



BERMUDA

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

[NB formerly the Health and Safety at Work Act 1982. Title amended by 2004:21 s.2 effective 20 July 2004]

1982 : 26

TABLE OF CONTENTS

1	Short title and commencement
2	Interpretation
3	General duties of employers
3A	Investigation and report of accidents and dangerous occurrences
3B	Duty of employer to display Act and Regulations
3C	Duty of employer to keep documents and data
3D	Duty of medical practitioners
3E	Duty of persons providing workers compensation coverage
4	General duties of employers and self-employed persons to persons not in their employment
5	General duty of employees
5A	Duty of person controlling premises to persons not employed there
6	Prohibition of interference with or misuse of anything provided as statutory safety measure
7	General duties of manufacturers etc. as regards articles
7A	Right of employee to refuse dangerous work
7B	Procedure to follow
7C	Protection from unjust disciplinary measures
8	Advisory Council
9	Regulations
10	Codes of practice
11	Exemption
12	Safety and Health Officer
13	Powers of a Safety and Health Officer
14	Notice of contravention
14A	Oral direction to eliminate or contain imminent danger

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

15	Matters to be included in notice of contravention
15A	Closing notice
15B	Appeal to Supreme Court
15C	Safety and Health Appeals Officer
16	Appeal against notice or oral direction of contravention
17	Appeal of certain decisions to Supreme Court
18	Obtaining information
19	Information confidential
20	Establishment of safety and health committees
20A	Safety and health representative
20B	Limitation of liability for certain persons
21	Offences and penalties
21A	Service of notice or other document
22	Civil liability
23	Evidence
24	Act binds the Crown
25	Conflict with other Acts; savings
26	Expenses
27	Definitions
28	Authorization of ticketing for offences
29	Form of ticket
30	Issue of ticket
31	Summons
32	Payment of penalty out of court
33	Information
34	Amount of penalty
35	Record of conviction
36	Regulations

[preamble and words of enactment omitted]

Short title and commencement

1 This Act may be cited as the Occupational Safety and Health Act 1982.

[commencement provisions omitted]

[NB formerly the Health and Safety at Work Act 1982. Short title amended by 2004:21 s.2 effective 20 July 2004. ; Section 19 of 2004:21 and the Schedule to that Act amend all references to "health and safety" to "safety and health" effective 20 July 2004. These amendments are not individually noted.]

Interpretation

2 (1) In this Act, unless the context otherwise requires—

“article for use at work” means—

- (a) any plant designed for use or operation (whether exclusively or not) by persons at work; and

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (b) any article designed for use as a component in any such plant;
- “code of practice” includes a standard, a specification and any other documentary form of practical guidance;
- “contract of employment” means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);
- “Council” means the Advisory Council for Safety and Health established by section 8;
- “employee” means an individual who works under a contract of employment, and related expressions shall be construed accordingly;
- “employer” means a person who has, in connexion with the operation of a place of employment, one or more employees in his service;
- “hire-purchase agreement” means an agreement in writing under which a person hires goods and may buy the goods upon payment in full of the credit price;
- “instalment-purchase agreement” means an agreement in writing for the purchase of goods on credit under which the credit price is paid by instalments, whether or not under the agreement the title in the goods remains in the seller until the credit price has been fully paid;
- “medical practitioner” means a person registered to practise medicine under the Medical Practitioners Act 1950;
- “Minister” means the Minister to whom responsibility for the subject of safety and health of persons at work is assigned;
- “personal injury” includes any disease and any impairment of a person’s physical or mental condition;
- “place of employment” means any building, site, workshop, structure, quarry, or other premises or place in which one or more employees or self-employed persons usually work or have worked;
- “plant” includes any machinery, equipment or appliance;
- “prescribed” means prescribed by regulations made by the Minister under section 9;
- “safety and health committee” means a committee established pursuant to section 20;
- “Safety and Health Officer” means a Safety and Health Officer for the purposes of the administration of this Act;
- “self-employed person” means an individual who works for gain or reward otherwise than under a contract of employment whether or not he himself employs others;
- “substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

“supply” where the reference is to supplying articles means supplying them by way of sale, lease, hire or hire-purchase, whether as a principal or agent for another.

(2) For the purposes of this Act—

- (a) “work” means work as an employee or as a self employed person;
- (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and
- (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person,

and “work” and “at work”, in whatever context, shall be construed accordingly.

[Section 2 “inspector” deleted and “Safety and Health Officer” inserted by 2004:21 s.3 effective 20 July 2004. Section 19 of 2004:21 and the Schedule to that Act amend all references to “inspector” to “Safety and Health Officer” effective 20 July 2004. These amendments are not individually noted.; “medical practitioner” inserted by 2005:12 s.2 effective 15 June 2005]

General duties of employers

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

(2) Without prejudice to the generality of an employer’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, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connexion with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his employees;
- (d) so far as is reasonably practicable as regards any place of employment under the employer’s control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work;
- (f) arrangements for consulting and co-operating with the safety and health committee or the safety and health representative at the place of employment for the purpose of resolving concerns on matters of health, safety and welfare at work.

(3) In such cases as may be prescribed, every employer shall prepare and as often as may be appropriate revise a written statement of his general policy with respect to the

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

safety and health at work of his employees and the organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.

