

TITLE 14**Chapter 14:08****PREVIOUS CHAPTER****FACTORIES AND WORKS ACT**

Acts 20/1948, 1/1955 (s. 6), 30/1957, 78/1959, 6/1961, 24/1962 (s. 2), 19/1963 (s. 12), 31/1965, 23/1968, 8/1976, 22/1976 (s 87), 42/1976 (s. 31), 31/1983, 8/1988; 9/1997 (s. 10), 22/2001; R.G.N.s 217/1970, 313/1970, 826/1973.

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AN ACT to provide for the registration and control of factories, the regulation of conditions of work in factories, supervision of the use of machinery, precautions against accident to persons employed on structural work and for matters incidental to the foregoing.

[Date of commencement: 1st March, 1951.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Factories and Works Act [Chapter 14:08].

2 Interpretation

(1) In this Act—

“activity” includes any process, handicraft or occupation;

“area” includes any number of areas whether or not contiguous;

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

“authority” means the National Social Security Authority established by the National Social Security Authority Act [Chapter 17:04];

“builder” means a person who employs anyone on structural work;

“building employee” means a person employed by a builder;

“commercial traveller” means an employee employed exclusively to travel from place to place for the purpose of selling or obtaining orders for goods, and includes an assistant travelling with such employee;

“employee” means any person who—

(a) is employed by or works for an employer in or in connection with a factory, but does not include a person employed solely as a commercial traveller, caretaker or watchman or in the delivery of goods or messages; or

(b) in any other manner whatsoever assists an employer in or about a factory in carrying on the business of such factory;

“employer” means a person who in connection with a factory employs or provides work for or permits anyone in any manner whatsoever to assist him in the carrying on of his business in or about a factory;

“excavation work” includes—

(a) loosening, taking out and removing—

(i) stone, soil and other material in connection with the making, repairing, reopening or closing of any trench, tunnel or similar excavation;

(ii) clay;

(iii) sand from river beds or river banks;

(b) quarrying for stone or gravel;

but does not include any excavation work on a mining location or farm which is associated with mining or farming operations thereon;

“inspector” means an inspector appointed under section four;

“institution” includes any charitable, educational or like institution, whether conducted by the State or by any other body or person;

“local authority” means—

- (a) a municipal council or town council; or
- (b) a rural district council declared in terms of subsection (2) to be a local authority for the purposes of this Act;

“machinery” means—

- (a) any locomotive or any stationary or portable engine, boiler or other steam apparatus; and
 - (b) any appliance or combination of appliances intended for developing, receiving, storing, transmitting or converting power;
- but does not include a vehicle;

“Minister” means the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may from time to time assign the administration of this Act;

“occupier”, in relation to a factory, means—

- (a) the person or persons (other than a manager who is not also the occupier) in whom is vested the right to control and manage the activities in such factory; or
- (b) the principal, superintendent or other person in charge of an institution in which any factory activity is carried on;

“officer” means a person on the fixed establishment of the Public Service or an inspector;

“premises” includes any land, structure, vehicle or vessel;

“structural work” means any work in connection with the erection, alteration, renovation, repair or demolition of any structure, bridge or building, and includes any railway line, road or irrigation, sewerage, excavation or similar work, but does not include any structural work on a mining location or farm which is associated with mining or farming operations thereon;

(2) With the approval of the Minister to whom the administration of the Rural District Councils Act [Chapter 29:13] has been assigned, the Minister may by notice in a statutory instrument declare a rural district council to be a local authority for the purposes of this Act.

3 Interpretation of “factory”

(1) Subject to this section, “factory” means—

- (a) any premises on which any person performs work in connection with any business, undertaking or institution, whether as an employer or employee, pupil or inmate of an institution or otherwise, in any one or more of the following activities—
 - (i) the making of any article or part of any article;
 - (ii) the altering, repairing, renovating, ornamenting, painting, spraying, polishing, finishing, cleaning, dyeing, washing or breaking up of any article;
 - (iii) the adaptation for sale or use of any article;
 - (iv) the sorting, assembling or packing, including washing or filling bottles or other containers, of any articles;
 - (v) the painting, spraying, construction, reconstruction, assembling, repairing or breaking up of vehicles or parts thereof;
 - (vi) printing by letterpress, lithography, photogravure or other similar process, including any activity associated with the printing industry;
 - (vii) the production and storage of gas in a holder of more than one hundred and fifty cubic metres storage capacity;
 - (viii) the freezing, chilling or storage in cold storage of any article;
 - (ix) the slaughtering of livestock;

- (x) the generation of electricity;
 - (xi) photographic work;
 - (xii) any other activity added in terms of subsection (4);
- and

(b) any premises on which bookkeeping, typewriting or any other clerical work incidental to any activity referred to in paragraph (a) is performed, if such premises form part of or are connected with the premises in which the said activity is carried on.

