

**A BILL
ENTITLED**

AN ACT to Provide for a balanced framework to secure the safety and health of workers; and for connected matters.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:-

PART I. *Preliminary*

Introduction

Short title. 1. This Act may be cited as the Occupational Safety and Health Act, 2017.

Commencement. 2. This Act shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Object

Object of Act. 3. - (1) The main object of this Act is to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by –

- (a) protecting workers and other persons against discrimination or harm to their safety, health and welfare through the elimination, or minimization, so far as is reasonably practicable, of hazards, serious injury and risks arising from plant, substances and structures;
- (b) providing for fair and effective workplace representation, consultation, cooperation, and resolution of issues in relation to occupational safety and health;
- (c) encouraging trade unions and employer organizations to take a constructive role in promoting improvements in occupational safety and health practices, and assisting persons conducting businesses or

undertakings and workers to achieve a healthier and safer working environment;

- (d) promoting the provision of advice, information, education, and training in relation to occupational safety and health;
- (e) securing compliance with this Act through effective and appropriate compliance and enforcement measures;
- (f) ensuring appropriate scrutiny and review of actions taken by persons performing functions under this Act;
- (g) providing a framework for continuous improvement and progressively higher standards of occupational safety and health;
- (h) facilitating a consistent national approach to occupational safety and health in Jamaica; and
- (i) protecting workers and other persons in the work place from discrimination.

(2) In furthering subsection (1)(a), regard shall be had to the principle that workers and other persons should be given the highest level of protection against harm to their safety and health from hazards and risks arising from work or from specified types of substances or plant, so far as is reasonably practicable.

Definitions

Interpretation. 4. – (1) In this Act, unless the context otherwise requires -

“administrative control” means any hazard correction procedure, including –

- (a) flexible work arrangements, the rotation of workers and the timing of work;
- (b) standards and operating procedures, policies, rules, guidelines, supervision, training, housekeeping, the maintenance of equipment, personal hygiene practices and

work practices; and

(c) measures aimed at reducing employee exposure to hazards;

"Advisory Council" means the Advisory Council on Occupational Safety and Health established by section 137(1);

"agricultural undertaking" means any activity relating to –

- (a) horticulture;
- (b) afforestation;
- (c) apiculture;
- (d) aquaculture;
- (e) the development and maintenance of pastures;
- (f) the cultivation of the soil and plants;
- (g) the keeping or breeding of livestock or poultry and for these purposes the making, construction or utilization of works, structures or buildings, except immovables used for residential purposes;
- (h) keeping land uncropped or using it for forestry purposes;
- (i) the storage, packaging, processing or sale of farm products; and
- (j) greenhouse and sheltered agricultural practices;

“animal” has the meaning assigned to it by section 2(1) of the *Endangered Species (Protection, Conservation and Regulation of Trade) Act*;

"appointed day" means the day appointed pursuant to section 1 for the coming into operation of this Act;

"apprentice" has the meaning assigned to it by section 2 of the *Apprenticeship Act*;

“aquaculture” means the controlled propagation, growth or harvest of fish, amphibians, shellfish, molluscs, crustaceans, algae, vascular plants, and other aquatic animals and plants, including seawater or freshwater fish or crustaceans caught in their natural environment

when juvenile;

"biological agents" means bacteria, viruses, fungi, rickettsiae, chlamydiae and parasites;

"branches of economic activity" includes -

- (a) all branches in which workers are employed or engaged for reward or hire;
- (b) the public service; and
- (c) in accordance with a memorandum of understanding between the Director and the relevant entity under the Act with the approval of the Minister, the economic activities provided for in the First Schedule;

**First
Schedule.**

"building" means a domestic building, a public building, a building of the warehouse class and any other physical structure, whether a temporary structure or not, any part of the structure, and any architectural or engineering product or work erected or constructed on, over or under land or the sea or other body of water;

"charitable purpose" has the meaning assigned to it by section 2 the *Charities Act*;

"chemical" means a chemical element and compound and any mixture thereof, whether natural or synthetic;

"child" means a person under the age of eighteen years;

"child labour" means work that –

- (a) is mentally, physically, socially or morally dangerous and harmful to children;
- (b) interferes with the schooling of children;
- (c) deprives children of the opportunity to attend school;
- (d) obliges children to leave school prematurely;
- (e) requires children to attempt to combine school attendance with

excessively long hours and heavy work;

(f) deprives children of their childhood, their potential and their dignity; or

(g) is harmful to the physical or mental development of children;

“code of practice” means a code of practice approved under section 214;

"commuting accident", in relation to a worker, means an accident resulting in death or personal injury occurring on the direct way in either direction between the place of work or work-related training or other work-related activity and -

(a) the worker's principal or secondary residence;

(b) the place where the worker usually takes a meal; or

(c) the place where the worker usually receives his remuneration;

“compliance power” means the powers conferred upon an OSH Officer, a Labour Officer or a Safety and Health Representative under this Act;

“condition” includes limitation and restriction;

“construct” includes assemble, erect, reconstruct, reassemble, and re-erect;

"construction" includes -

(a) the erection of a building or structure;

(b) the demolition, structural alteration, excavation, renovation, repair, cleaning, painting or other maintenance of a building or structure;

(c) the erection or dismantling of prefabricated buildings and structures and the manufacturing of elements of prefabricated buildings and structures on a construction site;

(d) the building or repairing of vessels;

- (e) works of civil engineering, such as road works, the construction of bridges, river works, the construction of sewerage plants, major hazard installations and related activities;

"construction site" means the site at which any construction is carried on;

"contractor" means a person who, or group of persons that, under one or more contracts or agreements or ownership, directs the activities of one or more persons conducting businesses or undertakings or workers involved in work at a workplace;

"critical substance" means a chemical substance, a physical or biological agent, or a combination thereof, to which the exposure of a worker is prohibited, regulated or restricted;

"dangerous incident" has the meaning assigned to it by section 37;

"dangerous occurrence" includes –

- (a) a readily identifiable event with potential to cause an injury or disease to persons at work or to the public; and
- (b) a dangerous incident;

"demolition" includes deconstruction;

"design", in relation to plant, a substance, or a structure includes —

- (a) the design of part of the plant, substance or structure; and
- (b) the redesign or modification of a design;

"Director" means the Director of Occupational Safety and Health appointed under section 132;

"discrimination" means any distinction, exclusion or preference pertaining to an occupational safety and health measure which has the effect of nullifying or impairing equality of opportunity or treatment in access to training, job promotion, job processes, security of tenure, remuneration, leave entitlements, rest periods,

social security and other benefits and conditions of work;

“discriminatory conduct” has the meaning assigned to it in section 104;

"dock" means any facility for -

- (a) the dry-docking, berthing, towing, mooring or moving of vessels in or entering or leaving a port;
- (b) the loading and unloading of goods or embarking on or disembarking of passengers from any vessel; or
- (c) the lighterage or sorting, weighing, warehousing or handling of goods and the carriage of passengers or goods in connection to them;

“domestic work” means work performed in or for a household;

“domestic worker” –

- (a) means a person employed to do domestic work on a professional or occupational basis; but
- (b) does not include a person who performs domestic work only occasionally or sporadically and not on an occupational basis;

“engineering control” means a physical control of any kind that is

designed to eliminate or reduce a risk other than -

- (a) a system of work or procedure; or
- (b) the use of personal protective equipment;

"equipment" means any machine, materials, protective gear or device, tool or article that is used in a workplace for the purposes of carrying out work-related activity;

"establishment" means a business organization (including any agricultural undertaking, construction site, dock, factory, industrial establishment, office, logging operation, mine, quarry, vessel, shop) or any public institution;

“fish” has the meaning assigned to it by section 2(1) of the *Fishing*

Industry Act;

“fixed penalty provision” means a provision to which section 203(1) relates;

“hazard” —

- (a) means the intrinsic property or potential of a product, process or situation to cause harm, adverse health effects on someone or damage to something and includes psychosocial hazards; and
- (b) includes a person’s behaviour where that behaviour has the potential to cause death, injury, or illness to a person (whether or not that behaviour results from physical or mental fatigue, drugs, alcohol, traumatic shock) and any other temporary condition that adversely affects a person’s behaviour;

"hazardous biological agent" means a biological agent at a level as may be classified as a hazardous substance;

"hazardous chemical" means a chemical which is classified as hazardous in accordance with Article 6 of the International Labour Convention No. 170 Concerning Safety in the Use of Chemicals at Work;

"hazardous physical agent" means a physical agent at a level that indicates that the physical agent may be classified as a hazardous substance;

"hazardous substance" means a substance, category of substance or mixture of substances which, because of its biological, chemical, physical or toxicological properties, either singly or in combination, constitutes a hazard;

"health" means a state of physical, mental and social well-being;

"HIV" means Human Immunodeficiency Virus;

"HIV-related discrimination" includes prejudice, negative attitude, abuse or maltreatment directed at persons who are living with or affected by HIV or AIDS;

"HIV-negative", in relation to a person, means the absence of HIV or HIV antibodies in the person upon HIV testing;

"HIV-positive", in relation to a person, means the presence of HIV or HIV antibodies in the person upon HIV testing;

"HIV status" means the status of being either HIV-positive or HIV-negative;

"HIV testing" means the application of established professional techniques or laboratory procedure done on an individual to determine the presence or absence of HIV in samples of blood or bio-fluid from the individual and "HIV test" shall be construed accordingly;

"home-work" means the performance for wages, of any work involving the manufacture, preparation, beautification or other aesthetic improvement, repair, alteration, assembly or completion of any article, in premises occupied primarily as a place of residence;

"home-work establishment" means an establishment in which home-work is carried out;

"home-worker" means a person employed to do home-work;

"improvement notice" means a notice issued under section 169;

"industrial establishment" means any office building, factory or shop or any land or building appurtenant to the office building, factory or shop;

"infringement notice" means an improvement notice issued under section 169(2), a prohibition notice issued under section 173(2) or

a non-disturbance notice issued under section 176;

“Jamaica” includes –

- (a) the Exclusive Economic Zone established under section 3 of the *Exclusive Economic Zone Act*;
- (b) the archipelagic waters of Jamaica as defined in section 5 of the *Maritime Areas Act*; and
- (c) the territorial sea of Jamaica as defined in section 12 of the *Maritime Areas Act*;

“Labour Officer” means any public officer authorized in writing by the Minister to exercise the powers conferred on a Labour Officer by the *Labour Officers (Powers) Act*;

"life-threatening illness" means cancer, heart disease, HIV or AIDS, diabetes, hypertension, multiple sclerosis, hepatitis, emphysema, lupus or any other illness or condition that -

- (a) in certain conditions could lead to death when left untreated or improperly treated; or
- (b) has the potential to result in the death of an individual;

"logging operation" means the operation of felling or trimming trees for commercial or industrial purposes or for the clearing of land and the measuring, storing, transporting or floating of logs, the maintenance of haul roads, scarification, the carrying out of planned burns and the practice of silviculture;

"major hazardous installation" means an installation that produces, processes, handles, uses, disposes of, or stores, either permanently or temporarily, one or more hazardous substances or categories of hazardous substances in quantities which exceed prescribed amounts;

"Medical Officer (Health)" has the meaning assigned to it by section 2 of

the *Public Health Act*;

“member of the Security Forces” means a member of -

- (a) the Jamaica Defence Force;
- (b) the Jamaica Constabulary Force;
- (c) the Rural Police;

"mine" has the meaning assigned to it by section 2 of the *Mining Act*;

"minerals" has the meaning assigned to it by section 2 of the *Minerals (Vesting) Act*;

"mining" means the intentional search for, extraction or winning of, minerals and any operation necessary for that purpose;

“Minister” means the Minister with responsibility for labour;

“National Occupational Safety and Health Policy” means the policy on occupational safety, occupational health and the working environment developed under section 139;

“non-disturbance notice” means a notice issued under section 176;

“notifiable incident” has the meaning assigned to it by section 35;

“occupational accident" includes an occurrence arising out of or in the course of work, which results in fatal or non-fatal injury and includes a commuting accident;

"occupational disease" means a disease specified in the Second Schedule and any other disease contracted as a result of an exposure to risk factors arising from work;

“occupational health services” means services organized for the purposes of advising the person conducting a business or undertaking, the workers and their representatives on -

- (a) the requirements for establishing and maintaining a safe and healthy working environment which will facilitate optimal physical and mental health in relation to work; and

**Second
Schedule.**

- (b) the adaptation of work to the capabilities of workers in light of their state of physical and mental health;

“occupational safety and health expert” means a person who can give managerial direction to occupational safety and health programmes and is so certified by the Director;

“office” means any establishment or part of an establishment declared under section 3 of the *Shops and Offices Act* to be an office;

“officer”, in relation to a person conducting a business or undertaking -

- (a) means, if the person conducting the business or undertaking is —

- (i) a company, any person occupying the position of a director of the company by whatever name called;
- (ii) a partnership, any partner;
- (iii) a body corporate or an unincorporated body, other than a company, partnership, or limited partnership, any person occupying a position in the body that is comparable with that of a director of a company;

- (b) includes the chief executive officer or any other person who makes decisions that affect the whole, or a substantial part, of the business of the person conducting the business or undertaking; but

- (c) does not include a Minister of Government acting in that capacity;

"OSH Officer" means –

- (a) any public officer designated as an OSH Officer under section 140; and
- (b) the Director;

"owner", in relation to any land or premises used or to be used as a workplace -

- (a) includes a trustee, receiver, mortgagee in possession, tenant, lessee, licensee or occupier of the land or premises and the agent or delegate of the person; but
- (b) does not include a person who occupies premises that is a private residence, unless the person conducts business or undertaking in the premises;

"person conducting a business or undertaking" has the meaning assigned to it by section 5;

"personal information" in relation to a person, means the name, description, age, gender, dental records or photograph of, or document relating to, the person and any other particulars that may be relevant or useful in the identification of that person;

"personal protective equipment" means any equipment or substance which is used or worn by a person to minimize risk to the person's safety and health, and any accessory or other addition which is designed to meet that objective;