[Section 3 subsection (2)(g) amended by 2004:21 s.4 effective 20 July 2004]

Investigation and report of accidents and dangerous occurrences

3A Every employer shall investigate the cause of every accident or dangerous occurrence at the work place and furnish a report to the Minister, in such form as the Minister may direct, on the cause of the accident or the dangerous occurrence and the remedial action taken to prevent a recurrence of the accident or dangerous occurrence, within one week of the accident or dangerous occurrence.

[Section 3A inserted by 2004:21 s.5 effective 20 July 2004]

Duty of employer to display Act and Regulations

3B An employer shall—

- (a) post a copy of this Act and any Regulations made under this Act at a conspicuous place at the place of employment; or
- (b) place a copy of this Act and any Regulations made under this Act at a place that is easily, readily and conveniently accessible for use by the employer and all employees.

[Section 3B inserted by 2004:21 s.5 effective 20 July 2004]

Duty of employer to keep documents and data

3C Every employer shall keep documents and data on work processes, material, equipment, working conditions and any other documents or data that affect the safety and health of persons at work as the Minister may specify and in such form as the Minister may direct.

[Section 3C inserted by 2004:21 s.5 effective 20 July 2004]

Duty of medical practitioners

3D (1) A medical practitioner who is of the opinion that a patient is suffering from an occupational disease or illness shall furnish the employer of that patient or the Minister, where the person is self-employed, with a report on the occupational disease or illness.

(2) An employer who receives a report under subsection (1) that an employee of his has been diagnosed as suffering from an occupational illness or disease shall report the matter to the Minister.

[Section 3D inserted by 2004:21 s.5 effective 20 July 2004; title and subsection (1) amended by 2005:12 s.3 effective 15 June 2005]

Duty of persons providing workers compensation coverage

3E A person in the business of providing workers compensation coverage to persons to whom this Act applies shall, on or before the last day of January in any year, provide the

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

Minister with data pertaining to accidents, injuries and illnesses of the previous year, in such form and in such detail as the Minister may direct.

[Section 3E inserted by 2004:21 s.5 effective 20 July 2004]

General duties of employers and self-employed persons to persons not in their employment

4 (1) It shall be the duty of every employer to 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 affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being their employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

General duty of employees

5 It shall be the duty of every employee while at work—

- (a) to take reasonable care to protect his safety and health and the safety and health of other persons who may be affected by his acts or omissions at work;
- (b) as regards any duty or requirement imposed on his employer or any other person by or under this Act or the regulations, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Duty of person controlling premises to persons not employed there

5A (1) This section has effect for imposing on persons duties in relation to those who—

- (a) are not their employees; but
- (b) use premises which are not domestic premises made available to them as a place of employment or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other premises which are not domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or
- (b) the safety of or the absence of risks to health arising from plant or substances in any such premises,

that person shall be treated, for the purposes of subsection (2), as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

(5) For the purpose of this section “domestic premises” means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling).

Prohibition of interference with or misuse of anything provided as statutory safety measure

6 No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare under this Act or the regulations.

General duties of manufacturers etc. as regards articles

7 (1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work—

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) to take such steps as are necessary to secure that there will be available in connexion with the use of the article at work adequate information about the use for which it is designed and about any conditions necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) 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 at work to ensure, so far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(2A) It shall be the duty of any person who manufactures, imports or supplies any substance for use at work—

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (a) to ensure, so far as reasonably practicable, that the substance is safe and without risks to health when properly used;
- (b) to take such steps as are necessary to secure that there will be available in connexion with the use of the substance at work adequate information about the conditions necessary to ensure that it will be safe and without risks to health when properly used.

(3) Any duty imposed on any person by subsections (1), (2) and (2A) shall extend only to things done in the course of trade, business or other undertaking carried on by him (whether for profit or not) and to matters under his control.

(4) Where a person designs, manufactures, imports or supplies an article for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by subsection (1)(a) to such extent as is reasonable having regard to the terms of the undertaking.

(5) Where a person ("the ostensible supplier") supplies any article for use at work or substance for use at work to another ("the customer") under a hire-purchase agreement or instalment-purchase agreement, and the ostensible supplier—

- (a) carries on the business of financing the acquisition of goods from others by means of such agreements; and
- (b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer for a third person ("the effective supplier"),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the article to the customer, and any duty imposed by this section on the suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(6) For the purposes of this section an article or substance is not to be regarded as properly used where 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.

[Section 7 subsection (5)(a) amended by 2004:21 s.6 effective 20 July 2004]

Right of employee to refuse dangerous work

7A (1) Subject to subsection (2) an employee who has reasonable cause to believe that the condition of an article or a place of employment presents an imminent and serious danger to his health or life shall have the right to refuse to work.

(2) An employee shall not be entitled to refuse to work where the imminent and serious danger referred to in subsection (1) is a danger inherent in the employee's work or

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

constitutes a normal condition of employment, or the withdrawal of the services of the employee could endanger the safety or life of another person.

[Section 7A inserted by 2004:21 s.7 effective 20 July 2004]

Procedure to follow

7B (1) Where an employee has reasonable cause to believe that the condition of an article or a place of employment presents an imminent and serious danger to his health or life he shall report the matter to his employer and remain available for work until his claim has been investigated.

(2) An employer who receives a report about a claim to an imminent and serious danger under subsection (1) shall conduct an investigation into the claim, in the presence of the employee and a member of the safety and health committee or the safety and health representative, to ascertain the authenticity of the claim.

