(2) A delegation made under subsection (1) shall not prevent the exercise of the relevant power by the Minister himself.

(3) The Minister may authorize any local authority to perform any function referred to in this Act.

(4) An authorization made under subsection (3) shall not prevent the performance of the relevant function by the Minister, Chief Inspector or an Inspector, as the case may be.

General duties of manufacturers

106.—(1) It shall be the duty of every person who designs, manufactures, imports or supplies any article for use in a factory or workplace —

- (a) to ensure, that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a);
- (c) to take such steps to ensure that there will be available in connection with the use of the article at work adequate information about the use for which it is designed and has been tested, and about any

conditions necessary to ensure that, when put to that use, it will be safe and without risks to health.

(d) to take such steps as reasonably practicable to ensure that there will be available in connection with the use of the substance at work, adequate information about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that it will be safe and without risks to health when properly used.

(2) It shall be the duty of any person who undertakes the design or manufacture of any article for use in a factory or workplace to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimization of any risks to health or safety which the design or article may afford.

(3) It shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons in a factory or workplace to ensure that nothing is about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(4) Nothing in subsections (1), (2), (3) of this section shall be taken to require a person to repeat any testing, inspection or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for purposes of those provisions.

(5) For the purposes of this section, an article or substance is not to be regarded as properly used when it is used without regard to any relevant information or advice relating to its use which has been made available by a person by whom it was designed, manufactured, imported or supplied.

Protection
provision

107. Any person exercising the powers or performing functions conferred upon him under this Act, shall not incur any criminal or civil liability as a result of exercising his power.

Repeal
and
savings
Cap. 297

108.—(1) The Factories Ordinance is hereby repealed.

(2) Notwithstanding the repeal of the Factories Ordinance, any regulations, rules or order made under the repealed Ordinance which were in force prior to the commencement of this Act shall be deemed to have been made under this Act until revoked or replaced.

Power to
make
Regula-
tions,
Rules and
Orders.

109.—(1) The Minister may, after consultation with the Board, make regulations, rules or orders —

(a) which in the opinion of the Minister are necessary or expedient in the interest of the health and safety of persons at work, property or environment or in connection with the use of the plant or machinery, or the protection of persons other than persons at work against risks to health and safety arising from or connected with the activities of persons at work, including regulations as to:

- (i) the planning, layout, construction, use, alteration, repair, maintenance or demolition of buildings;
- (ii) the design, manufacture, construction, installation, operation, use, handling, alteration, repair maintenance or conveyance of plant, machinery or health and safety equipment;
- (iii) the training, safety equipment or facilities to be provided by employers or users, the persons to whom and the circumstances in which they are to be provided and the application thereof;
- (iv) the health or safety measures to be taken by employers or users;
- (v) the occupational hygiene measures to be taken by employers or users;
- (vi) any matter regarding the biological monitoring or medical surveillance of employees;
- (vii) the production, processing, use, handling, storage or trans-

- port of, and the exposure of employees and other persons to, hazardous articles, substances or organisms, including specific limits, thresholds or indices of or for such exposure;
- (viii) the performance of work in hazardous or potentially hazardous conditions or circumstances;
 - (ix) the emergency equipment and medicine to be held available by employers and users, the place where the equipment and medicine are to be held, the requirements with which that equipment and medicine shall comply, the inspection of the equipment and medicine, the application of first-aid and the qualifications which persons applying first-aid shall possess;
 - (x) the compilation by employers of health and safety directives in respect of a factory or workplace, the matters to be dealt with in that directives and the manner in which the directives shall be brought to the attention of employees and other persons at factories or workplaces;
 - (xi) the registration of persons performing hazardous work, or using or handling a plant or machinery, the qualifications which those persons shall possess and the fees payable in respect of the registration;
 - (xii) the accreditation, functions, duties and activities of approved inspection authorities;
 - (xiii) the consultations between an employer and employees on matters of health and safety;
 - (xiv) subject to section 5(4) the provision of information by an employer or user to employees or the public on any matter to which this Act relates;
 - (xv) the conditions under which any employer is prohibited from permitting any person to partake of food or to smoke on or in any premises where a specified activity is carried out;
 - (xvi) the conditions under which the manufacture of explosives and activities incidental thereto may take place;
- (b) as to the preventive and protective measures for major hazard installations with a view to protect employees and the public against the risk of major incidents;