"physical agent" includes electromagnetic radiation, ionizing radiation, noise, vibration, heat, cold, humidity and pressure;

"plant" includes —

- (a) any machinery, vehicle, equipment, personal protective equipment, appliance, container, implement, or tool;
- (b) any component of any of those things; and
- (c) anything fitted or connected to any of those things;

"prescribed high-risk plant" means a plant prescribed by the regulations as a high-risk plant;

"prohibited reason" has the meaning assigned to it in section 105;

“prohibition notice” means a notice issued under section 173;

“qualified”, in relation to a person, means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project;

"quarry" has the meaning assigned to it by section 2 of the *Quarries Control Act*;

“reasonably practicable”, in relation to a duty to ensure safety and health, has the meaning assigned to it by section 18;

“register” means the Register of Businesses and Undertakings kept and maintained under section 40;

“regulations” mean regulations made under section 218;

“representative”, in relation to a worker, means —

- (a) the safety and health representative for the worker;
- (b) a trade union representing the worker; or
- (c) any other person who the worker authorizes to represent the worker;

“risk” means the likelihood or probability that a person will be harmed or experience severe health effects if exposed to a hazard, or that property will be damaged or lost;

“safety and health duty” means a duty imposed on a person under Part II;

"safety and health representative", in relation to a worker, means the person who is elected under Part V for the work group of which the worker is a member;

"serious injury or illness" has the meaning assigned to it by section 36;

"ship" includes every description of vessel used in navigation but does

not include a ship of war;

"shop" has the meaning assigned to it in the *Shops and Offices Act*;

"structure" —

- (a) means anything that is constructed, whether fixed, moveable, temporary, or permanent; and
- (b) includes —
 - (i) buildings, masts, towers, frameworks, pipelines, quarries, bridges, and underground works (including shafts and tunnels);
 - (ii) any component of a structure; and
 - (iii) part of a structure;

"substance" means any natural or artificial substance, whether in the form of a solid, liquid, gas or vapour;

"supervisor" means a person who has charge of a workplace, or has authority over a worker;

"supplier" means a person who supplies, sells, leases, installs or provides any tool, equipment, machine, device, hazardous biological agent, hazardous chemical or thing to be used in a workplace;

"supply" has the meaning assigned to it by section 6;

"technical advisory committee" means a committee constituted under section 136;

"technical examiner" means a person, other than the person conducting the business or undertaking, who is qualified by training and experience to undertake examinations of equipment, drawings, plans or specifications of any workplace and to report on their condition and is so certified by the Director;

"trade union" has the meaning assigned to it by section 2 of the *Trade Union Act*;

"Tribunal" means the Occupational Safety and Health Division of the Industrial Disputes Tribunal established by section 8(1B) of the *Labour Relations and Industrial Disputes Act*;

"vessel" means -

- (a) every description of water craft, however propelled or moored, including a barge, hydrofoil and hovercraft and every other type of non-displacement craft, anything constructed or used to carry persons or goods by water, and a seaplane on or in the water;
- (b) a hulk, store ship or other similar vessel without means of propulsion;
- (c) any other thing constructed or adapted for floating or being submerged in water as the Minister responsible for shipping may by order specify as a vessel for the purposes of the *Shipping Act*;

"volunteer" means a person who is acting on a voluntary basis (whether or not the person receives out-of-pocket expenses);

"work group" means a work group determined under section 51;

"worker" has the meaning assigned to it by section 7;

"workplace" has the meaning assigned to it by section 8;

"work-related disease" means -

- (a) any condition that results from the exposure in a workplace to a chemical, physical or biological agent which affects a worker's health to the extent that the normal physiological mechanisms are affected adversely causing physical impairment; and
- (b) an occupational disease.

(2) In Part IV, "authorized" means authorized by a licence, permit, registration or other authority (however described) as required by the regulations.

**Meaning of
“person
conducting
a business or
undertaking”.**

5. - (1) For the purposes of this Act, a person conducts a business or undertaking -

- (a) whether the person conducts the business or undertaking alone or with others;
- (b) whether or not the business or undertaking is conducted for profit or gain;
- (c) if the business or undertaking relates to the employment or engagement of a domestic worker in a dwelling house.

(2) A business or undertaking conducted by a person includes a business or undertaking conducted by a partnership or an unincorporated association.

(3) If a business or undertaking is conducted by a partnership (other than an incorporated partnership), a reference in this Act to a person conducting the business or undertaking is to be read as a reference to each partner in the partnership.

(4) A person does not conduct a business or undertaking to the extent that the person is engaged solely as a worker in, or as an officer of, that business or undertaking.

(5) An elected member of a local authority does not in that capacity conduct a business or undertaking.

(6) The regulations may specify the circumstances in which a person may be taken not to be a person who conducts a business or undertaking for the purposes of this Act or any provision of this Act.

(7) A volunteer association does not conduct a business or undertaking for the purposes of this Act.

(8) In this section, “volunteer association” means a group of volunteers working together for one or more charitable purposes where none of the

volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the volunteer association.

**Meaning of
“supply”.**

6. - (1) In this Act, unless the context otherwise requires, supply, in relation to a thing —

- (a) includes the supply (or resupply) of the thing by way of sale, exchange, lease, hire, or hire purchase, whether as a principal or an agent; but
- (b) does not include —
 - (i) the return of possession of a thing to the owner of the thing at the end of a lease or other agreement;
 - (ii) the supply of a thing by a person who does not control the supply or has no authority to make decisions about the supply (such as a registered auctioneer who auctions a thing without having possession of the thing); or
 - (iii) a prescribed supply.

(2) The supply of a thing occurs on the passing of possession of the thing to the person or an agent of the person to be supplied.

(3) A financier is taken not to supply any plant, substance, or structure for the purposes of this Act if —

- (a) the financier has, in the course of the financier's business as a financier, acquired ownership of, or another right in, the plant, substance, or structure on behalf of a customer of the financier; and
- (b) the action by the financier, that would be a supply but for this subsection, is taken by the financier for, or on behalf of, that customer.

(4) If subsection (3) applies, the person (other than the financier) who had possession of the plant, substance, or structure immediately before the financier's customer obtained possession of the plant, substance, or structure

is taken for the purposes of this Act to have supplied the plant, substance, or structure to the financier's customer.

(5) In this section —

“auctioneer” has the meaning assigned to it by section 2 of the *Licences on Trade and Business Act*;

“financier” means a person who is in the business of providing a financial service within the meaning of section 2 of the *Banking Services Act*;

“real estate dealer” has the meaning assigned to it by section 2 of the *Real Estate (Dealers and Developers) Act*.

Meaning of “worker”.

7. - (1) In this Act, unless the context otherwise requires, “worker” means a person who carries out work in any capacity for a person conducting a business or undertaking, including work as -

- (a) an employee;
- (b) a contractor or subcontractor;
- (c) an employee of a contractor or subcontractor;
- (d) a person whose service is procured or arranged by a company which is in the business of supplying workers for other businesses, and who has been assigned to work in the person’s business or undertaking;
- (e) an apprentice or trainee;
- (f) a student gaining work experience;
- (g) a volunteer;
- (h) a public officer; or
- (i) a person of a class prescribed by the Minister for the purposes of this section.

(2) For the purposes of this Act, a member of the Jamaica

Constabulary Force or a member of the Jamaica Defence Force is a worker and at work throughout the time when the officer or member is on duty or lawfully performing the functions of a police officer or a member of the Jamaica Defence Force, as the circumstances may require, but not otherwise.

(3) The person conducting the business or undertaking is also a worker if the person is an individual who carries out work in that business or undertaking.

(4) Worker does not include an inmate of a correctional institution or like public institution who participates inside the institution in a work project or rehabilitation programme.

**Meaning of
“workplace”.**

8. - (1) A “workplace” is a place where –

- (a) work is carried out for a business or undertaking; and
- (b) a worker needs to be, is likely to be, or to go, by reason of his work and which is under the direct or indirect control of the person conducting the business or undertaking.

(2) In subsection (1), “place” includes -

- (a) a vehicle, vessel, aircraft or other mobile structure; and
- (b) any waters and any installation on land, on the bed of any waters or floating on any waters.

Application of Act

**Application of
Act generally.**

9. - (1) Subject to this section, this Act applies to all branches of economic activity.

(2) Subject to subsection (3) (a), this Act applies to domestic workers and to the owner of a dwelling house with respect to the work performed in the dwelling house by a home-worker.

(3) This Act does not apply to -

- (a) non-commercial work performed by an owner of a dwelling house in or about the house or on any land or building appurtenant to the

house; and

- (b) non-commercial work performed by the occupant of a dwelling house in or about the dwelling house or the lands and appurtenances used in connection therewith.

(4) Except as otherwise provided, this Act applies to self-employed persons.

(5) Nothing in this Act applies to a worker who is an inmate or a young inmate who is carrying out work inside a correctional institution.

(6) In subsection (5), “correctional institution”, “inmate” and “young inmate” have the meanings assigned to them by section 2(1) of the *Corrections Act*.

(7) This Act applies to an aircraft in operation, wherever it may be, while the aircraft —

- (a) is operating on a flight beginning at a place in Jamaica and ending at that same place or at another place in Jamaica; or
- (b) is operating outside Jamaica, if any workers employed or engaged to work on board the aircraft are employed or engaged under a contract of service or a contract for services governed by Jamaican law.

(8) For the purposes of subsection (7)(b), an aircraft operating in Jamaica as part of a flight beginning or ending outside Jamaica shall be treated as operating outside Jamaica.

(9) For the avoidance of doubt, where this Act applies outside Jamaica, the provisions relating to offences apply even if an act or omission that constitutes an offence occurs in respect of an aircraft outside Jamaica.

(10) In this section, “in operation”, in relation to an aircraft, means while the aircraft is taxiing, taking off, flying, or landing.

(11) This Act applies to a Jamaican ship wherever it may be.

(12) This Act applies to a foreign ship on demise charter to a

Jamaican-based operator when it is operating in Jamaica.

(13) For the avoidance of doubt, where this Act applies outside Jamaica, the provisions relating to offences apply even if an act or omission that constitutes an offence occurs in respect of a ship outside Jamaica.

(14) This section does not limit or affect -

- (a) section 11 (which relates to the application of this Act to members of the Security Forces); or
- (b) section 12 (which relates to the application of this Act in the exclusive economic zone or in or on the continental shelf).

Application of Act to the Crown.

10. This Act binds the Crown.

Application of Act to members of Security Forces.

11. - (1) Subject to subsection (2) and the regulations, this Act applies to members of the Security Forces and any military aircraft or naval ship.

(2) This Act does not apply to —

- (a) a worker who is a member of the Security Forces while the worker is in operational service; or
- (b) any military aircraft or naval ship operating in an area in which the deployment of the aircraft or ship is in operational service.

(3) In subsection (2), “operational service” means service that is declared by the Minister responsible for national security by notice published in the *Gazette* to be operational service.

(4) Nothing in this section affects the primary duty of care of a person conducting a business or undertaking under this Act.

Application of Act in Exclusive Economic Zone and continental shelf.

12. - (1) This Act applies to—

- (a) a workplace in the exclusive economic zone or in or on the continental shelf if an activity that is regulated under the *Exclusive Economic Zone Act* or the *Minerals (Vesting) Act* is carried out at the workplace; and

- (b) any aircraft or ship (including a foreign ship) operating between Jamaica and the workplace in connection with an activity to which paragraph (a) applies.

(2) In this section —

“continental shelf” has the same meaning as in section 2 of the *Maritime Areas Act*;

“Exclusive Economic Zone” means the exclusive economic zone as defined in section 2 of the *Exclusive Economic Zone Act*.

PART II. *Safety and Health Duties*

Key Principles that Apply to Duties

Principles that apply to duty.

13. – (1) Sections 14, 15, 16 and 17 set out the principles that apply to all duties that persons have under this Act.

(2) A term of any agreement or contract that purports to exclude, limit, or modify the operation of this Act, or any duty owed under this Act, or to transfer to another person any duty owed under this Act has no effect to the extent that it does so.

(3) A person conducting a business or undertaking shall not impose a levy or charge on a worker (or permit a levy or charge to be imposed on a worker) for anything done, or provided, in relation to safety and health.

(4) For the purposes of subsection (3), a person conducting a business or an undertaking will be treated as having levied or charged a worker who is an employee of the person conducting the business or undertaking if the person conducting the business or undertaking requires the employee to provide his own protective clothing or equipment —

(a) as a pre-condition of employment; or

(b) as a term or condition in a contract of employment or engagement.

(5) Subsection (4) applies whether or not the person conducting the business or undertaking pays the worker an allowance or extra salary or

wages instead of providing protective clothing or equipment.

(6) If more than one person has a duty in relation to the same matter under this Act, each person with the duty shall, so far as is reasonably practicable, consult, co-operate with, and co-ordinate activities with all other persons who have a duty in relation to the same matter.

(7) A person who contravenes subsection (3) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Duties not transferable.

14. A duty under this Act is non-delegable and cannot be transferred to another person.

Person may have more than one duty.

15. A person may have more than one duty under this Act if the person belongs to more than one class of duty holder.

More than one person can have a duty.

16. - (1) More than one person can have the same duty under this Act at the same time.

(2) Each duty holder shall comply with that duty to the standard required by this Act even if another duty holder has the same duty.

(3) If more than one person has a duty for the same matter, each person -

(a) retains responsibility for that person's duty in relation to the matter; and

(b) shall discharge the duty to the extent to which the person has the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Management of risks.

17. A duty imposed on a person under this Act to ensure safety and health requires the person —

- (a) to eliminate risks to safety and health, so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to safety and health, to minimize those risks so far as is reasonably practicable.