(3) Where an employer and an employee cannot reach an agreement on a claim to the existence of an imminent and serious danger, a Safety and Health Officer shall be called in to investigate the claim.

(4) Where a Safety and Health Officer, called in to investigate a claim to the existence of an imminent and serious danger, determines that no imminent and serious danger exists, the employee shall no longer be entitled to the right of an employee to refuse to work under section 7A(1).

[Section 7B inserted by 2004:21 s.7 effective 20 July 2004]

Protection from unjust disciplinary measures

7C No employer shall dismiss, suspend, lay-off, demote or impose any penalty, financial or otherwise or institute any disciplinary measures against an employee for—

- (a) testifying in any proceedings under this Act;
- (b) providing information to a person who has a duty under this Act;
- (c) seeking compliance with or acting in accordance with this Act; or
- (d) exercising his rights under this Act.

[Section 7C inserted by 2004:21 s.7 effective 20 July 2004]

Advisory Council

8 (1) There shall be an Advisory Council for Safety and Health who, subject to this Act, shall be responsible for—

- (a) advising the Minister on proposals for regulations and the policy in relation to the development of new regulations and codes of practice and the policy in relation to new risks to safety and health;
- (b) advising the Minister on matters relating to the protection and promotion of the safety and health of persons at work;

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (c) advising the Minister on safety and health generally and the protection of employees and self-employed persons in specific kinds of situations;
 - (d) advising the Minister on any matter relating to safety and health on which the Minister seeks the advice of the Council;
 - (e) the giving of advice or the making of recommendations to the Minister on any matter mentioned in this subsection.
- (2) The Council shall consist of a Chairman appointed by the Minister and not less than nine other persons of whom—
- (a) four shall be appointed by the Minister after consultation with such organizations representing employers as he considers appropriate;
 - (b) four shall be appointed by the Minister after consultation with such organizations representing employees as he considers appropriate; and
 - (c) a Safety and Health Officer appointed by the Minister.
- (3) A member of the Council, other than the Safety and Health Officer, shall hold office for a period not exceeding three years, and shall be eligible for re-appointment.
- (4) The Minister may refer to the Council any matter relating to the safety and health of persons at work generally or in particular places of employment, and the Council shall enquire into and report to the Minister upon any matter so referred.
- (5) The report of the Council on any matter referred to it under subsection (4) may be published in such manner as the Minister may, after consultation with the Council, determine.
- (6) Fees shall be paid to the members of the Council in accordance with the Government Authorities (Fees) Act 1971 [*title 14 item 6*].
- (7) The Council may regulate its own proceedings.

[Section 8 subsection (2)(a) amended by 2004:21 s.8 effective 20 July 2004]

Regulations

- 9 (1) Subject to subsection 2, the Minister may make regulations—
- (a) prescribing the standards to be established and maintained by employers and self-employed persons for the protection of the safety and health of persons at work and self-employed persons at places of employment;
 - (b) regulating or prohibiting the manufacture, supply, keeping or use of any substance and the carrying on of any process or undertaking;
 - (c) where necessary to ensure the safety and health of persons at work and self-employed persons, imposing requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing, inspection or use of any plant or undertaking or any equipment or machinery used in any plant or undertaking;

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (d) imposing requirements with respect to the marking of any plant or of any articles, equipment or machinery used or made in any plant or undertaking and regulating or restricting the use of specified markings;
- (e) imposing requirements with respect to the testing, labelling or examination of any substance;
- (f) where necessary to ensure the safety and health of persons at work, regulating or prohibiting the employment in specified circumstances of any person or any class of persons;
- (g) where necessary to ensure the safety and health of persons at work and self-employed persons, restricting the performance of specified functions to persons possessing specified qualifications or experience;
- (h) requiring the making of arrangements to promote the health of persons at work, including arrangements for medical examinations and health surveys;
- (i) requiring the making of arrangements to monitor the atmospheric or other conditions in which persons work;
- (j) imposing requirements with respect to any matter affecting the conditions in which persons work, including such matters as the structural condition and stability of places of employment, safe means of access to and egress from places of employment and cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionizing and other radiations, dust and fumes at places of employment;
- (k) providing for minimum standards of certain welfare facilities for persons at work, including an adequate water supply, sanitary and washing facilities, transportation and first-aid arrangements for sick or injured employees, cloakroom accommodation, sitting facilities and lunch-room facilities;
- (l) imposing requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including clothing affording protection against the hazards of work and against unusual exposure to the weather;
- (m) imposing requirements with respect to the instruction, training and supervision of persons at work;
- (n) requiring in specified circumstances the taking of specified precautions in connexion with the risk of fire;
- (o) imposing requirements with respect to the keeping, preservation and submission of records and other documents necessary for the administration of this Act, including plans and maps;
- (p) requiring prompt notification to the Minister of specified kinds of occupational injuries, illnesses, dangerous occurrences and accidents and prescribing actions to be taken or not to be performed to facilitate inquiry

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

and investigation into and prevention of recurrences of such injuries, illnesses, dangerous occurrences and accidents;

- (q) specifying conditions under which work of a hazardous nature may be performed;
- (r) requiring notification respecting any person, premises or thing employed or used in specified hazardous activities as a condition of carrying on any such activity;
- (s) respecting the safety of any transportation provided by an employer for use by employees;
- (t) prescribing anything authorized or required by this Act to be prescribed;
- (u) creating offences and prescribing penalties (including imprisonment), for breaches of such offences;
- (v) respecting the composition and functioning of safety and health committees and the participation of employees in inspections and related matters;
- (w) respecting any matter deemed necessary or advisable to carry out the intent and purpose of this Act.