(2) Notwithstanding anything contained in subsection (1), “factory” shall not include—

(a) any premises on which fewer than five persons perform work in any activity referred to in subsection (1) unless mechanical power, other than for ordinary mining purposes, is used in the activity conducted on such premises, whether such power is derived from steam, electricity, gas, liquid or any other source;

(b) premises on which any activity referred to in subparagraph (iv) or (viii) of paragraph (a) of subsection (1) is only incidental to the conduct of a business engaged mainly in the sale of goods by wholesale or retail;

(c) any premises on a mining location in which operations associated with such mining location are carried on;

(d) private houses, hotels, boarding-houses, restaurants, refreshment or tea rooms or eating-houses in respect of any activity referred to in subsection (1) which is ordinarily and necessarily incidental to the conduct of such establishments;

(e) any structural work;

(f) premises on a farm whereon an individual or partnership or group of persons, other than a company, who is a farmer performs work in any activity referred to in paragraph (a) of subsection (1) solely in connection with products which he has produced on a farm occupied by him or solely in connection with his farming operations, unless upon the premises an industry, business or undertaking is being carried on which has by regulation been declared to be an industry, business or undertaking which shall not fall within the exemption conferred by this paragraph;

(g) a workroom in connection with a prescribed class of institution;

(h) any premises used for the purpose of housing vehicles where only minor adjustments are carried out;

(i) any factory for the manufacture of explosives, the owner of which holds a licence in terms of the Explosives Act [Chapter 10:08] to manufacture explosives on the premises concerned.

(3) For the purposes of this section, “power” does not include hand or foot power used to operate any mechanical appliance.

(4) The Minister may, by regulation, add any activity to those specified in paragraph (a) of subsection (1).

(5) Before the making of regulations under subsection (4) the Minister shall—

(a) cause to be published in the Gazette a notice setting forth the purport of the proposed regulation and calling upon all interested persons who have any objections to lodge them in writing at a specified address within thirty days of the date of publication thereof; and

(b) cause to be published in one or more newspapers within seven days after the publication of such notice a statement directing the attention of all interested persons to that notice.

(6) For the purposes of any provision of this Act, the Minister may in his discretion order that a part of a factory shall be deemed to be a separate factory or that two or more factories which are occupied by the same occupier shall be deemed to be a

single factory.

(7) Whenever in the opinion of the Minister the activities of a business would ordinarily constitute a factory if conducted on single premises and such activities have been subdivided into sections all or some of which are conducted on premises not constituting a factory, he may in his discretion order that all or any portion of the said premises shall be deemed to be a factory.

PART II

ADMINISTRATION

4 Appointment of inspectors

(1) Subject to the law relating to the Public Service, the Minister shall appoint—

- (a) a person to be the Chief Inspector of Factories;
- (b) a person to be an inspector.

(2) The Minister, with the approval of a local authority, may appoint a person employed by that local authority to be an inspector.

(3) The appointment of an inspector may be made for a specified period or area and the Minister may annex such conditions as he thinks fit to any such appointment and shall restrict an inspector to the exercise of powers and functions in relation to those matters of which the Minister is satisfied he has made a satisfactory study.

(4) Every inspector shall be furnished with a certificate signed by an officer thereto designated by the Minister stating that he has been appointed an inspector, and the certificate shall state any restrictions, area, period and conditions relating to the appointment.

(5) Where the Minister revokes the appointment of an inspector made under subsection (2) he shall cause the local authority concerned to be notified in writing of such revocation.

5 Powers of inspectors

(1) Any inspector may, for the purposes of ascertaining whether the provisions of this Act are being complied with—

(a) without previous notice, at any reasonable time enter any factory or any premises where structural work is being performed or a lift or elevator is installed and make such examination and inquiry as he deems necessary;

(b) while he is on the premises or at any other reasonable time require from any person the production then and there, or at a reasonable time and place fixed by the inspector, of the registration certificate or provisional factory permit, if any, issued in respect of the premises under section ten or of any book, notice, record, list or other document which by this Act is required to be kept or exhibited;

(c) at any reasonable time and at any place require from any person who has the possession or custody or control of any such book, notice, record, list or other document the production thereof then and there, or at a reasonable time and place fixed by the inspector;

(d) examine and make extracts from and copies of such books, records, lists or documents and may require from any person an explanation of any entries therein and may seize any such books, records, lists or documents as in his opinion may afford evidence of any offence under this Act;

(e) take or remove for purposes of analysis samples of any material or substance produced, used, handled or stored on the premises:

Provided that the occupier or builder or the representative of the occupier or builder of such premises shall be notified of any samples so taken or removed;

and take with him on to any premises an interpreter or other assistant.

(2) Any occupier of a factory or builder and every person employed by him shall at

all reasonable times furnish such facilities as are required by the inspector for entering the premises and for the exercise of his powers under subsection (1).

(3) Any inspector may require any employee or building employee to appear before him at any reasonable time and place fixed by the inspector and may then and there question such employee:

Provided that the inspector shall, after consultation with the employer or builder concerned, fix such time and place so as to inconvenience such employer or builder as little as possible.

(4) For the purposes of this section, an interpreter shall, while acting under the lawful direction of the inspector he accompanies, be deemed to be an inspector.

(5) Any inspector may question either alone or in the presence of any other person, as he thinks fit, with respect to matters dealt with in this Act, every person whom he finds on any premises entered in terms of this section or whom he has reasonable grounds for believing to be, or to have been within the preceding two months, employed on any premises in respect of which any provision of this Act is applicable, or in possession, custody or control of anything in respect of which any such provision is applicable.

(6) An inspector shall perform the functions imposed and duties conferred upon him by this Act subject to such general or special instructions as the Chief Inspector of Factories may from time to time issue.

6 Powers of inspector as to certain defects remediable by local authority

(1) Where an inspector finds any act or default in relation to any drain, sanitary convenience, water supply, lighting, ventilation, nuisance or other matter in a factory which is liable to be dealt with by a local authority under any enactment relating to public health, he shall give notice thereof in writing to the local authority and it shall be the duty of the local authority to make such inquiry into the subject of the notice and take such action thereon as seems to the local authority proper for the purpose of enforcing the enactment and to inform the inspector of the proceedings taken in consequence of the notice.