*What is Reasonably Practicable***What is “reasonably practicable” in ensuring safety and health.**

18. In this Act, , unless the context otherwise requires, “reasonably practicable”, in relation to a duty to ensure safety and health, means that which is, or was at a particular time, reasonably able to be done in relation to ensuring safety and health, taking into account and weighing up all relevant matters, including -

- (a) likelihood of the hazard or the risk concerned occurring;
- (b) the degree of harm that might result from the hazard or the risk; and
- (c) what the person concerned knows, or ought reasonably to know, about -
 - (i) the hazard or the risk;
 - (ii) ways of eliminating or minimizing the risk;
- (d) the state of knowledge about the hazard or the risk;
- (e) the availability and suitability of ways to eliminate or minimize the risk; and
- (f) after assessing the extent of the risk and the available ways of eliminating or minimizing the risk, the cost associated with available ways of eliminating or minimizing the risk, including whether the cost is grossly disproportionate to the risk.

*Primary Duty of Care***Primary duty of care.**

19. - (1) A person conducting a business or undertaking shall ensure, so far as is reasonably practicable, the safety and health of —

- (a) workers employed or engaged, or caused to be employed or engaged, by the person while the workers are at work in the business or undertaking; and
- (b) workers whose activities in carrying out work are influenced or directed by the person conducting the business or undertaking, while the workers are carrying out the work.

(2) A person conducting a business or undertaking shall ensure, so far as is reasonably practicable, that the safety and health of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

(3) Without limiting subsections (1) and (2), a person conducting a business or undertaking shall ensure, so far as is reasonably practicable -

- (a) the provision and maintenance of a work environment without risks to safety and health;
- (b) the provision and maintenance of safe plant and structures;
- (c) the provision and maintenance of safe systems of work;
- (d) the safe use, handling, and storage of plant, structures and substances;
- (e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities;
- (f) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking;
- (g) the provision of any information, training, instruction or supervision that is necessary to protect workers from risk to their safety and health arising from work carried out as part of the conduct of the business or undertaking;

- (h) that organizational arrangements regarding occupational safety and health and the working environment are adapted to the size of the undertaking and the nature of its activities;
- (i) without any cost to the worker, the provision of adequate personal protective equipment which are reasonably necessary where hazards cannot be otherwise prevented or controlled;
- (j) subject to the exceptions prescribed in the regulations, ensure that –
 - (i) working time arrangements shall not exceed twelve hours per work day, inclusive of a lunch break of at least one hour; and
 - (ii) other administrative controls do not adversely affect occupational safety and health;
- (k) that studies and research is undertaken to keep abreast of the scientific and technical knowledge necessary to comply with this Act;
- (l) the establishment of occupational health services for workers, as are required under this Act or as may be prescribed;
- (m) the keeping of records as may be prescribed relating to -
 - (i) the handling, storage, use and disposal of chemicals, physical agents or biological agents; and
 - (ii) the exposure of workers to chemicals, physical agents, biological agents or psychosocial hazards;
- (n) preparation and, as often as may be appropriate, revision of a written statement of the general policy with respect to the occupational safety and health at work of workers in his employment and the workplace and arrangements for the time being in force for carrying out that policy; and
- (o) that the statement prepared under paragraph (n) and any revision of it

is brought to the notice of all of his employees.

(4) Subsection (5) applies if —

- (a) a worker occupies accommodation that is owned by or under the management or control of the person conducting the business or undertaking; and
- (b) the occupancy is necessary for the purposes of the worker's engagement because other accommodation is not reasonably available.

(5) The person conducting a business or undertaking shall, so far as is reasonably practicable, maintain the premises so that the worker occupying the premises is not exposed to risks to safety and health.

*Further Duties of Persons
Conducting Businesses or Undertakings*

**Duty of person
conducting
business or
undertaking
who manages or
controls
workplace.**

20. - (1) A person conducting a business or undertaking with management or control of a workplace shall ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace, and anything arising from the workplace are without risks to the safety and health of any person.

(2) In subsection (1), a “person conducting a business or undertaking with management or control of a workplace” —

- (a) means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control (in whole or in part) of the workplace; but
- (b) does not include —

- (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
- (ii) a prescribed person.

Duty of person conducting business or undertaking who manages or controls fixtures, fittings, or plant at workplace.

21. - (1) A person conducting a business or undertaking with management or control of fixtures, fittings, or plant at a workplace shall, so far as is reasonably practicable, ensure that the fixtures, fittings, or plant are without risks to the safety and health of any person.

(2) In subsection (1), “a person conducting a business or undertaking with management or control of fixtures, fittings, or plant at a workplace” —

- (a) means a person conducting a business or undertaking to the extent that the business or undertaking involves the management or control of fixtures, fittings, or plant (in whole or in part) at a workplace; but
- (b) does not include —
 - (i) the occupier of a residence, unless the residence is occupied for the purposes of, or as part of, the conduct of a business or undertaking; or
 - (ii) a prescribed person.

Duty of person conducting business or undertaking who designs plant or structures.

22. - (1) This section applies to a person conducting a business or undertaking (a designer) who conducts a business or undertaking that designs —

- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace;
- (b) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

(2) The designer shall, so far as is reasonably practicable, ensure that the plant, or structure is designed to be without risks to the safety and health

of persons —

- (a) who, at a workplace, use the plant, or structure for a purpose for which it was designed;
- (b) who store the plant at a workplace;
- (c) who construct the structure at a workplace;
- (d) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to —

- (i) the manufacture, assembly, or use of the plant for a purpose for which it was designed, or the proper storage, decommissioning, dismantling, or disposal of the plant;

or

- (ii) the manufacture, assembly, or use of the structure for a purpose for which it was designed, or the proper demolition or disposal of the structure; or

- (e) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose safety or health may be affected adversely by a use or an activity referred to in any of paragraphs (a) to (e).

(3) The designer shall carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2).

(4) The designer shall give to each person who is provided with the design for the purpose of giving effect to it adequate information concerning

- (a) each purpose for which the plant, or structure was designed;
- (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3); and

- (c) any conditions necessary to ensure that the plant, or structure is without risks to safety and health when used for a purpose for which it was designed or when carrying out any activity referred to in subsection (2)(a) to (d).

(5) The designer, on request, shall, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (d).

Duty of person conducting business or undertaking who manufactures plant, substances, or structures.

23. - (1) This section applies to a person conducting a business or undertaking who conducts a business or undertaking that manufactures —

- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace;
- (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

(2) The manufacturer shall, so far as is reasonably practicable, ensure that the plant, substance, or structure is manufactured to be without risks to the safety and health of persons —

- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured;
- (b) who handle the substance at a workplace;
- (c) who store the plant or substance at a workplace;
- (d) who construct the structure at a workplace; or
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to —
 - (i) the assembly or use of the plant for a purpose for which it

was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant;

- (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage, or disposal of the substance; or
 - (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or
- (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose safety or health may be affected adversely by a use or an activity referred to in any of paragraphs (a) to (e).

(3) The manufacturer shall carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2).

(4) The manufacturer shall give to each person to whom the manufacturer provides the plant, substance, or structure adequate information concerning —

- (a) each purpose for which the plant, substance, or structure was designed or manufactured; and
- (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
- (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to safety and health when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

(5) The manufacturer, on request, shall, so far as is reasonably

practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

Duty of person conducting business or undertaking who imports plant, substances, or structures.

24. - (1) This section applies to a person conducting a business or undertaking (an importer) who conducts a business or undertaking that imports —

- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace;
- (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

(2) The importer shall, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the safety and health of persons —

- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured;
- (b) who handle the substance at a workplace;
- (c) who store the plant or substance at a workplace;
- (d) who construct the structure at a workplace;
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to —
 - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant;
 - (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage,

or disposal of the substance; or

(iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or

(f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose safety or health may be affected adversely by a use or an activity referred to in any of paragraphs (a) to (e).

(3) The importer shall —

(a) carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or

(b) ensure that the calculations, analysis, testing, or examination have been carried out.

(4) The importer shall give to each person to whom the importer provides the plant, substance, or structure adequate information concerning

—

(a) each purpose for which the plant, substance, or structure was designed or manufactured; and

(b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and

(c) any conditions necessary to ensure that the plant, substance, or structure is without risks to safety and health when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).

(5) The importer, on request, shall, so far as is reasonably practicable, give current relevant information on the matters referred to in

subsection (4) to a person who carries out, or is to carry out, any of the activities referred to in subsection (2)(a) to (e).

Duty of person conducting business or undertaking who supplies plant, substances, or structures.

25. - (1) This section applies to a person conducting a business or undertaking (a supplier) who conducts a business or undertaking that supplies —

- (a) plant that is to be used, or could reasonably be expected to be used, as or at a workplace;
- (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
- (c) a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

(2) The supplier shall, so far as is reasonably practicable, ensure that the plant, substance, or structure is without risks to the safety and health of persons —

- (a) who, at a workplace, use the plant, substance, or structure for a purpose for which it was designed or manufactured;
- (b) who handle the substance at a workplace;
- (c) who store the plant or substance at a workplace;
- (d) who construct the structure at a workplace; or
- (e) who carry out any reasonably foreseeable activity (such as inspection, cleaning, maintenance, or repair) at a workplace in relation to —
 - (i) the assembly or use of the plant for a purpose for which it was designed or manufactured, or the proper storage, decommissioning, dismantling, or disposal of the plant;
 - (ii) the use of the substance for a purpose for which it was designed or manufactured, or the proper handling, storage, or disposal of the substance; or

- (iii) the assembly or use of the structure for a purpose for which it was designed or manufactured, or the proper demolition or disposal of the structure; or
 - (f) who are at or in the vicinity of a workplace and who are exposed to the plant, substance, or structure at the workplace or whose safety or health may be affected adversely by a use or an activity referred to in any of paragraphs (a) to (e).
- (3) The supplier shall —
- (a) carry out, or arrange the carrying out of, any calculations, analysis, testing, or examination that may be necessary for the performance of the duty imposed by subsection (2); or
 - (b) ensure that the calculations, analysis, testing, or examination have been carried out.
- (4) The supplier shall give to each person to whom the supplier supplies the plant, substance, or structure adequate information concerning —
- (a) each purpose for which the plant, substance, or structure was designed or manufactured;
 - (b) the results of any calculations, analysis, testing, or examination referred to in subsection (3), including, in relation to a substance, any hazardous properties of the substance identified by testing; and
 - (c) any conditions necessary to ensure that the plant, substance, or structure is without risks to safety and health when used for a purpose for which it was designed or manufactured or when carrying out any activity referred to in subsection (2)(a) to (e).
- (5) The supplier, on request, shall, so far as is reasonably practicable, give current relevant information on the matters referred to in subsection (4) to a person who carries out, or is to carry out, any of the activities referred to

in subsection (2)(a) to (e).

(6) This section does not apply to the sale of plant, whether or not in trade, if the plant —

- (a) is a second-hand plant; and
- (b) is sold without any representations or warranties about its quality, durability, or fitness for the purposes for which it was bought, and with the entire risk in those respects to be borne by the buyer.

Duty of person conducting business or undertaking who installs, constructs, or commissions plant, or structures.

26. - (1) This section applies to a person conducting a business or undertaking who installs, constructs, or commissions plant or a structure that is to be used, or could reasonably be expected to be used, as or at a workplace.

(2) The person conducting a business or undertaking shall, so far as is reasonably practicable, ensure that the way in which the plant or structure is installed, constructed, or commissioned is without risks to the safety and health of persons who —

- (a) install or construct the plant or structure at a workplace;
- (b) use the plant or structure at a workplace for a purpose for which it was installed, constructed, or commissioned;
- (c) carry out any reasonably foreseeable activity at a workplace in relation to the proper use, decommissioning, or dismantling of the plant or demolition, or disposal of the structure; or
- (d) are at or in the vicinity of a workplace and whose safety or health may be affected adversely by a use or an activity referred to in any of paragraphs (a) to (c).

Duty of Officers, Workers and Other Persons

Duty of officers. 27. - (1) If a person conducting a business or undertaking has a duty or an obligation under this Act, an officer of the business or undertaking shall exercise due diligence to ensure that the person conducting the business or

undertaking complies with that duty or obligation.

(2) In this section, “due diligence” includes taking reasonable steps to

- (a) acquire, and keep up-to-date, knowledge of occupational safety and health matters;
- (b) gain an understanding of the nature of the operations of the business or undertaking and generally of the hazards and risks associated with those operations;
- (c) ensure that the person conducting the business or undertaking has available for use, and uses, appropriate resources and processes to eliminate or minimize risks to safety and health from work carried out as part of the conduct of the business or undertaking;
- (d) ensure that the person conducting the business or undertaking has appropriate processes for receiving and considering information regarding incidents, hazards, and risks and for responding in a timely way to that information;
- (e) ensure that the person conducting the business or undertaking has, and implements, processes for complying with any duty or obligation of the person conducting the business or undertaking under this Act; and
- (f) verify the provision and use of the resources and processes referred to in paragraphs (c) to (e).

Duties of workers.

28. While at work, a worker shall —

- (a) take reasonable care for his own safety and health;
- (b) take reasonable care that his acts or omissions do not adversely affect the safety and health of other persons;
- (c) comply, as far as the worker is reasonably able, with any reasonable instruction that is given by the person conducting the

business or undertaking to allow the person conducting the business or undertaking to comply with this Act; and

- (d) co-operate with any reasonable policy or procedure of the person conducting the business or undertaking relating to safety or health at the workplace that has been notified to workers.

Duties of other persons at the workplace.

29. – (1) A person at a workplace (whether or not the person has another duty under this Part) shall —

- (a) take reasonable care for the person's own safety and health;
- (b) take reasonable care that the person's acts or omissions do not adversely affect the safety and health of other persons; and
- (c) comply, as far as the person is reasonably able, with any reasonable instruction that is given by the person conducting the business or undertaking to allow the person conducting the business or undertaking to comply with this Act.

(2) A self-employed person shall ensure, so far as is reasonably practicable, his own safety and health while at work.

Offences and Penalties re Safety and Health Duty

Safety and health duty.

30. In sections 31 to 34, “safety and health duty” means a duty imposed under sections 19 to 29.

Offence of reckless conduct.

31. - (1) A person commits an offence if -

- (a) the person has a safety and health duty;
- (b) the person, without reasonable excuse, engages in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness; and
- (c) the person is reckless as to the risk to an individual of death or serious injury or illness.