(2) Before making any regulations under subsection (1), the Minister shall consult the Council and such organizations as appear to him to be representative of the employees and the places of employment concerned.

(3) Different regulations may be made for different places of employment.

(4) Regulations under this Act shall be subject to the negative resolution procedure.

(5) As an alternative to publication in the Gazette under section 5(1) of the Statutory Instruments Act 1977, regulations under this Act may, within one month after filing, be—

- (a) deposited for public inspection at the Bermuda National Library, as defined in the Bermuda National Library Act 1946, and at other locations to be determined by the Minister; and
- (b) posted on the website of the Government of Bermuda.

(6) Regulations that are deposited and posted under subsection (5) shall have effect on the day that the Minister publishes a notice in the Gazette that the regulations have been deposited and posted under that subsection.

(7) The notice referred to in subsection (6) shall indicate the locations where the regulations have been deposited and the web address where they have been posted.

[Section 9 subsection (1)(n) amended by 2004:21 s.9 effective 20 July 2004; subsection (5), (6), and (7) inserted by 2009:34 s.2 effective 15 July 2009]

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

Codes of practice

10 (1) For the purpose of providing practical guidance with respect to the requirements of any provision of the regulations, the Minister may, after consultation with the Council and any interested persons as he considers advisable, approve and issue such codes of practice, or any amendment, repeal or revision thereof, as in his opinion are suitable for that purpose.

(2) Where a code of practice is approved, amended, revised or repealed, the Minister shall cause to be published in the Gazette a notice identifying the code, specifying the provisions of the regulations to which it relates and stating the effective date of the approval, amendment, revision or repeal.

(3) The failure by any person to observe any provision of a code of practice is not of itself an offence.

(4) Where a person is charged with a contravention of any regulation in respect of which the Minister has issued a code of practice, that code is admissible as evidence in a prosecution for the contravention of the regulation.

(5) A copy of a code of practice, or of any amendment or revision thereof, certified to be a true copy by the Minister, shall be received in evidence in any court without proof of the signature of the Minister.

Exemption

11 The Minister may, on the advice of the Council and after consultation with any interested persons as he considers advisable, exempt conditionally or otherwise any person or class of persons from any provision of this Act, the regulations or codes of practice, provided that the standard of safety and health of any employee at work is not thereby adversely affected.

Safety and Health Officer

12 (1) The Minister may authorize any public officer to exercise any powers or perform any duties conferred or imposed on a Safety and Health Officer by this Act.

(2) The Minister shall provide every Safety and Health Officer with a written instrument of appointment and every Safety and Health Officer shall produce his instrument of appointment upon request when exercising or seeking to exercise any power or to perform any duties conferred upon him by this Act or the regulations.

Powers of a Safety and Health Officer

13 (1) A Safety and Health Officer may—

- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) enter any place of employment where he has reason to believe any person or self-employed person works or has worked, and he may conduct any tests, take any samples and make any examinations he considers necessary or advisable;

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (b) take with him to any place of employment one or more persons to assist him and may make arrangements with the person in charge of the place of employment for the person or persons he takes with him to re-enter the place of employment to perform specified duties,
- (c) take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
- (d) make any examination and investigation that may be necessary to ascertain whether or not this Act or the regulations are being complied with.
- (e) as regards any place of employment which he has power to enter, to direct that the place of employment or any part thereof, or anything therein shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d);
- (f) take samples of any articles or substances found in any place of employment which he has power to enter, and of the atmosphere in or in the vicinity of any such place of employment;
- (g) in the case of any article or substance found in any place of employment which he has power to enter being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose of carrying into effect any of the provisions of this Act or the regulations within the field of responsibility of a Safety and Health Officer;
- (h) in the case of any such article or substance as is mentioned in paragraph (g), to take possession of it and detain it for as long as is necessary for all or any of the following purposes—
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before the examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or the regulations or any proceedings relating to a notice under section 15;
- (i) require the production of, inspect and take copies of any books, records or documents or any entry therein, kept pursuant to this Act or the regulations;
- (j) require any person whom he finds in or at a place of employment to afford him any information the person can respecting the identity of the employer at that place of employment;
- (k) do such other things as may be authorized by the Minister.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

(2) Where a Safety and Health Officer proposes to exercise the power conferred by subsection (1)(g) in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(3) Before exercising the power conferred by subsection (1)(g) in the case of any article or substance, a Safety and Health Officer shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(4) Where under the power conferred by subsection (1)(h) a Safety and Health Officer takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power a Safety and Health Officer shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

[Section 13 subsection (4) "fix" substituted for "fixed" by 2004:21 s.10 effective 20 July 2004. NB amendment grammatically incorrect and not taken in by editor]

Notice of contravention

14 (1) If a Safety and Health Officer is of the opinion that a person—

- (a) is contravening any provision of this Act or the regulations;
- (b) has contravened any provision of this Act or the regulations in circumstances which make it likely that the contravention will continue or will be repeated,

he may serve on that person a notice stating the provision and the reasons which make him of that opinion and requiring that person to remedy the contravention within the period specified in the notice.