(2) When an inspector finds any such act or default as aforesaid he may take with him into the factory a medical officer of health, health or sanitary inspector or other officer of the local authority.

(3) If, within one month after notice of an act or default is given by an inspector under this section to a local authority, proceedings are not taken for punishing or remedying the act or default, the inspector may take the like proceedings for the punishment or remedying thereof as the local authority might have taken, and shall be entitled to recover from the local authority as a civil debt all such expenses incurred by him in and about the proceedings as are not recovered from any other person and have not been incurred in or about any unsuccessful legal proceedings.

7 Inspector to produce certificate

Any inspector exercising any power or performing any duty conferred or imposed upon him by this Act shall, on demand, produce the certificate furnished to him in terms of subsection (4) of section four.

PART III

REGISTRATION AND CONTROL OF FACTORIES

8 Premises not to be used as factory unless registered

(1) No person shall occupy or use a factory unless he is the holder of—

(a) a registration certificate issued in respect of such factory under subsection (2) of section ten; or

(b) a current provisional factory permit issued in respect of such factory under subsection (3) of section ten.

(2) The occupier of a registered factory shall not carry on therein any activity referred to in paragraph (a) of subsection (1) of section three, other than that specified in the registration certificate.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

9 Submission of plans for building or alteration of building

(1) Whenever any person intends—

(a) to effect any structural or other alterations to any premises registered as a factory under this Act; or

(b) to erect or to cause to be erected any building for use as a factory; or

(c) to alter or add to any existing building not registered as a factory under this Act with the intention of using such building or a portion thereof as a factory;

he shall submit to an inspector, in duplicate, plans in the prescribed form of the site and of the proposed building, alterations or additions, together with the prescribed particulars.

(2) The inspector shall advise the person submitting such plans and particulars whether he considers that—

(a) the proposed structural or other alterations to any premises registered as a factory under this Act would or would not result in such factory being unsuitable in terms of the regulations for use as a factory in respect of the activity which is specified in the registration certificate for such factory; or

(b) the proposed building or additions or the building altered in the manner proposed would or would not be suitable in terms of the regulations for use as a factory of the nature proposed:

Provided that whenever in terms of any enactment such plans require the approval of a local authority or an officer of a local authority, the inspector shall consult such local authority or officer before expressing his opinion.

(3) If the inspector considers that—

(a) the proposed structural or other alterations to any premises registered as a factory under this Act would result in such factory being unsuitable in terms of the regulations for use as a factory in respect of the activity which is specified in the registration certificate for such factory; or

(b) the proposed building or additions or the building altered in the manner proposed would not be suitable in terms of the regulations for use as a factory of the nature proposed;

he shall give the person submitting such plans and particulars the reasons for his opinion.

(4) Where application is made to any local authority or officer of any local authority for the approval, in terms of any enactment, of any plans for the erection, rebuilding or alteration of any building used or intended to be used for a factory, such local authority or officer, as the case may be, shall submit such plans to an inspector for examination by him, and shall not approve such plans unless the inspector has notified the local authority or officer, as the case may be, in writing that he considers the building will be suitable for use as a factory of the nature proposed.

10 Registration of factories

(1) Application for the registration of any premises as a factory under this Act shall be made to an inspector in the prescribed form by or on behalf of the person occupying or intending to occupy such premises as a factory. The applicant shall

furnish the prescribed particulars and plans, together with any additional information or drawings which may be required by the inspector:

Provided that no such additional information or drawings need be supplied by the applicant unless they are required of him by the inspector within two weeks of the receipt of the application by the inspector.

(2) As soon as practicable after receipt of an application and of any additional information or drawings required in terms of subsection (1) and after consultation with the local authority concerned, if any, the inspector shall—

(a) register the premises in respect of which the application is made by issuing a registration certificate in the prescribed form, specifying the activity in respect of which the factory is registered, the name of the occupier and any other prescribed particulars; or

(b) refuse to register the premises on all or any of the following grounds—

(i) that the premises are unsuitable in terms of the regulations for use as a factory;

(ii) that, subject to subsection (2) of section 24 of the Regional, Town and Country Planning Act [Chapter 29:12], the activity to be carried on in the factory or the siting of the factory would be in contravention of any approved scheme, operative regional plan, operative master plan or operative local plan as defined in that Act;

(iii) that the applicant has not obtained any licence or permit required under any other enactment in respect of the operations to be carried on the premises;

or

(c) register a portion of the premises in the manner prescribed in paragraph (a) and, on the ground of prescribed unsuitability, refuse to register the remaining portion.

(3) Whenever an inspector has refused to register the whole or any portion of the premises in respect of which application has been made, he may issue a provisional factory permit in the prescribed form in respect of the whole or any specified portion of the premises which he has refused to register, to be valid for a period to be stated in the permit, and subject to such conditions as the inspector may specify.

(4) An inspector may in terms of the regulations at any time by notice in writing to the occupier of a factory vary any period, prescribed particulars or conditions specified in a registration certificate or provisional factory permit.

(5) After the registration of any premises as a factory under this Act, no person shall effect or cause to be effected any structural or other alterations to such premises without the written prior approval of an inspector. If any such alteration is commenced without such approval, any inspector may, by notice in writing to the occupier, cancel the registration certificate, whereupon the premises shall cease to be registered as a factory under this Act.