Third Schedule. (2) A person who contravenes subsection (1) is liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

(3) A person who contravenes subsection (1) bears the burden of proving that the conduct was engaged in without reasonable excuse.

Failure to comply with safety and health duty exposing individual to risk of death or serious injury, etc.

32. – (1) A person commits an offence if -

- (a) the person has a safety and health duty;
- (b) the person fails to comply with that duty; and
- (c) the failure exposes an individual to a risk of death or serious injury or illness.

(2) A person who contravenes subsection (1) is liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Failure to comply with safety and health duty.

33. – (1) A person commits an offence if -

- (a) the person has a safety and health duty; and
- (b) the person fails to comply with that duty.

(2) A person who contravenes subsection (1) is liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Exceptions.

34. - (1) Subject to subsections (3) and (4), a volunteer does not commit an offence under this Part for a failure to comply with a safety and health duty, except a duty under section 28 or 29.

(2) Subject to subsections (3) and (4), an unincorporated association does not commit an offence under this Act for a failure to comply with a duty or obligation imposed on the unincorporated association under this Act.

(3) An officer of an unincorporated association (other than a volunteer) may be liable for a failure to comply with a duty under section 27.

(4) A member of an unincorporated association may be liable for failure to comply with a duty under section 28 or 29.

Part III. Incident Notification

Meaning of “notifiable incident”.

35. In this Act, “notifiable incident” means the occurrence of an

occupational accident or the outbreak of an occupational disease which results in -

- (a) the death of a person;
- (b) a serious injury or illness of a person; or
- (c) a dangerous incident.

**Meaning of
“serious injury
or illness”.**

36. In this Act, “serious injury or illness” of a person means an injury or illness requiring the person to have -

- (a) immediate treatment as an in-patient in a hospital;
- (b) immediate treatment for -
 - (i) the amputation of any part of the person’s body;
 - (ii) a serious head injury;
 - (iii) a serious eye injury;
 - (iv) a serious burn;
 - (v) the separation of his skin from an underlying tissue (such as degloving or scalping);
 - (vi) a spinal injury;
 - (vii) the loss of a bodily function; or
 - (viii) serious lacerations;
- (c) medical treatment within forty-eight hours of exposure to a substance; or
- (d) any other injury or illness prescribed by the regulations,

but does not include an illness or injury of a prescribed kind.

**Meaning of
“dangerous
incident”.**

37. In this Act, a “dangerous incident” means an incident in relation to a workplace that exposes a worker or any other person to a serious risk to a person's health or safety emanating from an immediate or imminent exposure

to -

- (a) an uncontrolled escape, spillage or leakage of a substance;
- (b) an uncontrolled implosion, explosion or fire;
- (c) an uncontrolled escape of gas or steam;
- (d) an uncontrolled escape of a pressurised substance;
- (e) electric shock;
- (f) the fall or release from a height of any plant, substance or thing;
- (g) the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorized for use in accordance with the regulations;
- (h) the collapse or partial collapse of a structure;
- (i) the collapse or failure of an excavation or of any shoring supporting an excavation;
- (j) the inrush of water, mud or gas in workings, in an underground excavation or tunnel;
- (k) the interruption of the main system of ventilation in an underground excavation or tunnel; or
- (l) any other incident prescribed by the regulations,

but does not include an incident of a prescribed kind.

**Duty to give
notice of
notifiable
incidents, etc.**

38. - (1) A person who conducts a business or undertaking shall ensure that the Director is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking has occurred.

(2) The notice shall be given in accordance with this section and by the fastest possible means.

(3) The notice shall be given -

- (a) by telephone;
- (b) by electronic mail;
- (c) by facsimile; or
- (d) in writing.

(4) Within forty-eight hours of its occurrence, written notification of an incident under this Part shall be submitted in a form, or contain the details, approved by the Director.

(5) Upon notification of an incident, the Director shall acknowledge receipt by notice in writing outlining the details as notified to the person conducting the business or undertaking.

(6) A person conducting a business or undertaking shall keep a record of each notifiable incident for at least six years from the day that notice of the incident is given to the Director under this section.

(7) A person who contravenes subsection (1) or (6) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Duty to preserve incident sites.

39. - (1) The person with management or control of a workplace at which a notifiable incident has occurred shall ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until an OSH Officer arrives at the site or any earlier time that an OSH Officer directs.

(2) In subsection (1), a reference to a site includes any plant, substance, structure or thing associated with the notifiable incident.

(3) Subsection (1) does not prevent any action -

- (a) to assist an injured person;
- (b) to remove a deceased person;
- (c) that is essential to make the site safe or to minimize the risk of a

further notifiable incident;

- (d) that is associated with a police investigation; or
- (e) for which an OSH Officer or the Director has given permission.

(4) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Part IV. *Registration of Businesses and Undertakings and Authorizations*

Registration of Establishments

Registration of establishments.

40. – (1) Subject to subsection (17), after the appointed day, every person conducting a business or undertaking, other than the Crown, shall apply to the Director in the prescribed form and manner to register the business or undertaking under this Act.

(2) An application under subsection (1) shall be made -

- (a) in the case of a business or undertaking in operation on the appointed day, within ninety days after the appointed day; or
- (b) where the business or undertaking commences business after the appointed day, within thirty days after the date of commencement of the business or undertaking.

(3) An application shall be accompanied by the prescribed application fee.

(4) Where the Director thinks necessary, the Director may, by notice in writing to the applicant, require the applicant to furnish such additional information within the time specified in the notice.

(5) The Director shall, on receipt of an application, and being satisfied that no further information is required, cause an inspection of the business or undertaking to be carried out.

(6) Where consequent on an inspection, the Director is satisfied that

the establishment is compliant with the safety and health requirements of this Act, the Director shall cause the business or undertaking to be registered and a certificate of registration to be issued to the applicant in the prescribed form.

(7) A person to whom a certificate of registration is issued shall, as soon as possible, display a copy of the certificate of registration in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out.

(8) The duration of registration shall be as prescribed.

(9) Where the Director -

- (a) refuses, whether conditionally or unconditionally to register; or
- (b) within thirty days of the inspection of the business or undertaking, fails to register the business or undertaking,

the Director shall provide reasons in writing to the applicant for his refusal or his failure to register the business or undertaking and inform the applicant of his right of appeal under this Act.

(10) There shall be no action for any loss arising where the Director refuses to register, conditionally registers or fails to register a business or undertaking under this Act.

(11) The Director shall keep and maintain, or cause to be kept and maintained, a register (to be known as the "Register of Businesses and Undertakings") in which shall be entered the names, addresses, qualifications and any other prescribed particulars, of every business or undertaking registered under this Act.

(12) The register shall have different parts for different categories of businesses and undertaking, as may be determined by the Director.

(13) The register shall be open to inspection on payment of the prescribed fee, if any, by any member of the public during ordinary office

hours.

(14) The Director shall publish a copy of the register on a website maintained by the Director.

(15) It shall be the duty of the Director –

- (a) to remove from or restore to the register any entry;
- (b) to remove from the register, the name of a business or undertaking that –
 - (i) has been issued with a certificate of registration which has expired or has been cancelled; or
 - (iv) has ceased to be a registered under this Act;
- (c) to correct an entry in the register which was incorrectly made;
- (d) to make, from time to time, any necessary alteration in any of the particulars mentioned in subsection (9).

(2) If the Director –

- (a) sends by post to a business or undertaking registered under this Act a registered letter, addressed to the address appearing in the register, enquiring whether the business or undertaking has ceased to be a registered under this Act, or has changed address and receives no reply to that letter within three months from the date of posting; and
- (b) upon the expiration of the period to reply to the letter, sends in like manner to that person a similar letter and receives no reply to either letter within three months of the date of the second posting, the Director may remove the name of that person from the register.

(16) The Director may restore to the register a name that was removed from the register under this section.

(17) The Minister may, by order published in the *Gazette*, exempt categories of businesses or undertakings from the requirement to be

registered under this section.

Authorizations

Requirements for authorization of workplaces.

41. - (1) A person shall not conduct a business or undertaking at a workplace or direct or allow a worker to carry out work at a workplace if -

- (a) the regulations require the workplace or workplaces in that class of workplace to be authorized; and
- (b) the workplace is not authorized in accordance with the regulations.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that

Third Schedule. offence in the Third Schedule.

Requirements for authorization of plant or substance.

42. - (1) A person shall not use a plant or a substance at a workplace if -

- (a) the regulations require the plant or substance or its design to be authorized; and
- (b) the plant or substance or its design is not authorized in accordance with the regulations.

(2) A person who conducts a business or undertaking shall not direct or allow a worker to use a plant or substance at a workplace if -

- (a) the regulations require the plant or substance or its design to be authorized; and
- (b) the plant or substance or its design is not authorized in accordance with the regulations.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Requirements for authorization of work.

43. - (1) A person shall not carry out work at a workplace if -
- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorized; and
 - (b) the person, or the person on whose behalf the work is carried out, is not authorized in accordance with the regulations.
- (2) A person who conducts a business or undertaking shall not direct or allow a worker to carry out work at a workplace if -
- (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorized; and
 - (b) the person, or the person on whose behalf the work is to be carried out, is not authorized in accordance with the regulations.
- (3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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Requirements for prescribed qualifications or experience.

44. - (1) A person shall not carry out work at a workplace if -
- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
 - (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.
- (2) A person who conducts a business or undertaking shall not direct or allow a worker to carry out work at a workplace if -
- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
 - (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who

has the prescribed qualifications or experience.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation

Third Schedule. to that offence in the Third Schedule.

Requirement to comply with conditions of authorization. 45. – (1) A person shall comply with the conditions of any authorization given to that person under the regulations.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Part V. Consultation, Representation and Participation

Consultation, Cooperation and Co-ordination Between Duty Holders

Duty to consult with other duty holders. 46. If more than one person has a duty in relation to the same matter under this Act, each person with the duty shall, so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons who have a duty in relation to the same matter.

Consultation with Workers

Duty to consult workers. 47. - (1) A person conducting a business or undertaking shall, so far as is reasonably practicable, consult, in accordance with this Part and the regulations, with workers who carry out work for the business or undertaking who are, or are likely to be, directly affected adversely by a matter relating to occupational safety or health.

(2) If the person conducting the business or undertaking and the workers have agreed to procedures for consultation, the consultation shall be in accordance with those procedures.

(3) The agreed procedures shall not be inconsistent with section 48.

(4) A person who contravenes subsection (1) or (2) commits an

offence and shall be liable on conviction to the penalty specified in relation

Third Schedule. to that offence in the Third Schedule.

Nature of consultation.

48. - (1) Consultation under this Part requires that -

- (a) relevant information about the matter is shared with workers;
- (b) workers be given a reasonable opportunity to -
 - (i) express their views and to raise occupational safety or health issues in relation to the matter; and
 - (ii) contribute to the decision-making process relating to the matter;
- (c) the views of workers are taken into account by the person conducting the business or undertaking; and
- (d) the workers consulted are advised of the outcome of the consultation in a timely manner.

(2) If the workers are represented by a safety and health representative, the consultation shall involve that representative.

When consultation is required.

49. Consultation under this Part is required in relation to the following safety and health matters when -

- (a) identifying hazards and assessing risks to safety and health arising from the work carried out or to be carried out by the business or undertaking;
- (b) making decisions about ways to eliminate or minimize those risks;
- (c) making decisions about the adequacy of facilities for the welfare of workers;
- (d) proposing changes that may affect the safety or health of workers;
- (e) making decisions about the procedures for -

- (i) consulting with workers;
 - (ii) resolving occupational safety or health issues at the workplace;
 - (iii) monitoring the health of workers;
 - (iv) monitoring the conditions at any workplace under the management or control of the person conducting the business or undertaking; or
 - (v) providing information and training for workers; or
- (f) when carrying out any other activity prescribed by the regulations for the purposes of this section.

Safety and Health Representatives

Request for Election of Safety and Health Representative

Request for election of safety and health representative.

50. A worker who carries out work for a business or undertaking may ask the person conducting the business or undertaking to facilitate the conduct of an election for one or more safety and health representatives to represent –
- (a) workers who carry out work for the business or undertaking; or
 - (b) the work group in which workers who carry out work for the business or undertaking belong.

Determination of Work Groups

Determination of work groups.

51. - (1) If a request is made under section 50, the person conducting the business or undertaking shall facilitate the determination of one or more work groups of workers.
- (2) The purpose of determining a work group is to facilitate the representation of workers in the work group by one or more safety and health representatives.
- (3) A work group may be determined for workers at one or more workplaces.

Negotiation for agreement for workgroup.

52. - (1) A work group is to be determined by negotiation and agreement between -

- (a) the person conducting the business or undertaking; and
- (b) the workers who will form the work group or their representatives.

(2) The person conducting the business or undertaking shall take all reasonable steps to commence negotiations with the workers within fourteen days after a request is made under section 50.

(3) The purpose of the negotiations is to determine -

- (a) the number and composition of work groups to be represented by safety and health representatives;
- (b) the number of safety and health representatives and deputy safety and health representatives (if any) to be elected;
- (c) the workplace or workplaces to which the work groups will apply; and
- (d) the businesses or undertakings to which the work groups will apply.

(4) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.

(5) The person conducting the business or undertaking shall, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and shall not exclude the representative from those negotiations.

(6) A person who contravenes subsection (2) or (5) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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(7) The regulations may prescribe the matters that shall be taken into account in negotiations for and determination of work groups and variations of agreements concerning work groups.

Notice to workers.

53. - (1) The person conducting a business or undertaking involved in negotiations to determine a work group shall, within fourteen days after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

(2) The person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups shall, as soon as practicable after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Failure of negotiations.

54. - (1) If there is a failure of negotiations (including negotiations concerning the variation of an agreement), any person who is or would be a party to the negotiations may ask the Director to appoint an OSH Officer for the purposes of this section.

(2) An OSH Officer appointed under subsection (1) may decide -

(a) the matters referred to in section 52(3), or any of those matters which is the subject of the proposed variation (as the case requires), or

(b) that work groups should not be determined or that the agreement should not be varied (as the case requires).