- (c) as to the registration of premises where employees perform any work or where plant or machinery is used and the fee payable in respect of that registration;
- (d) whereby provision is made for the continuation of any registration under this Act;
- (e) as to the registration of a plant and machinery and the fee payable in respect of that registration;
- (f) as to the establishment of one or more committees for the administration of this Act, the constitution and functions of the committees, the procedure to be followed at meetings of the committees, the allowances which may be paid to members of the committees;
- (g) prescribing the records to be kept and the returns to be rendered by employers and users and the persons to whom the returns shall be rendered to;
- (h) prescribing the procedure for inspection of register or any other documents by interested persons;
- (i) as to the designation and functions of health and safety representatives and Health and Safety Committees;
- (j) as to the activities of self-employed persons;
- (k) prescribing special application and extension of the provisions of this Act to docks, wharves and quays; and
- (l) as to any other matter the regulation of which is in the opinion of the Minister necessary or desirable for the effective carrying out of the provisions of this Act.

Incorporation of health and safety standards in regulations, rules or orders

110.—(1) The Minister may in making regulations under section 109, incorporate in the regulations, rules or orders, any health and safety standard or part thereof, without stating the text thereof, by mere reference to the number, title and year of issue of that health and safety standard or to any other particulars by which that health and safety standard is sufficiently identified.

(2) Any health and safety standard incorporated in the regulations rules or orders under subsection (1), shall for the purpose of this Act, in so far as it is not inconsistent with any regulation or rule or order made under this Act, be deemed to be a regulation, rule or order,

FIRST SCHEDULE

(Made under section 17(1))

The Occupational Health and Safety Act, 2003
No. 5 of 2003

Notice

PARTICULARS TO BE SUBMITTED BY OCCUPIER, OR
INTENDING OCCUPIER OF A FACTORY/WORKPLACE

1. Name of the occupier, or intending occupier, of the factory/workplace.
2. Address and location of the factory/workplace.
3. Nature of the work carried on, or proposed to be carried on, in the factory/workplace.
4. Whether mechanical power is used or intended to be used and, if so, its nature.
5. Whether steam boilers are used or intended to be used, and, if so, the following particulars in respect of each such boiler -
 - (a) Type, description and distinctive number,
 - (b) Country and year of manufacture,
 - (c) Date of the last thorough examination and name of the person by whom the examination was made,
 - (d) Maximum permissible working pressure in recognized units
6.
 - (a) Total number of persons employed, or intended to be employed, in the factory/workplace.
 - (b) Where persons are employed, or intended to be employed, in shifts, the maximum number employed, or intended to be employed, at any one time.
 - (c) Capital investment of the whole undertaking.

SECOND SCHEDULE

(Made under section 17(2))

The Occupational Health and Safety Act, 2003
No. 5 of 2003

CERTIFICATE OF REGISTRATION OF A FACTORY/WORKPLACE

No. of Certificate

Date of Issue

I hereby certify that the factory/workplace named below has been duly registered in

Incorporation of health and safety standards in regulations, rules or orders

pursuance of section 7 of the Occupational Health and Safety Act, 2003

Name of Occupier

Address and location of factory/workplace

Nature of work

.....

Chief Inspector

THIRD SCHEDULE

(Made under section 17(3))

The Occupational Health and Safety Act, 2003
(No. 5 2003)

COMPLIANCE LICENCE

Name of the Occupier/Owner

.....

Address and location of factory/workplace

.....

Nature of work

The occupier/owner has been issued with a compliance licence after fulfilling the requirements of Occupational Health and Safety Act, and is required to observe the conditions of licence.

Validity Period of Licence

Place of Issue

Date of Issue

Issuing Officer

Conditions:-

1. The occupier/owner must comply with Occupational Health and Safety Act and its subsidiary legislation throughout the validity period of the license.
2. Non-compliance at anytime can attract legal actions and/or revocation of a licence.