(5a) Any person who contravenes subsection (5) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

(6) If the occupier of a factory loses the registration certificate issued to him under subsection (2) or the provisional factory permit issued to him under subsection (3) or a duplicate registration certificate or duplicate provisional factory permit issued to him under this subsection, he shall, not later than fourteen days after the discovery of such loss, obtain a duplicate registration certificate or duplicate provisional factory permit, as the case may be, from an inspector upon payment of the prescribed fee.

(7) The occupier of a factory shall exhibit the registration certificate or provisional

factory permit issued to him in terms of this section in a glazed frame on the factory premises.

(8) Any person who contravenes subsection (7) shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month, or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

11 Requirements of inspector

(1) If, in the opinion of an inspector, an occupier of a factory has failed to comply with the regulations applicable to him, or the whole or a part of premises constituting a registered factory is no longer suitable in terms of the regulations for use as a factory, he may—

(a) by notice in writing setting forth in what respect the occupier has, in his opinion, failed to comply with such regulations or in what respect the premises are, in his opinion, no longer suitable for use as a factory, require such occupier to take the steps and make the structural alterations mentioned in such notice; or

(b) by a similar notice require such occupier to submit to him a statement setting forth the steps which such occupier proposes to take and, if structural alterations are proposed, also the prescribed plans, showing the structural alterations which such occupier proposes to make in order to comply with such regulations or to render the premises suitable for use as a factory; and

(c) by further notice in writing require such occupier to take the steps and make the structural alterations so proposed without modification or with such modification as the inspector may determine;

within a period specified in such notice not being less than fourteen days.

(2) The period within which the requirements of any notice under subsection (1) are to be complied with may, at the request of the occupier concerned, from time to time be extended by an inspector.

(3) If the occupier upon whom an inspector has, in terms of this section, served notice fails within the time specified to comply with the requirements contained in the notice—

(a) he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(b) without affecting any proceedings instituted for an offence in terms of paragraph (a), the inspector may by further notice in writing to the occupier cancel the registration certificate in respect of the factory concerned, whereupon the premises shall cease to be registered as a factory under this Act.

[substituted by Act 22 of 2001, with effect from the 10th September, 2002.]

(4) If, in the opinion of an inspector, the whole or part of any premises constituting a registered factory are no longer suitable in terms of the regulations for use as a factory and cannot be rendered suitable, he may by notice in writing to the occupier cancel the registration certificate in respect of that factory, as from a date at least six months after the date of such notice, and the premises shall thereafter cease to be registered as a factory under this Act. An inspector may vary or withdraw any such notice.

(5) If the occupier upon whom an inspector has, in terms of this section, served notice fails within the time specified to comply with the requirements contained in the notice—

(a) he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(b) without affecting any proceedings instituted for an offence in terms of paragraph (a), the inspector may by further notice in writing to the occupier cancel the registration certificate in respect of the factory concerned, whereupon the premises shall cease to be registered as a factory under this Act.

[inserted by Act 22 of 2001, gazetted on the 1st February, 2002.]

12 Transfer and surrender of certificate of registration

(1) A registration certificate issued under subsection (2) of section ten may, with the approval of an inspector, be transferred by the occupier of the factory concerned to another person intending to be the occupier.

(2) If the occupier of a registered factory ceases to use the premises as a factory, the premises shall, unless the registration certificate has in terms of subsection (1) been transferred to another occupier, forthwith cease to be a registered factory, and the occupier shall, within seven days of his ceasing to use the premises as a factory, notify an inspector in writing thereof and return the registration certificate to him:

Provided that, in the event of the death or insolvency of any person or the liquidation or winding-up of any company which is an occupier of a factory, his or its trustee, liquidator or executor may continue to occupy such factory for a period not exceeding three months after his appointment and for any additional period authorized in writing by an inspector.

(3) If an occupier of a registered factory fails:-

(a) to notify an inspector in writing of the fact that he factory has ceased to be used as such; or

(b) to return the registration certificate to an inspector;

when required to do so by subsection (2), the occupier shall be guilty of an offence and liable to a fine not exceeding level three or to imprisonment for a period not exceeding one month or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

PART IV

MACHINERY AND ACCIDENTS

13 Inspection of machinery by inspectors

All boilers and machinery shall be subject to examination and inspection by an inspector appointed by the Minister for the purposes of this Part, and for this purpose an inspector may at any reasonable time enter upon any factory or premises where boilers or machinery are in use.

14 Accident register and notification of accidents

(1) Every occupier of any factory and every builder shall keep in the form and manner prescribed an accident register and shall record in such register the particulars of any accident which he is required to notify in terms of subsection (3).

(2) Every occupier of a factory and every builder shall retain any register kept in terms of this section for a period of three years subsequent to the last date upon which an entry was made therein and shall, on demand by an inspector made at any reasonable time during the said period of three years, produce such register for inspection.

(3) Whenever any accident occurs in a factory or on premises where structural work is being performed or in connection with machinery and such accident causes loss of human life or injury to an employee or building employee which results in his absence from work for a period of three days or more or injury to any person not employed on the premises, the occupier of the factory or the builder or user of the machinery, as the case may be, shall, as soon as possible thereafter in the manner and in the form prescribed, notify an inspector in writing of the accident and of the prescribed particulars.

(4) On or before the tenth day of each month the Chief Inspector of Factories shall report to the Authority all accidents which have been notified in terms of subsection (3) during the previous month.