(3) For the purposes of this section, there is a failure of negotiations if -

(a) the person conducting the business or undertaking has not taken all reasonable steps to commence negotiations with the workers and negotiations have not commenced within fourteen days after -

(i) a request is made under section 50; or

(ii) a party to the agreement requests the variation of the agreement; or

(b) agreement cannot be reached on a matter relating to the determination of a work group (or the variation of an agreement concerning a work group) within a reasonable time after negotiations commence.

(4) A decision under this section is taken to be an agreement under section 52.

Multiple Business Work Groups

Determination of work groups of multiple businesses.

55. - (1) Work groups may be determined for workers carrying out work for two or more persons conducting businesses or undertakings at one or more workplaces.

(2) The particulars of the work groups are to be determined by negotiation and agreement, in accordance with section 56, between each of the persons conducting the businesses or undertakings and the workers.

(3) The parties to an agreement concerning the determination of a work group or groups may, at any time, negotiate a variation of the agreement.

(4) The determination of one or more work groups under section 51 does not -

(a) prevent the determination under section 51 of any other work group of the workers concerned; or

(b) affect any work groups of those workers that have already been determined under this Part.

Negotiation of agreement for work groups of multiple businesses.

56. - (1) Negotiations concerning work groups under this Part shall be directed only at the following -

(a) the number and composition of work groups to be represented by safety and health representatives;

(b) the number of safety and health representatives and deputy safety and health representatives (if any) for each work group;

(c) the workplace or workplaces to which the work groups will apply;

and

(d) the businesses or undertakings to which the work groups will apply.

(2) A person conducting a business or undertaking shall, if asked by a worker, negotiate with the worker's representative in negotiations under this section (including negotiations for a variation of an agreement) and shall not exclude the representative from those negotiations.

(3) If an agreement cannot be reached on a matter relating to the determination of a work group (or a variation of an agreement) within a reasonable time after negotiations commence under this Part, any party to the negotiations may ask the Director to appoint an OSH Officer to assist the negotiations in relation to that matter.

(4) The regulations may prescribe the matters that shall be taken into account in negotiations for, and determination of, work groups and variations of agreements.

**Notice to
workers of
outcome of
negotiations,
etc.**

57. - (1) A person conducting a business or undertaking involved in negotiations to determine a work group shall, within fourteen days after the negotiations are completed, notify the workers of the outcome of the negotiations and of any work groups determined by agreement.

(2) A person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups shall, within fourteen days after the negotiations are completed, notify the workers of the outcome of the negotiations and of the variation (if any) to the agreement.

(3) A person who fails to comply with subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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Schedule.
Withdrawal
from
negotiations or**

58. - (1) A party to a negotiation for an agreement, or to an agreement,

agreement involving multiple businesses.

concerning a work group under this Part may withdraw from the negotiation or agreement at any time by giving reasonable notice (in writing) to the other parties.

(2) If a party withdraws from an agreement concerning a work group under this Part -

(a) the other parties shall negotiate a variation to the agreement in accordance with section 56; and

(b) the withdrawal does not affect the validity of the agreement between the other parties in the meantime.

Effect of Part V on other arrangements.

59. For the avoidance of doubt, nothing in Part V affects the capacity of two or more persons conducting businesses or undertakings and their workers to enter into other agreements or make other arrangements, in addition to complying with this Part, concerning the representation of those workers.

Election of Safety and Health Representatives

Eligibility to be elected.

60. A worker is -

- (a) eligible to be elected as a safety and health representative for a work group only if the worker is a member of that work group; and
- (b) not eligible to be elected as a safety and health representative if the worker is disqualified under section 65 from being a safety and health representative.

Procedure for election of safety and health representative.

61. - (1) The workers in a work group may determine how an election of a safety and health representative for the work group is to be conducted.

(2) However, an election shall comply with the procedures (if any) prescribed by the regulations.

(3) If a majority of the workers in a work group so determine, the election may be conducted with the assistance of a trade union or other person or organization.

(4) The person conducting the business or undertaking to which the

work group relates shall provide any resources, facilities and assistance that are reasonably necessary or are prescribed by the regulations to enable elections to be conducted.

(5) A person who contravenes subsection (4) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Eligibility to vote.

62. - (1) A safety and health representative for a work group is to be elected by the workers of that work group.

(2) All workers in a work group are entitled to vote for the election of a safety and health representative for that work group.

When election not required.

63. If the number of candidates for election as a safety and health representative for a work group equals the number of vacancies, the election need not be conducted and each candidate is to be taken to have been elected as a safety and health representative for the work group.

Term of office of safety and health representative.

64. - (1) A safety and health representative for a work group holds office for three years and is eligible for re-election.

(2) However, a person ceases to hold office as a safety and health representative for a work group if -

- (a) the person resigns as a safety and health representative for the work group by written notice given to the person conducting the business or undertaking;
- (b) the person ceases to be a worker in the work group for which he was elected as a safety and health representative;
- (c) the person is disqualified under section 65 from acting as a safety and health representative; or
- (d) the person is removed from that position by a majority of the members of the work group in accordance with the regulations.

Disqualification of safety and health

65. - (1) An application may be made to the Tribunal to disqualify a safety

representative. and health representative on the ground that the representative has -

- (a) exercised a power or performed a function as a safety and health representative for an improper purpose; or
- (b) used or disclosed any information he acquired as a safety and health representative for a purpose other than in connection with the role of safety and health representative.

(2) The following persons may make an application under this section -

- (a) any person affected adversely by -
 - (i) the exercise of a power or the performance of a function referred to in subsection (1) (a); or
 - (ii) the use or disclosure of information referred to in subsection (1) (b); or
- (b) the Director.

(3) If the Tribunal is satisfied that a ground in subsection (1) is made out, the Tribunal may make a recommendation that the safety and health representative is disqualified from serving in that capacity in the particular workplace for a specified period or indefinitely.

Immunity of safety and health representative.

66. A safety and health representative is not personally liable for anything done or omitted to be done in good faith -

- (a) in performing a function under this Act; or
- (b) in the reasonable belief that the thing was done or omitted to be done in the exercise of a power or the performance of a function under this Act.

Deputy safety and health representative.

67. - (1) Each deputy safety and health representative for a work group is to be elected in the same way as a safety and health representative for the work group.

(2) If the safety and health representative for a work group ceases to hold office or is unable (because of absence or any other reason) to exercise

the powers or perform the functions of a safety and health representative under this Act -

- (a) the functions may be exercised or performed by a deputy safety and health representative for the work group; and
- (b) this Act applies in relation to the deputy safety and health representative as if he were the safety and health representative.

(3) Sections 64, 65, 66, 72 and 73 apply to deputy safety and health representatives in the same way as they apply to safety and health representatives.

Functions of Safety and Health Representatives

Functions of safety and health representative.

68. - (1) The functions of a safety and health representative for a work group are -

- (a) to represent the workers in the work group in matters relating to occupational safety and health;
- (b) to monitor the measures taken by the person conducting the relevant business or undertaking or that person's representative to ensure compliance with this Act in relation to workers in the work group;
- (c) to investigate complaints from members of the work group relating to occupational safety and health; and
- (d) to inquire into anything that appears to be a risk to the safety or health of workers in the work group, arising from the conduct of the business or undertaking.

(2) In performing a function, the safety and health representative may -

- (a) inspect the workplace or any part of the workplace at which a worker in the workgroup works -
 - (i) at any time after giving reasonable notice to the person conducting the business or undertaking at that workplace;

and

- (ii) at any time, without notice, in the event of a notifiable incident, or any situation involving a serious risk to the safety or health of a person emanating from a dangerous incident;
- (b) accompany an OSH Officer during an inspection of the workplace or part of the workplace at which a worker in the work group works;
 - (c) with the consent of a worker that the safety and health representative represents, to be present at an interview concerning occupational safety and health between the worker and -
 - (i) an OSH Officer; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative;
 - (d) with the consent of one or more workers that the safety and health representative represents, be present at an interview concerning occupational safety and health between a group of workers, which includes the workers who gave the consent, and -
 - (i) an OSH Officer; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative;
 - (e) request that the person conducting the business or undertaking establishes a joint safety and health committee;
 - (f) receive information concerning the occupational safety and health of workers in the work group; and
 - (g) whenever necessary, request the assistance of any person.
- (3) Despite subsection (2) (f), a safety and health representative is not entitled to have access to any personal or medical information concerning a

worker without the worker's consent unless the information is in a form that

- (a) does not identify the worker; and
- (b) could not reasonably be expected to lead to the identification of the worker.

(4) Nothing in this Act imposes or is taken to impose a duty on a safety and health representative in that capacity.

Functions generally limited to the particular work group.

69. - (1) A safety and health representative for a work group may perform functions under this Act only in relation to matters that affect, or may affect, workers in that work group.

(2) Subsection (1) does not apply if -

- (a) there is a serious risk to safety or health emanating from a dangerous incident that affects or may affect a member of another work group; or
- (b) a member of another work group asks for the representative's assistance,

and the safety and health representative (and any deputy safety and health representative) for that other work group is found, after reasonable inquiry, to be unavailable.

(3) In this section, "another work group" means another work group of workers carrying out work for a business or undertaking to which the work group that the safety and health representative represents relates.

Obligations of Person Conducting Business or Undertaking to Safety and Health Representatives

General obligations of person conducting business or undertaking.

70. - (1) A person conducting a business or undertaking shall -

- (a) consult, so far as is reasonably practicable, on occupational safety and health matters, with the safety and health representative for a work group of workers carrying out work for the business or undertaking;

- (b) confer with the safety and health representative for a work group, whenever requested by the representative, for the purpose of ensuring the safety and health of the workers in the work group;
- (c) allow the safety and health representative for the work group to have access to information that the person conducting the business or undertaking has relating to -
 - (i) hazards (including associated risks) at the workplace affecting workers in the work group; and
 - (ii) the safety and health of the workers in the work group;
- (d) with the consent of a worker that the safety and health representative represents, allow the safety and health representative to be present at an interview concerning occupational safety and health between the worker and -
 - (i) an OSH Officer; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative;
- (e) with the consent of one or more workers that the safety and health representative represents, allow the safety and health representative to be present at an interview concerning occupational safety and health between a group of workers, which includes the workers who gave the consent, and -
 - (i) an OSH Officer; or
 - (ii) the person conducting the business or undertaking at that workplace or the person's representative;
- (f) provide any resources, facilities and assistance to a safety and health representative for the work group that are reasonably necessary or prescribed by the regulations to enable the representative to perform his functions under this Act;

- (g) allow a person assisting a safety and health representative for the work group to have access to the workplace if that is necessary to enable the assistance to be provided;
- (h) permit a safety and health representative for the work group to accompany an OSH Officer or Labour Officer during an inspection of any part of the workplace where a worker in the work group works; and
- (i) provide any other assistance to the safety and health representative for the work group that may be required by the regulations.

(2) The person conducting a business or undertaking shall allow a safety and health representative to spend such time as is reasonably necessary to perform his functions under this Act.

(3) A person who commits an offence under subsection (1) or (2) shall be liable on conviction to the penalty specified in relation to that

Third Schedule. offence in the Third Schedule.

(4) Any time that a safety and health representative spends for the purposes of performing his functions under this Act shall be with the pay that he would otherwise be entitled to receive for performing his normal duties during that period.

**Exceptions
from
obligations
under section
70(1).**

71. - (1) This section applies despite section 70(1).

(2) The person conducting a business or undertaking shall not allow a safety and health representative to have access to any personal or medical information concerning a worker without the worker's consent unless the information is in a form that -

- (a) does not identify the worker; and
- (b) could not reasonably be expected to lead to the identification of the worker.

(3) The person conducting a business or undertaking shall not give

financial assistance to a safety and health representative for the purpose of the assistance referred to in section 70(1) (f).

(4) A person who fails to comply with subsection (2) or (3) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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Obligation to train safety and health representative.

72. - (1) The person conducting a business or undertaking shall, if requested by a safety and health representative for a work group for that business or undertaking, allow the safety and health representative to attend a course of training in occupational safety and health that is -

- (a) approved by the Director;
- (b) a course that the safety and health representative is entitled under the regulations to attend; and
- (c) subject to subsection (5), chosen by the safety and health representative, in consultation with the person conducting the business or undertaking.

(2) The person conducting the business or undertaking shall -

- (a) as soon as practicable within the period of three months after the request is made, allow the safety and health representative time off work to attend the course of training; and
- (b) pay the course fees and any other reasonable costs associated with the safety and health representative's attendance at the course of training.

(3) If -

- (a) a safety and health representative represents a work group of the workers of more than one business or undertaking; and
- (b) the person conducting any of those businesses or undertakings has complied with this section in relation to the representative,

each of the persons conducting those businesses or undertakings is to be

taken to have complied with this section in relation to the representative.

(4) Any time that a safety and health representative is given off work to attend the course of training shall be with the pay that he would otherwise be entitled to receive for performing his normal duties during that period.

(5) If agreement cannot be reached between the person conducting the business or undertaking and the safety and health representative within the time required by subsection (2) as to the matters set out in subsections (1) (c) and (2), either party may ask the Director to appoint an OSH Officer to decide the matter.

(6) A person conducting a business or undertaking shall allow a safety and health representative to attend a course approved by the Director and pay the cost related to attendance at the course.

(7) A person who contravenes subsection (6) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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Obligation to share costs if multiple businesses or undertakings.

73. - (1) If a safety and health representative, or deputy safety and health representative (if any), represents a work group of workers carrying out work for two or more persons conducting businesses or undertakings -

- (a) the costs of the representative exercising powers and performing functions under this Act; and
- (b) the costs referred to in section 72 (2) (b),

for which any of the persons conducting those businesses or undertakings are liable shall be apportioned equally between each of those persons unless they agree otherwise.

(2) An agreement to apportion the costs in another way may be varied at any time by negotiation and agreement between each of the persons conducting the businesses or undertakings.