(2) Where a Safety and Health Officer is of the opinion that any activities which are being carried on or are about to be carried on at a place of employment involve or will involve a risk of serious personal injury he may direct in the notice of contravention that the activities to which the contravention notice relates shall not be carried on after the period specified in the notice or until the contravention specified in the notice has been remedied, whichever occurs first.

(3) Where the Safety and Health Officer is of the opinion that a risk of serious personal injury is or will be imminent, he shall, in the direction given pursuant to subsection (2), require that the activities mentioned in subsection (2) other than those necessary to remedy the contravention, shall cease forthwith.

(4) Where there is a safety and health committee or a safety and health representative at a place of employment and a notice of contravention which relates to a contravention at that place has been served upon any person, the Safety and Health Officer

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

shall provide the committee or the representative with a copy of that notice and, where there is no such committee or representative, the Safety and Health Officer shall post a copy of the notice in a prominent place at the place of employment.

(5) The person on whom a notice has been served shall within seven days of the end of the period specified in the notice provide the safety and health committee or safety and health representative with, or where no committee or representative exists shall post in a prominent place at the place of employment, a written report of the progress that has been made towards remedying the contravention and, in the case of a notice relating to risk of serious personal injury, he shall, within seven days of the end of the period specified in the notice, send a copy of the report to the Safety and Health Officer who issued the notice.

[Section 14 subsections (4) and (5) substituted by 2004:21 s.11 effective 20 July 2004]

Oral direction to eliminate or contain imminent danger

14A (1) Notwithstanding section 14, where a Safety and Health Officer is of the opinion that a person is about to contravene, is contravening or has contravened any provision of this Act or any Regulations made under this Act and the contravention may involve serious personal injury or is dangerous to public safety and health and requires immediate attention to ensure the remedying, containment or elimination of an imminent personal injury or imminent danger to safety and health he may give an oral direction to the person causing, about to cause or who has caused the contravention, stating the reason for that opinion and requiring the immediate remedying or cessation of the activity.

(2) A Safety and Health Officer who gives an oral direction under subsection (1) shall confirm the oral direction, in writing as soon as reasonably practicable and have it served on the person causing, about to cause or who has caused the contravention.

(3) The confirmation of the oral direction in writing referred to under subsection (2) shall specify—

- (a) the reason for the oral direction; and
- (b) the time within which the person causing, about to cause or has caused the contravention, is required to remedy, contain or eliminate the contravention.

(4) Where a person is given an oral direction under subsection (1), and the person does not comply with the direction within the time he is required to comply with the direction, he commits an offence.

[Section 14A inserted by 2004:21 s.12 effective 20 July 2004]

Matters to be included in notice of contravention

15 (1) A notice of contravention may include directions as to the measures to be taken to remedy the contravention to which the notice relates, and the directions shall, where practicable, give the person on whom the notice is served a choice of different ways of remedying the contravention.

(2) Where a notice of contravention which is not to take effect immediately has been served—

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (a) the notice may be withdrawn by the Safety and Health Officer at any time before the end of the period specified in the notice; or
- (b) the period so specified may be extended by the Safety and Health Officer at any time except when an appeal against the notice is pending.

Closing notice

15A (1) Notwithstanding any provision in this Act, where the Minister on consideration of a report from any of his Safety and Health Officers or other information in his possession is satisfied that any place of employment or part thereof is in such a state as to be a danger to the health or safety or to both safety and health of persons using the place or part thereof, he may in the interests of the public serve a closing notice upon the employer or upon the person having control of the place of employment or the part thereof.

(2) A closing notice shall be a notice prohibiting the use of the place of employment or part thereof in respect of which the notice is made for any purpose other than a purpose approved by the Minister.

(3) *[Repealed by 2004:21]*

(4) The approval of the Minister under subsection (2) shall not be unreasonably withheld and if the Minister is satisfied that the danger to the health or safety or to both safety and health of persons using the place or part thereof is removed, he shall determine the closing notice.

(5) Any person aggrieved by—

- (a) the withholding of approval by the Minister of any use of the place of employment or part thereof to which the closing notice relates; or
- (b) a refusal by the Minister to determine the closing notice,

may appeal to the Magistrates' Court and on any such appeal the Court may make such order as it thinks fit.

(6) The procedure in respect of an appeal under this section shall be by way of complaint for an order.

(7) An appeal under this section shall be brought within twenty-eight days after the withholding of approval or the refusal, as the case may be, and for the purposes of this subsection the making of the complaint is deemed to be the bringing of the appeal.

(8) The bringing of an appeal under this section shall not have the effect of suspending the operation of the closing notice.

[Section 15A subsection (3) repealed by 2004:21 s.13 effective 20 July 2004]

Appeal to Supreme Court

15B An appeal lies to the Supreme Court against an order, determination or other decision of the Magistrates' Court under section 15A.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

Safety and Health Appeals Officer

15C (1) The Minister may by instrument in writing authorise any Safety and Health Officer to exercise any powers or perform any duties conferred on a Safety and Health Appeals Officer under this Act.

(2) The instrument of authorisation under subsection (1) shall specify the duration of the authorisation.