(5) Every medical practitioner who attends any patient whom he believes to be suffering from lead, phosphorus, arsenical or mercurial poisoning or anthrax which may have been contracted as the result of his employment in a factory shall forthwith report the matter in writing to an inspector.

(5a) Any person who contravenes subsection (1), (2), (3) or (5) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

(6) For the purposes of subsection (3)—

“user of machinery” means the owner of or the person benefiting from the use of the machinery and includes the person charged with the supervision of the machinery.

15 Inquiries by inspectors

(1) Whenever in or about a factory or in connection with the activities of a factory, or in connection with structural work or machinery—

(a) any person is killed or injured as a result of an accident; or

(b) any other occurrence takes place which, in the opinion of an inspector, might have led to any person being killed or injured;

an inspector may, if he deems it expedient, hold an inquiry into such accident or occurrence.

(2) Any evidence given at such inquiry shall be taken down in writing and shall be transmitted by the inspector with his report to the Minister.

(3) In the case of an accident causing loss of life or serious bodily injury or where the inquiry reveals a contravention of any of the provisions of this Act, the inspector shall send a copy of his report and of the evidence to the Attorney-General.

(4) This section shall not affect any other law relating to inquests or inquiries into the cause of death from other than natural causes.

PART V

PRECAUTIONS AGAINST ACCIDENTS TO BUILDING WORKERS

16 Interpretation in Part V

In this Part and in section thirty-four—

“competent and responsible person” and “competent workman”, subject to paragraph (c) of subsection (1) of section nineteen, mean a person or workman, as the case may be, possessing the prescribed qualifications;

“crane” means any engine, hoist, lift or derrick or apparatus or contrivance of a like kind operated by hand or other power used in connection with structural work for hoisting, lowering, carrying or removing from place to place materials or goods, and includes any machinery by which the crane is operated;

“gear” includes any ladder, plank, putlog, rope, fastening, hoist, block, pulley, hanger, sling, brace, bracket, chain, shore, strut or prop used or intended to be used in connection with scaffolding, the timbering of excavations or any appliance used or intended to be used instead of scaffolding;

“scaffolding” means any structure or framework used for the support or protection of building employees engaged on any structural work and includes a swinging stage.

17 Scaffolding

(1) No builder shall require or permit a building employee to perform structural work which cannot be performed in safety except on scaffolding unless he provides scaffolding erected in terms of the regulations.

(2) No building employee shall perform structural work except on scaffolding erected

in terms of the regulations if such work cannot be performed in safety otherwise than on scaffolding.

(3) No builder shall require or permit any scaffolding to be constructed, taken down or substantially altered except—

(a) under the supervision of a competent and responsible person; and

(b) as far as possible by competent workmen possessing adequate experience in the construction or removal of scaffolding.

(4) No builder shall require or permit a crane to be installed on scaffolding until he has caused tests to be made by a competent and responsible person to ensure the strength and stability of the said scaffolding.

(5) Every builder shall cause all scaffolding in connection with structural work undertaken by him to be inspected by a competent and responsible person whenever any additions or alterations to such scaffolding have been made.

(6) Any builder who contravenes subsection (1), (3), (4) or (5) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

(7) Any building employee who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

18 Gear used in connection with structural work

(1) No builder shall require or permit a building employee employed on structural work to use in connection therewith any gear which is not of adequate strength, free from patent defect and in good working order.

(2) No building employee employed on structural work shall use in connection therewith any gear which is not of adequate strength, free from patent defect and in good working order.

(3) Every builder shall cause all hoisting machines and tackle to be examined and adequately tested before being put into use, and every chain, ring, hook, shackle, swivel, pulley block, lewis, claw and dog used in connection therewith to be periodically examined by a competent and responsible person.

(4) Any builder who contravenes subsection (1) or (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

(5) Any building employee who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

19 Powers of inspectors

(1) An inspector may by notice in writing to the builder concerned order—

(a) that no scaffolding, crane or gear may be used until the inspector has satisfied himself that it has been tested and complies with the regulations;

(b) that no excavation work may be proceeded with until the inspector is satisfied that the timbering complies with the regulations and that the regulations have been complied with;

(c) that any named person shall not be regarded as a competent and responsible person or a competent workman for the purposes of sections seventeen and eighteen.

(2) An inspector may cancel or amend any notice under subsection (1).

(3) Any person who contravenes or fails to comply with a notice under subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

20 Application of this Part

(1) This Part shall only apply in areas prescribed under subsection (2).

(2) The Minister may, by order in a statutory instrument, prescribe the whole of Zimbabwe or any part or parts thereof to be an area in which this Part shall apply.

PART VI

PROCEDURE AND MISCELLANEOUS

21 Acts or omissions by managers, agents or employees

(1) Whenever any manager, agent, architect, contractor, employee or building employee of any occupier of a factory, employer or builder does or omits to do any act which it would be an offence under this Act for the occupier, employer or builder to do or omit to do, then, unless it is proved that—

(a) such act or omission occurred without the connivance or permission of the occupier, employer or builder; and

(b) all reasonable steps were taken by the occupier, employer or builder to prevent any act or omission of the kind in question; and

(c) it was not in any circumstances within the scope or authority or in the course of the employment of the manager, agent, architect, contractor, employee or building employee to do or to omit to do acts, whether lawful or unlawful, of the character of the act or omission charged;

the occupier, employer or builder shall be presumed to have done or omitted to do that act and 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, of itself, be accepted as conclusive proof that he took all reasonable steps to prevent the act or omission.