List of safety and health

74. - (1) A person conducting a business or undertaking shall ensure that -

- representatives.**
- (a) a list of each safety and health representative and deputy safety and health representative (if any) for each work group of workers carrying out work for the business or undertaking is prepared and kept up to date; and
 - (b) a copy of the up-to-date list is displayed -
 - (i) at the principal place of business of the business or undertaking; and
 - (ii) at any other workplace that is appropriate taking into account the constitution of the relevant work group or work groups,
 in a manner that is readily accessible to workers in the relevant work group or work groups.

(2) A person conducting a business or undertaking shall provide a copy of the up-to-date list prepared under subsection (1) to the Director as soon as practicable after it is prepared.

(3) A person who contravenes subsection (1) or (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

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Joint Safety and Health Committees

Joint safety and health committees.

75. - (1) The person conducting a business or undertaking at a workplace which employs or engages at least twenty workers shall establish a joint safety and health committee for the business or undertaking or part of the business or undertaking -

- (a) within two months after being requested to do so by -
 - (i) a safety and health representative for a work group of workers carrying out work at that workplace; or
 - (ii) five or more workers at that workplace; or
- (b) if required by the Director to do so, within the time prescribed by

the regulations.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

(3) A person conducting a business or undertaking at a workplace may establish a joint safety and health committee for the workplace or part of the workplace on the person's own initiative.

76. - (1) Subject to subsections (2), (3) and (4), the constitution of a joint safety and health committee may be agreed between the person conducting the business or undertaking and the workers at the workplace.

(2) If there is a safety and health representative at a workplace, that representative shall be a member of the committee.

(3) If there are two or more safety and health representatives at a workplace, those representatives may choose one or more of their number (who consent) to be members of the committee.

(4) At least half of the members of the committee shall be workers who are not nominated by the person conducting the business or undertaking.

(5) If agreement is not reached under this section within a reasonable time, any party may ask the Director with responsibility for conciliation in the Ministry with responsibility for labour to appoint a Conciliation Officer to decide the matter.

(6) A Conciliation Officer appointed on a request under subsection (5) may decide the constitution of the joint safety and health committee.

(7) A decision of a Conciliation Officer under this section is taken to be an agreement under this section between the parties.

77. The functions of a joint safety and health committee are -

(a) to facilitate cooperation between the person conducting a business or undertaking and workers in instigating, developing and carrying

Third Schedule.

Constitution of joint safety and health committee.

Functions of joint safety and health committee.

out measures designed to ensure the workers' safety and health at work;

- (b) to assist in developing standards, rules and procedures relating to safety and health that are to be followed or complied with at the workplace; and
- (c) any other functions prescribed by the regulations or agreed between the person conducting the business or undertaking and the committee.

Meetings of joint safety and health committee.

78. A joint safety and health committee shall meet -

- (a) at least once every three months; and
- (b) at any reasonable time at the request of at least half of the members of the committee.

Duties of person conducting business or undertaking.

79. - (1) The person conducting a business or undertaking shall allow each member of the joint safety and health committee to spend the time that is reasonably necessary to attend meetings of the committee or to carry out functions as a member of the committee.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that

Third Schedule. offence in the Third Schedule.

(3) The person conducting a business or undertaking shall pay each member of the joint safety and health committee the amount that the member would otherwise be entitled to receive for performing his normal duties during that period for any time that the member spends for the purposes set out in subsection (1).

(4) The person conducting a business or undertaking shall allow the joint safety and health committee for a workplace to have access to information that the person has relating to -

- (a) hazards (including associated risks) at the workplace; and

(b) the safety and health of the workers at the workplace.

(5) A person who contravenes subsection (3) or (4) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

(6) Despite subsection (3), the person conducting a business or undertaking shall not allow the joint safety and health committee to have access to any personal or medical information concerning a worker without the worker's consent, unless the information is in a form that -

- (a) does not identify the worker; and
- (b) could not reasonably be expected to lead to the identification of the worker.

(7) A person who contravenes subsection (6) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Resolution of OSH Issues

Parties to an issue.

80. - (1) In this Part, "parties", in relation to an issue, means the following -

- (a) the person conducting the business or undertaking or the person's representative;
- (b) if the issue involves more than one business or undertaking, the person conducting each business or undertaking or the person's representative;
- (c) if the worker or workers affected adversely by the issue are in a work group, the safety and health representative for that work group or his representative; or
- (d) if the worker or workers affected adversely by the issue are not in a work group, the worker or workers or their representative.

(2) A person conducting a business or undertaking shall ensure that the

person's representative (if any) for the purposes of this Part -

- (a) is not a safety and health representative; and
- (b) has an appropriate level of seniority, and is sufficiently competent, to act as the person's representative.

Resolution of safety and health issues.

81. - (1) This section applies if a matter about occupational safety and health arises at a workplace or from the conduct of a business or undertaking and the matter is not resolved after discussion between the parties to the issue.

(2) The parties shall make reasonable efforts to achieve a timely, final and effective resolution of the issue in accordance with the relevant agreed procedure, or if there is no agreed procedure, the default procedure prescribed in the regulations.

(3) A representative of a party to an issue may enter the workplace for the purpose of attending discussions with a view to resolving the issue.

Referral of issue to Director with responsibility for conciliation.

82. - (1) This section applies if an issue has not been resolved after reasonable efforts have been made to achieve an effective resolution of the issue.

(2) A party to the issue may request that the Director with responsibility for conciliation in the Ministry with responsibility for labour to appoint a conciliation officer to assist in resolving the issue.

(3) A request to the Director under this section does not prevent -

- (a) a worker from exercising the right under this Part to cease or refuse to carry out work;
- (b) a safety and health representative or a Labour Officer from issuing a provisional improvement notice or a direction under this Part to cease or refuse to carry out work;
- (c) an OSH Officer from exercising any of the OSH Officer's

compliance powers under this Act in relation to a workplace.

(4) A party to an issue may lodge a complaint with the Tribunal where the intervention by a Conciliation Officer fails to bring about the resolution of the issue within six months of the intervention of the Minister with responsibility for labour.

Right to Cease or Direct Cessation of Unsafe Work

Definition of "cease work under sections 84 to 89" and application of sections.

83.— (1) In sections 84 to 89, "cease work" means -

- (a) to cease, or refuse, to carry out work under section 84; or
- (b) to cease work on a direction under section 85.

(2) Sections 84 to 89 do not apply to workers who are employed in the essential services specified in the First Schedule to the *Labour Relations and Industrial Disputes Act*.

Right of worker to cease unsafe work.

84. A worker may cease, or refuse to carry out, work if the worker has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard.

Safety and health representative may direct that unsafe work cease.

85. - (1) Subject to subsection (2), a safety and health representative may direct a worker who is in a work group represented by the representative to cease or refuse to carry out work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's safety or health, emanating from an immediate or imminent exposure to a hazard.

(2) The safety and health representative shall not give a worker a direction to cease or refuse to carry out work unless the matter is not resolved after -

- (a) consulting about the matter with the person conducting the business or undertaking for whom the workers are carrying out work; and
- (b) attempting to resolve the matter as an issue under sections 84 to 89.

(3) The safety and health representative may direct the worker to cease or refuse to carry out work without carrying out that consultation or attempting to resolve the matter as an issue under sections 84 to 89 if the risk is so serious and immediate or imminent that it is not reasonable to consult before giving the direction.

(4) The safety and health representative shall carry out the consultation as soon as practicable after giving a direction under subsection (3).

(5) The safety and health representative shall inform the person conducting the business or undertaking of any direction given by the safety and health representative to workers under this section.

(6) A safety and health representative cannot give a direction under this section unless the representative -

- (a) has completed initial training and certification prescribed by the regulations referred to in section 72 (1) (b);
- (b) has completed that training and certification previously when acting as a safety and health representative for another work group; or
- (c) has completed training and certification equivalent to that training under a corresponding law relating to occupational safety and health.

Worker to notify person conducting business or undertaking if worker refuses to work.

86. A worker who refuses to work under sections 84 to 89 -

- (a) shall, as soon as practicable, notify the person conducting the business or undertaking that the worker has ceased work under sections 84 to 89 unless the worker ceased work under a direction from a safety and health representative; and
- (b) shall remain available to carry out suitable alternative work.

Alternative work.

87. If a worker ceases work under sections 84 to 89, the person conducting the business or undertaking may direct the worker to carry out suitable alternative work at the same or another workplace if that work is safe and

appropriate for the worker to carry out until the worker can resume normal duties.

Continuity of Engagement of Worker

Continuity of engagement of worker.

88. If a worker ceases or refuses to carry out work under sections 84 to 89, that action does not affect the continuity of engagement of the worker for prescribed purposes if the worker has not unreasonably failed to comply with a direction to carry out suitable alternative work -

- (a) at the same or another workplace; and
- (b) that was safe and appropriate for the worker to carry out.

Request to Director to Appoint OSH Officer to Provide Technical Assistance

Request to Director to appoint OSH Officer to provide technical assistance.

89. - (1) The safety and health representative or the person conducting the business or undertaking or a relevant worker may request that the Director appoints an OSH Officer to attend the workplace as soon as is reasonably practicable to provide technical assistance to the parties in resolving an issue arising in relation to the cessation of work.

(2) An issue under this section which is not resolved despite an OSH Officer's intervention is to be determined as an issue under section 82.

Provisional Improvement Notice

Provisional improvement notice.

90. - (1) This section applies if a safety and health representative or Labour Officer reasonably believes that a person -

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

(2) The safety and health representative or Labour Officer may issue a provisional improvement notice requiring the person to -

- (a) remedy the contravention;
- (b) prevent a likely contravention from occurring; or

- (c) remedy the things or operations causing the contravention or likely contravention.

(3) However, the safety and health representative or Labour Officer shall not issue a provisional improvement notice to a person unless the safety and health representative has first consulted the person.

(4) A safety and health representative shall not issue a provisional improvement notice unless the representative has -

- (a) completed initial training prescribed by the regulations referred to in section 72;
- (b) previously completed that training when acting as a safety and health representative for another work group; or
- (c) completed training and certification equivalent to that training under a corresponding law relating to occupational safety and health.

(5) A safety and health representative or Labour Officer cannot issue a provisional improvement notice in relation to a matter if an OSH Officer has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

Provisional improvement notice to be in writing.

91. A provisional improvement notice shall be in writing in the prescribed form.

Contents of provisional improvement notice.

92. A provisional improvement notice shall state -

- (a) that the safety and health representative or Labour Officer believes the person -

- (i) is contravening a provision of this Act; or

- (ii) has contravened a provision of this Act in circumstances

- that make it likely that the contravention will continue or be repeated;

- (b) the provision the representative believes is being, or has been, contravened;
- (c) briefly, how the provision is being, or has been contravened; and
- (d) the day, at least eight days after the notice is issued, by which the person is required to remedy the contravention or likely contravention.

Provisional improvement notice may give directions to remedy contravention.

93. - (1) A provisional improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention or the matters or activities causing the contravention or likely contravention to which the notice relates.

- (2) A direction included in a provisional improvement notice may -
 - (a) refer to a code of practice if it exists; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

Minor changes to provisional improvement notice.

94. A safety and health representative or Labour Officer may make minor changes to a provisional improvement notice -

- (a) for clarification;
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

Issue of provisional improvement notice.

95. A provisional improvement notice may be issued to a person in accordance with section 90.

Safety and health representative or Labour Officer may cancel notice.

96. The safety and health representative or Labour Officer may, at any time, cancel a provisional improvement notice issued to a person by written notice given to that person.

Display of provisional improvement notice.

97. - (1) A person to whom a provisional improvement notice is issued shall, as soon as practicable, display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being

carried out that is affected adversely by the notice.

(2) A person who contravenes subsection (1) commits an offence and

Third Schedule. shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

(3) A person shall not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) during the period that the notice is in force.

(4) A person who contravenes subsection (3) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Formal irregularities or defects in notice.

98. A provisional improvement notice is not invalid only because of -

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person.

Offence of failure to comply with provisional improvement notice.

99. - (1) This section applies if -

- (a) a provisional improvement notice has been issued to a person; and
- (b) an OSH Officer has not been required under section 89 to attend at the workplace.

(2) The person shall comply with the provisional improvement notice within the time specified in the notice.

(3) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Request for review of provisional improvement notice.

100. - (1) Within seven days after a provisional improvement notice is issued to a person -

- (a) the person to whom it was issued; or
- (b) if the person is a worker, the person conducting the business or

undertaking at the workplace at which the worker carries out work, may ask the Director to appoint an OSH Officer to review the notice.

(2) If a request is made under subsection (1), the operation of the provisional improvement notice is stayed until the OSH Officer makes a decision on the review.

Decision of OSH Officer on review of provisional improvement notice.

101. - (1) After reviewing the provisional improvement notice, the OSH Officer shall -

- (a) confirm the provisional improvement notice;
- (b) confirm the provisional improvement notice with changes; or
- (c) cancel the provisional improvement notice.

(2) The OSH Officer shall give a copy of his decision to -

- (a) the applicant for the review of the provisional improvement notice;
- and
- (b) the safety and health representative or Labour Officer who issued the notice.

(3) A provisional improvement notice issued by a safety and health representative or a Labour Officer that is confirmed (with or without changes) by an OSH Officer is taken to be an improvement notice issued by the OSH Officer under this Act.

Part V does not apply to inmates.

102. Nothing in this Part applies to a worker who is an inmate.

Part VI. Discriminatory, Coercive and Misleading Conduct

Prohibition of Discriminatory, Coercive or Misleading Conduct

Prohibition of discriminatory conduct.

103. - (1) A person shall not engage in discriminatory conduct for a prohibited reason.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that

Third Schedule.

offence in the Third Schedule.

(3) A person commits an offence under subsection (1) only if the reason referred to in section 105 was the dominant reason for the discriminatory conduct.

**Meaning of
“discriminatory
conduct”.**

104. - (1) For the purposes of this Part, a person engages in discriminatory conduct if -

(a) the person -

(i) dismisses a worker;

(ii) terminates a contract for the provision of services by a worker;

(iii) puts a worker in a position that operates to the worker's detriment in the engagement of the worker; or

(iv) alters the position of a worker to the worker's detriment;

(b) the person -

(i) refuses or fails to offer to engage a prospective worker; or

(ii) treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement;

(c) the person terminates a commercial arrangement with another person; or

(d) the person refuses or fails to enter into a commercial arrangement with another person.