[Section 15C inserted by 2005:12 s.4 effective 15 June 2005]

Appeal against notice or oral direction of contravention

16 (1) Any person on whom a notice of contravention is served under section 14 or an oral direction of a contravention is given under section 14A may, within seven days from the date of the giving of the notice or the giving of the oral direction, appeal to the Safety and Health Appeals Officer, who may affirm, amend or cancel the notice.

(2) An appeal to the Safety and Health Appeals Officer under subsection (1) shall not have the effect of suspending the operation of the notice of contravention or the oral direction of a contravention, but the Safety and Health Appeals Officer may suspend the operation of the notice or the oral direction, until the appeal is disposed of.

(3) Any person aggrieved by a decision of the Safety and Health Appeals Officer under subsection (1) may, within seven days from the date of the decision, appeal to the Minister against that decision.

(4) An appeal to the Minister under subsection (3) shall not have the effect of suspending the operation of the notice of contravention or the oral direction of a contravention, but the Minister may suspend the operation of the notice or the oral direction of a contravention until the appeal is disposed of.

[Section 16 substituted by 2004:21 s.14 effective 20 July 2004]

Appeal of certain decisions to Supreme Court

17 (1) Subject to subsection (2), any person aggrieved by the decision of the Minister on such appeal may appeal to the Supreme Court against that decision within fifteen days (or such longer period as the Court may in any particular case for good cause allow) after the making thereof by lodging a notice of appeal with the Minister setting forth the grounds of appeal.

(2) No appeal shall lie to the Court pursuant to this section except upon a ground of appeal involving a question of law or mixed fact and law.

(3) Upon the hearing of any such appeal the Court may make such order, including an order for costs, as it thinks fit.

Obtaining information

18 For the purpose of obtaining any information which the Minister needs in the administration of this Act, the Minister may direct any person to furnish him with such information in such form and manner and within such time as he may specify.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

Information confidential

19 No person employed for any of the purposes of this Act shall reveal or in any manner communicate to any other person, except for the purposes of this Act and the regulations or as required by law, any information which may come to his knowledge in the course of his duties and employment.

Establishment of safety and health committees

20 (1) At every place of employment where ten or more persons are employed, the employer shall cause a committee to be established to be known as a safety and health committee.

(2) The committee shall consist of no fewer than two and no more than twelve persons of whom at least half shall be persons representing employees other than employees connected with the management of the place of employment and either elected by the employees they represent or appointed in accordance with the constitution of the trade union of which the employees are members.

(2A) Notwithstanding the provisions of subsections (1) and (2), where an employer has more than one place of employment he may with the agreement of his employees, cause to be established a single committee covering all his places of employment, and such committee shall consist of no fewer than two persons representing each place of employment where five or more persons are employed of whom half shall be persons representing employees other than employees connected with the management of the places of employment and either elected by the employees they represent or appointed in accordance with the constitution of the trade union of which the employees are members.

(3) The employer shall cause the names of the committee members to be posted in a prominent place at the place of employment.

(4) The duties of the committee shall include—

- (a) participation in the identification and control of the safety and health hazards within the place of employment;
- (b) the establishment and promotion of safety and health programmes for the education and information of employees;
- (c) the receipt, consideration and disposition of matters respecting the safety and health of employees; and
- (d) such other duties as may be specified in this Act or in Regulations made under this Act.

(5) *Repealed*

[Section 20 subsection (1) amended, and (4) repealed, by 2004:21 s.15 effective 20 July 2004; new subsection (4) inserted, and (5) repealed, by 2005:12 s.5 effective 15 June 2005]

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

Safety and health representative

20A (1) At every place of employment where less than ten persons are employed and a safety and health committee has not been established, the employer shall appoint an employee to be a safety and health representative.

(2) The safety and health representative appointed under subsection (1) shall be an employee not involved in the management of the place of employment and either elected by the employees he represents or appointed in accordance with the constitution of the trade union of which the employees are members.

(3) The duties of the safety and health representative shall be the same as the duties of the safety and health committee specified under section 20(4).

[Section 20A inserted by 2004:21 s.16 effective 20 July 2004; subsection (3) substituted by 2005:12 s.6 effective 15 June 2005]

Limitation of liability for certain persons

20B No Safety and Health Officer, safety and health committee member or safety and health representative having a duty under this Act shall be held personally liable for anything done or omitted to be done by him in good faith in pursuance of his purported authority under this Act or any Regulations made under this Act.

[Section 20B inserted by 2004:21 s.16 effective 20 July 2004]

Offences and penalties

21 (1) Every person who—

- (a) fails to discharge a duty to which he is subject by virtue of section 3, 4, 5, 5A or 7;
- (b) contravenes any health or safety regulations made under section 9;
- (c) contravenes any requirement or prohibition imposed by a notice of contravention, including any such notice as modified on appeal;
- (d) intentionally obstructs a Safety and Health Officer in the exercise of his powers or the performance of his duties;
- (e) falsely pretends to be a Safety and Health Officer;
- (f) intentionally makes or causes to be made a false entry in any register, book, notice or other document to be kept by him under this Act or the regulations or deletes or destroys any true or proper entry in such document;
- (g) contravenes any other provision of this Act or fails to comply with an order or direction made under this Act or the regulations,

commits an offence.