(2) Whenever any manager, agent, architect, contractor, employee or building employee of any occupier of a factory, employer or builder does or omits to do any act which it would be an offence for the occupier, employer or builder to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the occupier, employer or builder.

(3) Any such manager, agent, architect, contractor, employee or building employee may be so convicted and sentenced in addition to the occupier, employer or builder.

22 Presumption and proof by affidavit

(1) Proof of publication in the Gazette of regulations in terms of subsection (4) of section three shall be conclusive proof that all the provisions of this Act, in respect of matters precedent and incidental to the publication thereof, have been complied with.

(2) Whenever in any proceedings under this Act it is proved that any person was present on any premises used as a factory, that person shall, until the contrary is proved, be presumed to be an employee.

(3) In the absence of satisfactory proof of age, the age of any person shall, in any proceedings under this Act, be presumed to be that stated by an inspector to be in his opinion the probable age of that person, but any interested person who is dissatisfied with that statement of opinion may, at his own expense, cause the person whose age is in question to appear before and be examined by a medical practitioner, and a statement contained in a certificate by the medical practitioner who examined that person as to what in his opinion is the probable age of that person shall, but only for the purpose of the said proceedings, be prima facie proof as to the age of that person.

(4) In any proceedings under this Act, any statement or entry contained in any book or document kept by the occupier of a factory, an employer or a builder or by his manager, agent or employee or found upon the premises concerned 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 occupier, employer or builder or by any manager, agent or employee of that occupier, employer or builder in the course of his work as manager or in the course of his agency or employment.

(5) Whenever in any 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, wilfully to have falsified that record.

(6) In any proceedings under this Act, an affidavit purporting to be made by an inspector in which it is stated—

(a) that any person is or is not the holder of a registration certificate or provisional factory permit issued in respect of any premises under subsection (2) or (3) of section ten; or

(b) that any person is or was the occupier of a factory; or

(c) that any exemption or authorization to depart from any provision of this Act has or has not been granted to any person in accordance with this Act, or has been withdrawn; or

(d) that an inspector has made an order under section nineteen;

shall, on its mere production in those proceedings by any person, be admissible as evidence of the facts stated therein:

Provided that the officer presiding over the proceedings at which any such affidavit is adduced in evidence may cause the inspector to be summoned to give oral evidence in the proceedings in question or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply on oath thereto purporting to be a reply from the inspector shall in like manner be admissible as evidence in such proceedings.

(7) A certificate signed by the registrar of the Administrative Court or a magistrate, as the case may be, setting out the terms of any decision given on appeal in terms of section twenty-three shall, on its mere production by any person, be conclusive proof of such decision.

23 Appeals from decisions of inspectors

(1) Any person who considers himself aggrieved by a requirement or other decision of an inspector under subsection (2) or (4) of section nine, subsection (2), (3), (4) or (5) of section ten, subsection (1), (2), (3) or (4) of section eleven, subsection (1) or (2) of section twelve, section nineteen or any regulations may, within fourteen days of the date of such requirement or decision, lodge an appeal in the prescribed form and manner.

(2) Appeals in respect of a requirement or decision of an inspector under subsection (1) or (2) of section twelve, section nineteen or any regulations shall be made to any magistrate of the province appointed for the purpose of this section by the Minister responsible for justice, the Chief Magistrate or the provincial magistrate of the province in which the factory, premises or structural work is situated or, in respect of a requirement or decision under any of the other sections mentioned in subsection (1), to the Administrative Court.

(3) The Administrative Court or the magistrate, as the case may be, (hereinafter in this section called the court) shall confirm the decision of the inspector or give such other decision as in its opinion the inspector ought to have given and, for the purpose of this Act, the court's decision shall be deemed to be the decision of the inspector

given on the date on which the court gives such decision.

(4) A decision given by the court in terms of subsection (3) shall, subject to section twenty-four, be final.

24 Appeal from decision of Administrative Court or magistrate

(1) On the decision by the Administrative Court or a magistrate of any appeal under this Act, any party who is dissatisfied—

(a) with the decision as being erroneous in point of law; or

(b) with any decision of the president of the Administrative Court as to whether a matter for decision is a matter of fact or a matter of law; may appeal to the High Court.

(2) Upon the hearing of the appeal the High Court may—

(a) confirm, vary or reverse the decision appealed from;

(b) remit the matter to the Administrative Court or magistrate, as the case may be, with instructions in regard to the taking of further evidence or the setting out of further information;

(c) take any other course which may lead to the just, speedy and as much as may be inexpensive settlement of the appeal;

(d) make such order as to costs as it may deem just.

(3) For the purposes of this Act, the decision of the High Court, or of the Supreme Court on appeal from the High Court's decision, shall be deemed to be the decision of the inspector given on the date on which the High Court or the Supreme Court, as the case may be, gives such decision.

25 Service of notice under this Act

A notice under this Act to any person may be served on him personally or by posting a registered letter addressed to him personally or under his usual business name or style at his place of business or his residence. Any notice to the occupier of a factory may also be served by means of an entry in the factory register.

26 Victimization forbidden

(1) No employer shall dismiss any person employed by him or reduce the rate of his remuneration or alter the conditions of his employment to conditions less favourable to him or alter his position to his disadvantage relatively to other persons employed by such employer by reason of the fact that he suspects or believes, whether or not the suspicion or belief is justified or correct, that that person has given any information which under this Act he could be required to give to an inspector or has complied with any lawful requirement of an inspector or has given evidence in any proceedings under this Act.