(2) For the purposes of this Part, a person also engages in discriminatory conduct if the person organizes to take any action referred to in subsection (1) or threatens to organize or take that action.

**Meaning of
“prohibited**

105. Discriminatory conduct referred to in section 104 is engaged in for a

reason”.

prohibited reason if it is engaged in because the worker or prospective worker or the person referred to in section 104(1)(c) or (d) (as the case requires) -

- (a) is or has been, pregnant;
- (b) is, or is perceived to be, a person living with or affected adversely by HIV or Acquired Immunodeficiency Syndrome (AIDS) or is afflicted with any other life threatening illness;
- (c) is, has been or proposes to be a safety and health representative or a member of a joint safety and health committee;
- (d) undertakes, has undertaken or proposes to undertake another role under this Act;
- (e) exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function as a safety and health representative or as a member of a joint safety and health committee;
- (f) performs, has performed or proposes to perform a function under this Act or performs, has performed or proposes to perform a function under this Act in a particular way;
- (g) refrains from, has refrained from or proposes to refrain from performing a function under this Act or refrains from, has refrained from or proposes to refrain from performing a function under this Act in a particular way;
- (h) assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person performing a function under this Act;
- (i) raises or has raised or proposes to raise an issue or concern about occupational safety and health with -

- (i) the person conducting a business or undertaking;
- (ii) an OSH Officer;
- (iii) a Labour Officer;
- (iv) a safety and health representative;
- (v) a member of a joint safety and health committee;
- (vi) another worker;
- (vii) any other person who has a duty under this Act in relation to the matter; or
- (viii) any other person performing a function under this Act;
- (j) is involved in, has been involved in or proposes to be involved in resolving an occupational safety and health issue under this Act; or
- (k) is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under this Act.

Prohibition of requesting, instructing, inducing, encouraging, authorizing or assisting discriminatory conduct.

106. - (1) A person shall not request, instruct, induce, encourage, authorize or assist another person to engage in discriminatory conduct in contravention of section 103.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Prohibition of coercion or inducement.

107. - (1) A person shall not organize or take, or threaten to organize or take, any action against another person with intent to coerce or induce the other person, or a third person, to -

- (a) exercise or not to exercise a power, or to propose to exercise or not to exercise a power, under this Act;
- (b) perform or not to perform a function, or to propose to perform or not

to perform a function, under this Act;

- (c) exercise or not to exercise a power or perform a function, or to propose to exercise or not to exercise a power or perform a function, in a particular way; or
- (d) refrain from seeking, or continuing to undertake, a role under this Act.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

(3) In this section, a reference to taking action or threatening to take action against a person includes a reference to not taking a particular action or threatening not to take a particular action in relation to that person.

(4) For the avoidance of doubt, a reasonable direction given by an emergency services worker in an emergency is not an action with intent to coerce or induce a person.

Misrepresentation.

108. - (1) A person shall not knowingly or recklessly make a false or misleading representation to another person about that other person's -

- (a) rights or obligations under this Act;
- (b) ability to initiate, or participate in, a process or proceedings under this Act; or
- (c) ability to make a complaint or inquiry to a person empowered under this Act to seek compliance with this Act.

(2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

(3) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that

offence in the Third Schedule.

Criminal Proceedings in Relation to Discriminatory Conduct

Proof of discriminatory conduct.

109. - (1) This section applies if in proceedings for an offence of contravening section 103 or 106, the prosecution -

- (a) proves that the discriminatory conduct was engaged in;
- (b) proves that a prohibited reason referred to in section 105(a) to (k) existed at the time the discriminatory conduct was engaged in; and
- (c) adduces evidence that the discriminatory conduct was engaged in for a prohibited reason.

(2) The reason alleged for the discriminatory conduct is presumed to be the dominant reason for that conduct unless the accused proves, beyond a reasonable doubt, that the reason was not the dominant reason for the conduct.

Order for compensation.

110. If a person is convicted or found guilty of an offence under section 103 or 106, the court may (in addition to imposing a penalty) -

- (a) make an order that the offender pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the court considers appropriate; and
- (b) make any other order as the court considers appropriate.

Procedure of Tribunal for hearing Complaint in Relation to Discriminatory or Coercive Conduct

Proceedings in relation to engaging in or inducing discriminatory or coercive conduct.

111. - (1) An eligible person may apply to the Tribunal for an award under this section.

(2) The Tribunal may make one or more of the awards set out in subsection (3) in relation to a person who has -

- (a) engaged in discriminatory conduct for a prohibited reason;

(b) requested, instructed, induced, encouraged, authorized or assisted another person to engage in discriminatory conduct for a prohibited reason; or

(c) contravened section 107.

(3) For the purposes of subsection (2), the awards that the Tribunal may make are -

(a) in the case of conduct referred to in subsection (2)(a) or (b), an award that the person pay (within a specified period) the compensation to the person who was the subject of the discriminatory conduct that the Tribunal considers appropriate;

(b) in the case of conduct referred to in subsection (2)(a) in relation to a worker who was or is an employee or prospective employee, an award that -

(i) the worker be reinstated or re-employed in his former position or, if that position is not available, in a similar position; or

(ii) the prospective worker be employed in the position for which he had applied or a similar position; or

(c) any other award that the Tribunal considers appropriate.

(4) For the purposes of this section, a person may be found to have engaged in discriminatory conduct for a prohibited reason only if a reason referred to in section 105 was a substantial reason for the conduct.

(5) Nothing in this section is to be construed as limiting any other powers of the Tribunal under the *Labour Relations and Industrial Disputes Act* or any other enactment.

(6) For the purposes of this section, each of the following is an eligible person -

- (a) a person affected adversely by the contravention; or
- (b) a person authorized as a representative by a person referred to in paragraph (a).

Procedure for complaint to be heard by Tribunal for discriminatory conduct.

112. - (1) A proceeding brought under section 111 shall be commenced not more than one year after the date on which the applicant knew or ought to have known that the cause of action accrued.

(2) In a proceeding under section 111 in relation to conduct referred to in section 111(2) (a) or (b), if a prohibited reason is alleged for discriminatory conduct, that reason is presumed to be a substantial reason for that conduct unless the defendant proves, on the balance of probabilities, that the reason was not a substantial reason for the conduct.

(3) It is a defence to a proceeding under section 111 in relation to conduct referred to in section 111(2)(a) or (b) if the defendant proves that -

- (a) the conduct was reasonable in the circumstances; and
- (b) a substantial reason for the conduct was to comply with the requirements of this Act or a corresponding law relating to occupational safety and health.

General Provisions Relating to Orders

General provisions relating to orders.

113. - (1) The making of an award in a proceeding under section 111 in relation to conduct referred to in section 111(2)(a) or (b) does not prevent the bringing of a proceeding for an offence under section 103 or 106 in relation to the same conduct.

(2) If the Tribunal makes an award under section 111 in a proceeding in relation to conduct referred to in section 111(2) (a) or (b), the court cannot make an order under section 110 in a proceeding for an offence under section 103 or 106 in relation to the same conduct.

(3) If the court makes an order under section 111 in a proceeding for an offence under section 103 or 106, the Tribunal cannot make an award under section 111 in relation to conduct referred to in section 111(2) (a) or (b) that is the same conduct.

(4) An award in respect of any conduct referred to the Tribunal for settlement -

- (a) may be made with retrospective effect from such date, not being earlier than the date of the conduct, as the Tribunal may determine;
- (b) shall specify the date from which it shall have effect;
- (c) shall be final and conclusive and no proceedings shall be brought in any court to impeach the validity thereof, except on a point of law.

Prohibition of multiple actions.

114. A person shall not -

- (a) commence a proceeding under this Part if the person has commenced a proceeding or made an application or complaint in relation to the same matter under any enactment and that proceeding, application or complaint has not been withdrawn;
- (b) recover any compensation under this Part if the person has received compensation for the matter under any enactment; or
- (c) commence or continue an application under this Part if the person has failed in a proceeding, application or complaint in relation to the same matter under the laws of Jamaica, other than a proceeding, application or complaint relating to workers' compensation.

PART VII. *Workplace Entry by Labour Officers*

Interpretation of Part VII

Interpretation of Part VII.

115. In this Part VII -

“relevant person conducting a business or undertaking” means a person conducting a business or undertaking in relation to which the

Labour Officer is exercising or proposes to exercise the right of entry;

“relevant worker”, in relation to a workplace, means a worker who -

- (a) has reported a suspected contravention of this Act or on whose behalf a suspected contravention has been reported; and
- (b) works at that workplace being a low risk establishment as prescribed by the Director or an establishment that has been classified as a general establishment as prescribed by the Director.

*Entry to Ensure Compliance and
Inquire into Suspected Contraventions*

Entry to inquire into suspected contraventions. 116. For the purposes of this Act, a Labour Officer may enter a workplace other than a place where domestic work is being carried out as an economic activity-

- (a) to ensure compliance with this Act;
- (b) for the purpose of inquiring into a suspected contravention of this Act that relates to, or affects, workers or a relevant worker.

Rights that may be exercised while at workplace. 117. - (1) While at the workplace under this Act, a Labour Officer may do all or any of the following in relation to the suspected contravention of this Act -

- (a) inspect any work system, plant, substance, structure or other thing relevant to the suspected contravention;
- (b) consult with the relevant workers in relation to the suspected contravention;
- (c) consult with the relevant person conducting the business or undertaking about the suspected contravention;
- (d) require the relevant person conducting the business or undertaking to

allow the Labour Officer to inspect, and make copies of, any document that is directly relevant to the suspected contravention and that -

- (i) is kept at the workplace; or
 - (ii) is accessible from a computer that is kept at the workplace;
- (e) warn any person whom the Labour Officer reasonably believes to be exposed to a serious risk to his safety or health emanating from an immediate or imminent exposure to a hazard, of that risk.

(2) A relevant person conducting a business or undertaking shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1) (d).

(3) Subsection (2) places an evidential burden on the defendant to show a reasonable excuse.

(4) A person who contravenes subsection (2) commits an offence and shall be liable on conviction to the penalty specified in relation to that

Third Schedule. offence in the Third Schedule.

Notice of entry to ensure compliance and enquire into suspected contravention. 118. - (1) A Labour Officer shall, as soon as is reasonably practicable after entering a workplace under this Act, give notice of the entry and the suspected contravention, in accordance with the regulations, to -

- (a) the relevant person conducting the business or undertaking; and
- (b) the person with management or control of the workplace.

(2) Subsection (1) does not apply if to give the notice would -

- (a) defeat the purpose of the entry to the workplace; or
- (b) unreasonably delay the Labour Officer in an urgent case.

(3) Subsection (1) does not apply to an entry to a workplace under this Act to inspect or make copies of documents referred to in section 117 (1)

(d).

Entry to inspect employee records or information held by another person.

119. - (1) This section applies if a Labour Officer is entitled under section 116 to enter a workplace to inquire into a suspected contravention of this Act.

(2) For the purposes of the inquiry into the suspected contravention, the Labour Officer shall enter any workplace for the purpose of inspecting, or making copies of -

(a) employee records that are directly relevant to a suspected contravention; or

(b) other documents that are directly relevant to a suspected contravention and that are not held by the relevant person conducting the business or undertaking.

Entry to Consult and Advise Workers

Entry to consult and advise workers.

120. - (1) A Labour Officer may enter a workplace to consult on occupational safety and health matters with, and provide advice on those matters to one or more relevant workers who wish to participate in the discussions.

(2) A Labour Officer may, upon entering a workplace under this Part, warn any person whom the Labour Officer reasonably believes to be exposed to a serious risk to his safety or health, emanating from an immediate or imminent exposure to a hazard, of that risk.

Notice of entry to consult and advise workers.

121. - (1) Before entering a workplace under this Part, a Labour Officer shall give notice of the proposed entry to the relevant person conducting the business or undertaking.

(2) The notice shall comply with the regulations.

(3) The notice shall be given during the usual working hours at that workplace at least twenty-four hours, but not more than fourteen days, before

the entry.

Requirements for Labour Officers

- Where right of entry may be exercised.** 122. A Labour Officer may exercise a right of entry to a workplace only in relation to -
- (a) the area of the workplace where the relevant workers work; or
 - (b) any other work area that directly affects the safety or health of those workers.
- Occupational safety and health requirements.** 123. A Labour Officer shall not exercise a right of entry to a workplace unless he complies with any reasonable request by the relevant person conducting the business or undertaking or the person with management or control of the workplace to comply with -
- (a) any occupational safety and health requirement that applies to the workplace; and
 - (b) any other requirement prescribed by the regulations or any other enactment that applies to that type of workplace.
- Residential premises.** 124. A Labour Officer shall not enter any part of a workplace that is used only for residential purposes.
- Labour Officer not required to disclose names of workers.** 125. - (1) A Labour Officer is not required to disclose to the relevant person conducting the business or undertaking or the person with management or control of the workplace the name of any worker at the workplace.
- (2) A Labour Officer who wishes to disclose to the relevant person conducting a business or undertaking or the person with management or control of the workplace the name of any worker may only do so with the consent of the worker.

Prohibitions

Offence of refusing or delaying entry of Labour Officer. 126. - (1) A person shall not, without reasonable excuse, refuse or unduly delay entry into a workplace by a Labour Officer who is entitled to enter the workplace under this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

(3) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

Offence of hindering or obstructing Labour Officer.

127. - (1) A person shall not intentionally and unreasonably hinder or obstruct a Labour Officer in entering a workplace or in exercising any rights at a workplace in accordance with this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Labour Officer shall not delay, hinder or obstruct any person or disrupt work at workplace.

128. A Labour Officer exercising, or seeking to exercise, rights in accordance with this Part shall not intentionally and unreasonably delay, hinder or obstruct any person or disrupt any work at a workplace, or otherwise act in an improper manner.

Misrepresentations about things authorized by Part VII.