FOURTH SCHEDULE

(Made under section 41)

The Occupational Health and Safety Act No.... of 2003
(No. 5 of 2003)

REGISTER OF CHAIN, ROPES AND LIFTING TACKLE, AND LIFTING MACHINE

1. Name of occupier of factory/workplace.
2. Address and location of the factory.
3. Distinguishing number or mark and description sufficient to identify the chain, rope or lifting tackle, or the lifting machine.
4. Date (if after the commencement of this Act) when the chain, rope or lifting tackle, or the lifting machine, was first taken into use in the factory or workplace.
5. Date of each examination made under section 38(5) or section 39(2), as the case may be, and the name of the person by whom it was carried out.
6. Particulars of any defect found at any such examination and affecting the safe working load, and of the steps taken to remedy such defect.
7. Date and number of the certificate relating to any test and examination made under section 40(4) or section 33(3), as the case may be, together with the name and address of the person who issued the certificate.
8. In the case of chains and lifting tackle (except rope slings), dates of annealing or other heat treatment.

FIFTH SCHEDULE

(Made under section 63)

The Occupational Health and Safety Act, 2003
(No. 5 of 2003)

PROCESSES REQUIRING PROVISION OF SUITABLE GOGGLES OR EFFECTIVE SCREENS

1. Dry grinding of metals, or articles of metal, applied by hand a revolving wheel or disc driven by mechanical power.
2. Turning (external or internal) of non-ferrous metals, or of cast iron, or of articles of such metals or such iron, where the work is done dry, other than precision turning where the use of goggles or a screen would seriously interfere with the work, or turning by means of hand tools.

3. Welding or cutting of metals by means of an electrical, oxy-acetylene or similar process.
4. The following processes when carried on by means of hand tools or other portable tools:-
 - (a) Fettling of metal castings involving the removal of metal;
 - (b) Cutting out or cutting off (not including drilling or punching back) of cold rivets or bolts from boilers or other plant or from ships;
 - (c) Chipping or scaling of boilers or ships plates;
 - (d) Breaking or dressing of stone concrete or slag.

SIXTH SCHEDULE

(Made under section 47(6))

The Occupational Health and Safety Act, 2003
(No. 5 of 2003)

PARTICULAR TO BE SUBMITTED BY OCCUPIERS OF PREMISES (OTHER THAN A FACTORY) IN WHICH A STEAM BOILER IS USED

1. Name of the occupier of premises.
2. Address and location of the premises.
3. Nature of the work carried on in the premises.
4. The following particulars in respect of each steam or hot water boiler in use:-
 - (a) Type, description and distinctive number;
 - (b) Country and year of manufacture;
 - (c) Date of the last thorough examination and name of the person by whom the examination was made;
 - (d) Maximum permissible working pressure in recognized units.

SEVENTH SCHEDULE

(Made under section 51(6))

The Occupational Health and Safety Act, 2003
(No. 5 of 2003)

IMPROVEMENT NOTICE

I,an inspector appointed under section 5 of the Occupational Health and Safety Act, 2003 and entitled to issue this notice. I, hereby give you notice that I am of the opinion that at you, as an employer/a self employed person/a person

wholly or partly in control of the premises/other* are contravening/have contravened in circumstances that make it likely that the contravention will continue or to be repeated* the following statutory provisions:-and I hereby direct you to remedy the said contraventions or, as the case may be, the matters occasioning them by (and I direct that the measures specified in the inspection report which forms contraventions or matters)*

Signature, Date

EIGHTH SCHEDULE

(Made under section 51(1))

The Occupational Health and Safety Act, 2003
(No. 5 of 2003)

PROHIBITION NOTICE

I,an inspector appointed under section 5 of the Occupational Health and Safety Act No. 5 of 2003 and entitled to issue this notice. I, hereby give you notice that I am of the opinion that, the following activities namely:-, which are being carried on by you/likely to be carried on by you/under your control* at,involve, or will involve, a risk of serious personal injury, and that the matters which give rise/will give rise* to the said risk(s) are:-and I direct that the said activities shall not be carried on by you or under your control, immediately/after* unless the said contravention(s)* and matters have been remedied. I further direct that the measures specified in the inspection report which forms part of this notice shall be taken to remedy the said contravention(s)* or matters.*

Signature Date

Passed in the National Assembly on the 13th February, 2003

KIPENKA M. MUSSA,
Clerk of the National Assembly