(2) Punishment on summary conviction in respect of an offence under subsection (1)(a), (b) or (c)—

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

- (a) in the case of a first conviction for such offence: imprisonment for 1 year or a fine of twenty thousand dollars or both such imprisonment and fine and, in the case of a continuing offence, a further fine of two thousand dollars for each day during which the offence continues;
- (b) in the case of a second or subsequent conviction for such offence: imprisonment for 2 years or a fine of forty thousand dollars or both such imprisonment and fine and, in the case of a continuing offence, a further fine of four thousand dollars for each day during which the offence continues.

(3) Punishment on summary conviction in respect of an offence under subsection (1)(d), (e), (f) or (g): imprisonment for one year or a fine of two thousand dollars or both such imprisonment and fine.

(3A) Any person who knows that a closing notice has become operative and uses the place of employment or part of the place of employment, in contravention of the notice or permits the place or part of the place of employment, to be so used, commits an offence and is liable, on conviction summarily, to imprisonment for six months or to a fine of ten thousand dollars and a further fine of one thousand dollars for every day on which he so uses the place or part of the place of employment or permits the place or part of the place of employment to be so used, after the closing notice becomes operative.

(3B) Where a person contravenes a provision of this Act, knowing that the contravention is likely to cause serious injury or result in the death of an employee, he commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment; and
- (b) on conviction on indictment, to a fine not exceeding one million dollars or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3C) Without prejudice to—

- (a) subsections (2), (3), (3A) and (3B); and
- (b) the procedure set out in the Criminal Jurisdiction and Procedure Act 2015 for laying an information and for issuing summons,

an information may be laid and a summons issued by a Safety and Health Officer for an offence under section 21 by means of a Notice in accordance with Regulations made under this Act.

(4) Where an offence against this Act or the regulations is committed by a body corporate with the consent or connivance of, or is attributable to any wilful neglect on the part of any director, manager, secretary or any person purporting to act in any such capacity, he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

(5) No prosecution for an offence under this section shall be brought except by or with the consent of the Director of Public Prosecutions.

[Section 21 subsection (5) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; subsections (2) and (3) amended, and (3A)-(3C) inserted, by 2004:21 s.17 effective 20 July 2004; subsection (3C)(b) amended by 2015 : 38 s. 91 effective 6 November 2015]

Service of notice or other document

21A (1) Any notice or other document which is required or authorised by this Act or regulations to be given to or served on a Safety and Health Officer may be given or served by delivering it to him or by leaving it at, or sending it by post to his office.

(2) Any notice or other document which is required or authorised by or under this Act or regulations to be given or served on a person may be given or served—

- (a) by delivering it to that person;
- (b) by leaving it, or sending it in a prepaid registered letter addressed to him, at his usual or last known residence;
- (c) in the case of a body corporate, by delivering it to the secretary or clerk at the registered or principal office of the body corporate or by sending it in a prepaid registered letter addressed to the body corporate's secretary or clerk at that office.

(3) If the name or the address of any employer or person having control of the place of employment or part thereof on or to whom any notice or other document is to be given or served cannot after reasonable inquiry be ascertained, the notice or other document may be given or served by addressing it to the person on or to whom it is to be given or served by the description of "employer" or "person having control" of the place of employment (describing it) to which the notice or other document relates, and by delivering it to some responsible person who is or appears to be employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the place of employment.

Civil liability

22 (1) Nothing in this Act shall confer a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by sections 3, 4, 5 and 7 or any contravention of section 6.

(2) Breach of a duty imposed by any regulations made under this Act shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise.

(3) Subsections (1) and (2) are without prejudice to any right of action which exists apart from this Act.

(4) Any term of an agreement which purports to exclude or restrict the operation of subsection (2), or any liability arising by virtue of that subsection, shall be void, except in so far as the regulations provide otherwise.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

(5) In this section “damage” includes the death of, or injury to, any person (including any disease and any impairment of a person’s physical or mental condition).

Evidence

23 (1) In any proceedings for an offence under any of the provisions of the Act or the regulations consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove, as the case may be, that it was not practicable or not reasonably practicable to do more than was actually done to satisfy the duty or requirement, or that there was no better practicable means than was actually used to satisfy that duty or requirement.

(2) Where a person who has a duty to fulfill an obligation under this Act has exercised due care, diligence, and attention and done his utmost best towards fulfilling that obligation, he shall not be liable for failure to fulfill that obligation.

[Section 23 subsection (2) inserted by 2004:21 s.18 effective 20 July 2004]

Act binds the Crown

24 This Act shall bind the Crown.

Conflict with other Acts; savings

25 Nothing in this Act or the regulations shall derogate from the Public Health Act 1949 [*title 11 item 1*], the Building Authority Act 1962 [*title 20 item 2*], the Development and Planning Act 1974 [*title 20 item 1*] or any regulations made thereunder or any other Act or regulations relating to safety and health at work, but in the event of any conflict between this Act and any of the aforementioned Acts or regulations, the provisions of this Act or the regulations, as the case may be, shall, in so far as they relate to safety and health at work, prevail.

Expenses

26 All expenses incurred for the purposes of this Act shall be defrayed out of moneys provided by the Legislature.

Definitions

27 In sections 28 to 36—

“offence” means a contravention of this Act, or regulations made under this Act, that is listed in regulations made under section 36;

“ticket” means a ticket referred to in section 29.