(2) An employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment, and the court which convicts him may, in addition to any sentence which it may impose—

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(a) in the case of an employee the reduction of the rate of whose remuneration or the alteration of whose position was the subject of the charge, order the employer to restore the position of such employee to that existing prior to the reduction or alteration, with effect from the date on which the reduction was made or his position was so altered; and

(b) in the case of an employee whose dismissal was the subject of the charge, order the employer to pay to the said employee a sum estimated by the court to be equal to three months' remuneration at the rate according to which he was being remunerated at the time of his dismissal.

(3) Any order made under subsection (2) shall have the effect of and may be executed

as if it were a civil judgment in favour of the Minister, and any moneys recovered shall be paid to the employee concerned.

(4) For the purposes of this section, the definitions of “employer” and “employee” shall not be confined to persons connected with a factory.

27 Provisions of Act cannot be varied by agreement or waived

(1) No agreement, express or implied, shall operate to permit of the application to any employee of any treatment or the grant to him of any benefit less favourable to him than the treatment or benefits in this Act prescribed; nor shall it affect any waiver by any employee of the application to him of any provision of this Act. Any person who enters into any agreement purporting to permit of any such application or grant or to effect any such waiver shall be guilty of an offence and any such agreement shall be void.

(2) Any person who is guilty of an offence under subsection (1) shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

28 Prohibition of deduction from wages

(1) Any employer, builder or occupier of a factory who in respect of anything required to be done or provided by him in pursuance of this Act makes any deduction from or reduces the remuneration of any employee, or requires any employee to make a payment in respect of such requirement to any other person, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(2) For the purposes of subsection (1), the definition of “employee” shall not be confined to persons connected with a factory.

29 Disclosure of certain information prohibited

(1) If any person in the exercise of his powers under this Act or in the performance of his duties in carrying out this Act acquires information relating to the affairs of any other person, firm or business, or to any manufacturing or commercial secrets or working processes, he shall not, save for the purposes of legal proceedings under this Act, disclose such information to any other person, except—

(a) to a court of law or to any person who by law is invested with the power to compel the disclosure of such information; or

(b) to the Minister or to any person acting in the execution of this Act, in so far as such information may be necessary for the execution thereof.

(2) Any person who wilfully contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

30 Offences in connection with safety appliances

(1) No person shall—

(a) wilfully or negligently injure or interfere with; or

(b) misuse; or

(c) in a negligent manner use;

any means, appliance, convenience or other thing provided in pursuance of this Act for securing the health, safety or welfare of employees in any factory or place where structural work is being performed.

(2) Where any means, appliance or other thing for securing health or safety is provided under the requirements of this Act for the use of an employee engaged in any process, he shall use such means, appliance or other thing while so engaged.

(3) No employee shall, wilfully and without reasonable cause or negligently, do anything likely to endanger the health, safety or welfare of himself or others.

(4) Any person who contravenes subsection (1), (2) or (3) shall be guilty of an offence and liable—

(a) in the case of a contravention of subsection (1), to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;

(b) in the case of a contravention of subsection (2) or (3), to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(5) For the purposes of this section, the definition of “employee” shall not be confined to persons connected with a factory.

31 Offences in relation to inspectors

Any person who—

(a) falsely holds himself out to be an inspector; or

(b) refuses or fails to answer to the best of his power any question which an inspector in the exercise of his functions has put to him; or

(c) refuses or fails to comply to the best of his power with any lawful requirement or order made by an inspector; or

(d) delays or hinders an inspector in the exercise of his functions; or

(e) falsifies or makes any false entry in any register, record or return he is required to keep or make under this Act;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

32 Locking of factories

(1) No occupier of a factory or employer shall, without good reason, cause or permit all the entrances to his factory at the same time to be locked or otherwise rendered incapable of being opened from the outside while any work is being performed in such factory.

(2) Any occupier or employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001, with effect from the 10th September, 2002.]

33 Penalties

(1)

[repealed by Act 22 of 2001, with effect from the 20th May, 2002.]

(2) Any person who contravenes any provision of this Act or any order, notice or requirement under this Act shall be guilty of an offence and, if no special penalty is prescribed therefor, shall be liable—

(a) on a first conviction, to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(b) on a second or subsequent conviction, to a fine not exceeding level nine or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(3) If any person continues an offence after his prosecution therefor under this Act he

shall be liable to further prosecution or prosecutions for such offence.