[Section 27 inserted by 2009:34 s.3 effective 15 July 2009]

Authorization of ticketing for offences

28 Without prejudice to the procedure set out in the Criminal Jurisdiction and Procedure Act 2015 for laying an information and for issuing a summons, an information

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

may be laid and a summons issued for an offence by means of a ticket issued in accordance with this Act.

[Section 28 inserted by 2009:34 s.3 effective 15 July 2009; amended by 2015 : 38 s. 91 effective 6 November 2015]

Form of ticket

29 (1) A ticket shall consist of three parts – an information, a summons and a record of convictions – and shall be in a form prescribed by regulations made under section 36.

(2) A ticket shall include a reference to the provision of this Act, or regulations made under this Act, that is alleged to have been contravened and a description of the offence as set out in regulations made under section 36.

[Section 29 inserted by 2009:34 s.3 effective 15 July 2009]

Issue of ticket

30 An authorized officer who has reasonable cause to believe that a person has committed an offence may issue a ticket under this Act to that person by delivering to, or serving on, the person the summons part of the ticket in accordance with section 31.

[Section 30 inserted by 2009:34 s.3 effective 15 July 2009]

Summons

31 (1) An authorized officer who issues a ticket shall, upon completing and signing the summons part of the ticket, either deliver the summons part to the person charged with the offence in respect of which the ticket is issued or serve it on that person by sending it by registered mail to the person's last known address.

(2) Unless the contrary is shown, the date of service of a summons served by registered mail is the fourteenth day after it was sent to the address referred to in subsection (1).

(3) Where the summons part is delivered to the person charged, the authorized officer shall request the person charged with the offence to sign the ticket in the place provided for signature, and the person's signature shall be sufficient proof that the person has received the summons.

(4) A person charged with an offence who refuses without reasonable excuse to accept delivery of the summons part of a ticket under subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$100.

[Section 31 inserted by 2009:34 s.3 effective 15 July 2009]

Payment of penalty out of court

32 (1) An authorized officer who issues a ticket in respect of an offence may enter on the summons part of the ticket the amount of any penalty for that offence specified in regulations made under section 36, in which case the officer shall endorse on the back of the summons part of the ticket a notice that the person to whom the summons is directed

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

may, within seven days after delivery or service of the summons as the case may be, pay out of court the specified penalty.

(2) Where a summons is endorsed under subsection (1), it shall provide for a plea of guilty in the following form—

“PLEA OF GUILTY

I am aware that I have a right to a hearing in respect of the offence with which I am charged and that by signing this plea of guilty I am waiving my right to a hearing and my signature may result in a conviction against me without a hearing. I hereby plead guilty to the offence as charged and consent to be convicted of the offence in my absence.

[blank]

Signature of Defendant”

(3) A signature affixed to the form of Plea of Guilty purporting to be that of the person to whom the summons is directed is prima facie proof that it is the signature of that person.

(4) Upon receipt of a summons duly signed with a plea of guilty and of the amount of the penalty specified in the summons, an officer of the court shall issue an official receipt for the amount of that penalty and shall place the summons before the court.

(5) The court shall formally convict the person charged of the offence specified in the summons and no further penalty may be imposed in respect of the offence.

(6) If a person charged with an offence does not plead guilty to the offence and pay the penalty specified in the summons, the person shall appear at the time and place specified in the summons for the hearing of the charge, and, if they fail to appear, the court may proceed in accordance with section 3 of the Criminal Jurisdiction and Procedure Act 2015

[Section 32 inserted by 2009:34 s.3 effective 15 July 2009; subsection (6) amended by 2015 : 38 s. 91 effective 6 November 2015]

Information

33 (1) The information part of a ticket shall be—

- (a) signed by the authorized officer who issues the ticket;
- (b) signed by the person who swears the information (the “informant”) and sworn before a justice of the peace; and
- (c) deposited with the court, together with the record of conviction part of the ticket.

OCCUPATIONAL SAFETY AND HEALTH ACT 1982

(2) The information part of a ticket need not be sworn to before the summons part is delivered or served and the informant need not be the person who delivers or serves the summons.

[Section 33 inserted by 2009:34 s.3 effective 15 July 2009]

Amount of penalty

34 Nothing in this Act prevents the court from imposing any penalty authorized by law in respect of an offence if—

- (a) no amount is entered on the summons; or
- (b) the person charged does not plead guilty to the offence and pay the penalty specified in the summons.

[Section 34 inserted by 2009:34 s.3 effective 15 July 2009]

Record of conviction

35 Where the court makes a conviction on an information in a ticket in respect of an offence, the court shall complete the record of conviction part of the ticket and an officer of the court shall cause a copy of it to be forwarded to the Minister.

[Section 35 inserted by 2009:34 s.3 effective 15 July 2009]

Regulations

36 (1) The Minister may make regulations—

- (a) prescribing the form of a ticket;
- (b) listing offences in respect of which a ticket may be issued;
- (c) setting out a description of offences; and
- (d) specifying fines for offences, not exceeding \$1,000 for any offence.

(2) The negative resolution procedure applies to regulations made under this section.

[Section 36 inserted by 2009:34 s.3 effective 15 July 2009]

[Assent Date: 29 May 1982]

[This Act was brought into operation on 2 April 1984 by BR 13/1984]

Amended by

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OCCUPATIONAL SAFETY AND HEALTH ACT 1982

2004 21
2005 12
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2015 38]