34 Regulations

(1) The Minister may make regulations as to—

- (a) (i) the construction, lay-out and equipment of factories;
- (ii) the character, site, structure, lighting, ventilation, cleansing, drainage and water supply of any factory;
- (iii) the machinery, apparatus, appliances, instruments and utensils to be used in a factory;
- (b) the measures to be taken to secure cleanliness, safety and preservation of health, including sanitation, ventilation and lighting, in or about factories and on or about premises where structural work or excavation work is performed, and the duties of occupiers of factories, builders, employers and employees and building employees in connection therewith;
- (c) the accommodation facilities and conveniences to be provided in factories by occupiers for employees while they are working, resting or eating therein;
- (d) the clothing, safety devices and protective articles and protective measures to be provided by employers, builders and occupiers of factories for employees who handle specified articles in the course of their work or who are employed in specified activities and under specified conditions;
- (e) the first aid equipment to be provided by occupiers of factories and builders and the employment of persons who hold specified qualifications in first aid;
- (f) the steps to be taken by the owners of buildings used or intended for use as factories or by occupiers of factories in connection with the structure of such buildings or otherwise in order to prevent or extinguish fires, and to ensure the safety, in the event of fire, of persons in such buildings;
- (g) the medical examination of persons where such examination is required under this Act;
- (h) the hours and conditions of work of female and juvenile employees and the prohibition of the employment of any person under a specified age in any specified activity or class of activity, whether carried on in a factory or in connection with structural work;
- (i) the returns, statistics, information and reports which under this Act shall be furnished in relation to factories, structural work and employees, and the times at which, the manner in which and the persons by whom the same shall be furnished, and the records which shall be kept;
- (j) the conditions governing the erection, installation, working and use of any machinery, and the duties, responsibilities and qualifications of the user or person in charge of or erecting such machinery;
- (k) lifts, elevators or escalators in a building, including—
 - (i) the conditions governing the erection, installation, working and use thereof;
 - (ii) the duties, responsibilities and qualifications of a person erecting or installing a lift, elevator or escalator;
 - (iii) the duties and responsibilities of the owner of a building in which a lift, elevator or escalator is in use;
 - (iv) the duties and responsibilities of a person operating or using a lift, elevator or escalator;
- (l) appeals from decisions and instructions of an inspector;
- (m) the reporting of accidents under section fourteen, the manner of holding inquiries in connection therewith and the procedure to be followed at such

inquiries;

(n) the fees which shall be payable for any registration certificate, duplicate registration certificate or duplicate provisional factory permit and for any inspection or for the examination of particulars and plans of buildings and alterations under this Act;

(o) the qualifications to be held by persons performing prescribed classes of work in connection with machinery;

(p) the conditions governing the construction, erection, alteration or taking down of scaffolding or cranes;

(q) the conditions governing the use of scaffolding, gear, cranes, hoisting machines and tackle, and the testing thereof;

(r) the conditions governing structural work, including the steps to be taken in connection with timbering, underpinning and shoring up;

(s) in respect of structural work—

(i) the precautions to be taken by builders or building employees to prevent persons being injured by falling articles;

(ii) the lighting of structural work and the safeguards to be used in connection with electrical equipment;

(iii) the stacking of materials on or near the site of the work;

(iv) the necessary qualifications of a cranedriver or hoisting appliance operator;

(v) who may be regarded as a competent or responsible person or a competent workman for the purposes of sections seventeen and eighteen;

(t) the provision of equipment and the precautions necessary where persons employed on structural work are in risk of drowning;

(u) the stacking or storage of material or products at a factory or in connection with any structural works;

(v) the control of noise in or emanating from a factory or during any structural work;

(w) all matters which by this Act are required or permitted to be prescribed.

(2) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof not exceeding a fine not exceeding level seven or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

[amended by Act 22 of 2001, with effect from the 10th September, 2002.]

(3) Nothing in this section contained shall be deemed to prohibit any agreement published or deemed to have been published under the Labour Relations Act [Chapter 28:01] from prescribing provisions which relate to any matter referred to in subsection (1), but in the event of any conflict between those provisions and any relevant regulations the provisions of such regulations shall prevail.

35 Exemption by Minister

(1) Notwithstanding anything in this Act contained, the Minister may, if in his opinion special circumstances exist which justify exemption, by order, exempt any class of employers or other persons, either generally or with such limitations as he may deem fit and subject to any conditions he may impose in such order, from all or any of the provisions of sections eight, nine, ten, eleven, twelve, thirteen, fourteen, seventeen, eighteen and nineteen, or of any of the provisions of the regulations.

For the purposes of this section—

“class of employers or persons” includes such group or section or type of employers or persons as may be specified by the Minister in the order, and the Minister may, in so specifying, apply any method of differentiation or discrimination he may deem

advisable.

(2) The Minister may by further order cancel or amend any order published in terms of subsection (1).

(3) The Minister may, if in his opinion special circumstances exist which justify exemption, under licence signed by a prescribed officer, exempt any person, either generally or with such limitations as he may deem fit and subject to any conditions he may impose and for such period as he may specify, from all or any of the provisions of this Act referred to in subsection (1) or from any condition prescribed in an order published in terms of the said subsection.

(4) The Minister may from time to time, by writing under his hand and subject to such conditions as he may deem fit, delegate all or any of the powers conferred upon him by this section to any officer and withdraw such delegation. Notice of any such delegation or withdrawal thereof shall be published in the Gazette.

(5) Any exemption granted in terms of subsection (3) may at any time be withdrawn at the discretion of the Minister or of an officer to whom powers have been delegated under subsection (4).

(6) Any person who contravenes any condition imposed under subsection (1) or (3) shall be guilty of an offence.

(7) All exemptions granted under this section shall be laid before Parliament as soon as may be after they are granted and, if a resolution is passed within the next subsequent twenty-eight days on which Parliament has sat next after such exemption is laid before it requesting the Minister to rescind such exemption, it shall be forthwith rescinded or varied by the Minister but without prejudice to anything previously done under such exemption.

(8) Particulars of all exemptions and amendments thereto which are granted under this section shall be published in the Gazette and in the weekly edition of a newspaper circulating in the area in which the person or persons or classes of persons exempted carry on business.

36 Application to State

This Act shall bind the State.

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