129. - (1) A person shall not take action, intentionally or recklessly, to give the impression that the doing of a thing is authorized by this Part if it is not so authorized.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

(3) Subsection (1) does not apply if the person reasonably believes that the doing of the thing is authorized.

Unauthorized use or

130. - (1) A person shall not use or disclose information or a document

disclosure of information or documents.

obtained under this Part in an inquiry into a suspected contravention for a purpose that is not related to the inquiry or rectifying the suspected contravention, unless -

- (a) the person reasonably believes that the use or disclosure is necessary to lessen or prevent -
 - (i) a serious risk to a person's safety or health; or
 - (ii) a serious threat to public safety or health;
- (b) the person has reason to suspect that unlawful activity has been, is being or may be engaged in, and uses or discloses the information or document as a necessary part of an investigation of the matter or in reporting concerns to relevant persons or authorities;
- (c) the use or disclosure is required or authorized by or under law;
- (d) the person reasonably believes that the use or disclosure is reasonably necessary for -
 - (i) the prevention, detection, investigation, prosecution or punishment of criminal offences, breaches of a law imposing a penalty or sanction or breaches of a prescribed law;
 - (ii) the enforcement of laws relating to the confiscation of the proceeds of crime;
 - (iii) the protection of the public revenue;
 - (iv) the prevention, detection, investigation or remedying of seriously improper conduct or prescribed conduct;
 - (v) the preparation for, or conduct of, proceedings before any court or tribunal, or implementation of the orders of a court or tribunal; or

- (e) if the information is, or the document contains, personal information, the use or disclosure is made with the written consent in the prescribed form of the individual to whom the information relates.

- (2) A person who contravenes subsection (1) commits an offence

Third Schedule.

and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Register of OSH Officers and Labour Officers.

131. The Director shall keep available for public access an up-to-date register of OSH Officers and Labour Officers in accordance with the regulations.

PART VIII. Administration of Safety and Health

Department of Occupational Safety and Health and Staff

Department of Occupational Safety and Health and staff.

132. – (1) For the purposes of this Act, there is established within the Ministry with responsibility for labour a department of Government to be called the Department of Occupational Safety and Health.

(2) For the due administration of the Department of Occupational Safety and Health, the Governor-General may appoint -

- (a) a Director; and
- (b) so many public officers as may be necessary for the efficient operation of the Department.

(3) An appointment under subsection (2) may be subject to conditions or limitations specified in the instrument of appointment.

Functions of Director

Functions of Director.

133. - (1) The functions of the Director are to -

- (a) advise and make recommendations to the Minister and report on the operation and effectiveness of this Act;
- (b) monitor and enforce compliance with this Act;
- (c) provide advice and information on occupational safety and health to

duty holders under this Act and to the community;

- (d) collect, analyse and publish statistics relating to occupational safety and health;
- (e) foster a co-operative, consultative relationship between duty holders and the persons to whom they owe duties and their representatives in relation to occupational safety and health matters;
- (f) promote and support education and training on matters relating to occupational safety and health;
- (g) engage in, promote and co-ordinate the sharing of information to achieve the object of this Act;
- (h) initiate and give instruction to conduct and defend proceedings under this Act before a court or tribunal;
- (i) certify technical examiners and occupational safety experts as prescribed;
- (j) do all things necessary to be done for or in connection with the performance of the functions of the Director; and
- (k) any other function conferred on the Director by this Act or any other enactment.

(2) Without limiting subsection (1), the Director may perform all the functions that an OSH Officer has under this Act.

(3) In performing the functions specified in subsection (1), the Director –

(a) shall establish, review and apply systems for –

(i) the recording and notification in accordance with the

Fourth Schedule of –

**Fourth
Schedule.**

(A) occupational accidents;

(B) occupational diseases;

(C) as appropriate, dangerous occurrences and

commuting accidents; and

- (D) suspected cases of occupational diseases;
and

- (ii) the statistical analysis of work-related injuries and deaths;
- (b) may, where he considers it expedient so to do, hold or cause to be held, a formal investigation in respect of any notifiable incident and of its causes and circumstances.
- (c) shall formulate, promote, develop, and maintain appropriate industry standards and codes of practices for the occupational safety and health of workers in the workplace and monitor compliance with the standards and codes;
- (d) shall develop, implement and monitor a five year strategic plan and other plans and programmes for improving occupational safety and health and keep the plans and programmes under review;
- (e) shall ensure that the plans and programmes developed under paragraph (d) meet the existing and future needs of sectors, industries and the public;
- (f) shall collect and disseminate information on occupational safety and health;
- (g) based on the notifications and other available information, shall publish annually statistics that are compiled in a way that is representative of the country as a whole, concerning occupational accidents, occupational diseases and, as appropriate, dangerous occurrences and commuting accidents, as well as the analyses thereof;
- (h) with the assistance of a technical advisory committee -
- (i) shall conduct directly, or in collaboration with other persons or bodies, research, experiments and

demonstrations relating to occupational safety and health;

- (ii) shall develop specific plans for the research, demonstration, and experiments as are necessary to produce criteria for the formulation of safety and health standards under this Act;
 - (iii) on the basis of the research, demonstration, and experiments, or any other information available to him, shall develop and publish any standards necessary for carrying out of the purposes of this Act;
- (i) shall conduct other special research, experiments, and demonstrations with a view to improving occupational safety and health; and
 - (j) shall develop standards for dealing with toxic material and harmful physical substances and agents which shall describe safe exposure levels including, the exposure level, at which workers will not suffer impaired health, functional capacities or diminished life expectancy as a result of his work.
- (4) Subject to subsection (5), the Director shall –
- (a) encourage and facilitate the establishment of occupational health services that are adequate and appropriate to the specific risks of the work and workplace for the workers; and
 - (b) ensure adequate cooperation and co-ordination between occupational health services and, as appropriate, other bodies concerned with the provision of health services.
- (5) The regulations may provide for the establishment of occupational health services -
- (a) by collective agreements or as otherwise agreed upon by the person

conducting the business or undertakings and workers concerned; or

- (b) in any other manner approved by the Minister after consultation with the representative organizations of employers and workers concerned.

(7) The Director shall, within four months after the end of each financial year (or within any longer period as the Minister may, in special circumstances approve) cause to be made, and transmit to the Minister a report dealing generally with activities relating to occupational safety and health during the preceding financial year.

(8) The Minister shall cause a copy of the report to be laid in the House of Representatives and the Senate.

Delegation by Director.

134. - (1) The Director may, by instrument in writing, delegate to an authorized person a power or function under this Act other than this power of delegation.

(2) A delegation under this subsection (1) -

- (a) may be made subject to such conditions as the Director thinks fit;
- (b) is revocable at will; and
- (c) does not derogate from the power of the Director to act.

Powers of Director to Obtain Information

Powers of Director to obtain information.

135. - (1) This section applies if the Director has reasonable grounds to believe that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of this Act or that will assist the Director to monitor or enforce compliance with this Act.

(2) The Director may, by written notice served on the person, require the person to do one or more of the following -

- (a) to give the Director, in writing signed by the person (or in the case of an offence committed by a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in

the notice, that information of which the person has knowledge,

- (b) to produce to the Director, in accordance with the notice, those documents; or
- (c) to appear before a person appointed by the Director on a day, and at a time and place, specified in the notice (being a day, time and place that are reasonable in the circumstances) and give, either orally or in writing, that evidence and produce those documents.

(3) The notice shall -

- (a) state that the requirement is made under this section;
- (b) contain a statement to the effect that a failure to comply with a requirement is an offence; and
- (c) if the notice requires the person to provide information or documents or answer questions -
 - (i) contain a statement about the effect of section 150 and that it does not affect legal professional privilege; and
 - (ii) state that the person may attend with an attorney-at-law.

(4) The Director shall not make a requirement under subsection (2)

- (c) unless the Director has taken all reasonable steps to obtain the information under subsection (2) (a) and (b) and has been unable to do so.

(5) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

(6) Subsection (5) places an evidential burden on the person accused to show a reasonable excuse.

(7) Section 150 (with any necessary changes) applies to a requirement under this section.

(8) A person who contravenes subsection (3) and (5) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule

*Technical Advisory Committee***Technical
Advisory
Committee.**

136. - (1) The Director may, from time to time, constitute a technical advisory committee to assist the Director in the performance of his functions.

(2) A technical advisory committee constituted under subsection (1) shall consist of the Director as chairman and not less than five other members.

(3) Subject to this Act, a technical advisory committee shall regulate its own proceedings.

(4) A technical advisory committee shall –

- (a) be appointed by the Director from among persons professionally qualified in safety and health and knowledgeable in specific industry standards and codes of practice;
- (b) consider any data, research or recommendations on occupational safety and health made to it by any of its members or any other person for carrying out the functions of the technical advisory committee; and
- (c) perform any other functions as the Director may, from time to time, assign to it.

*Advisory Council on Occupational Safety and Health***Establishment
of Advisory
Council on
OSH.**

137. - (1) For the purpose of this Act, there is established a body to be called the Advisory Council on Occupational Safety and Health.

(2) The provisions of the Sixth Schedule shall have effect as to the constitution of the Advisory Council and otherwise in relation to the Advisory Council.

**Sixth
Schedule.****Functions of
Advisory
Council.**

138. - (1) The Advisory Council shall advise the Minister on -

- (a) matters of general policy with respect to occupational safety and health;
- (b) the formulation and development of the National Occupational

Safety and Health Policy;

- (c) strategic means of promoting best practices in occupational safety and health; and
- (d) any other question referred to it by the Minister.

(2) The Minister may, after consultation with the chairman of the Advisory Council, give to the Advisory Council directions of a general character as to the policy to be followed by the Advisory Council in the performance of its functions, as appear to the Minister to be necessary in the public interest, and the Advisory Council shall give effect to the directions.

(3) The Minister may co-opt members of the technical advisory committee constituted under section 136(1), reflecting various industries, for the purpose of assisting the Advisory Council in performing its functions in relation to industry codes of practice.

National policy on occupational safety, etc.

139. – (1) The Minister shall, in light of national conditions and practice and in consultation with the most representative organizations of employers and workers, cause to be formulated, implemented, and periodically reviewed, a coherent national policy on occupational safety, national occupational health and the working environment to be known as the “Occupational Safety and Health Policy”.

(2) The aim of the National Occupational Safety and Health Policy shall be to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.

(3) The National Occupational Safety and Health Policy shall -

- (a) be approved by the Cabinet; and
- (b) contain the information set out in the Fifth Schedule and any other information that the Minister thinks necessary.

Fifth Schedule.

(4) On the approval of the National Occupational Safety and Health Policy, or any amendment to the Policy, all Government activities in relation to occupational safety and health shall be undertaken in accordance with the Policy.

(5) The National Occupational Safety and Health Policy as approved by the Cabinet shall be tabled in the House of Representatives and the Senate.

PART IX. *Securing Compliance*

Appointment of OSH Officers

Appointment of OSH Officers.

140. - (1) The Minister may, from time to time, appoint suitably qualified public officers as OSH Officers, for the purposes of this Act.

(2) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment.

(3) The Minister shall issue each OSH Officer with an identification card and the OSH Officer shall, on entering any place for the purpose of carrying into effect any of the functions specified in this Act, produce the identification card.

(4) The appointment of a person as an OSH Officer shall be published in the *Gazette*.

Functions of OSH Officer

Function of OSH Officer.

141. An OSH Officer has the following functions under this Act to -

(a) provide information and advice about compliance with this Act;

(b) assist in the resolution of -

(i) the exercise of the right to cease or refuse to carry out work under section 84;

(ii) occupational safety and health issues at workplaces;

(iii) issues related to access to a workplace by a person assisting to a safety and health representative; and

- (iv) issues related to the exercise or purported exercise of a right of entry of a Labour Officer under Part VII;
- (c) review disputed provisional improvement notices;
- (d) require compliance with this Act through the issuing of notices;
- (e) investigate contraventions of this Act and assist in the prosecution of offences;
- (f) interview witnesses and experts and prepare witness statements and accident reports on the occurrence of occupational accidents, diseases and injuries;
- (g) perform such other functions as may be prescribed in the Regulations or as may be authorised by the Director for the purposes of this Act.

**OSH Officers
subject to
Director's
directions.**

142. - (1) An OSH Officer is subject to the Director's directions in the exercise of the OSH Officer's compliance powers.

(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

General Powers of Entry

**Powers of entry
of OSH Officer.**

143. - (1) Subject to Section 148, an OSH Officer may, at any time, enter a place that is, or that the OSH Officer reasonably suspects is, a workplace.

(2) An entry may be made under subsection (1) with, or without, the consent of the person conducting the business or undertaking or the person with management or control of the workplace.

(3) An OSH Officer may enter any place if the entry is authorized by a search warrant.

**Notification of
entry.**

144. - (1) An OSH Officer may enter a place under section 143 without prior notice to any person.

(2) An OSH Officer shall, as soon as practicable after entry to a

workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry -

- (a) the relevant person conducting a business or undertaking at the workplace;
- (b) the person with management or control of the workplace; or
- (c) any safety and health representative for workers carrying out work for that business or undertaking at the workplace.

(3) However, an OSH Officer is not required to notify any person if to do so would defeat the purpose for which the workplace was entered or cause unreasonable delay.

(4) In this section, "relevant person conducting a business or undertaking" means the person conducting any business or undertaking in relation to which the OSH Officer is exercising the powers of entry.

General powers on entry.

145. - (1) An OSH Officer who enters a workplace under this Act may do all or any of the following -

- (a) inspect, examine and make inquiries at the workplace;
- (b) inspect and examine anything (including a document) at the workplace;
- (c) bring to the workplace and use any equipment or materials that may be required;
- (d) take measurements, conduct tests and make sketches or recordings (including photographs, films, audio, video, digital or other recordings);
- (e) take and remove for analysis a sample of any substance or thing without paying for it;
- (f) require a person at the workplace to give the OSH Officer reasonable help to exercise the OSH Officer's powers under paragraphs (a) to (e);

(g) exercise any compliance power or other power that is reasonably necessary to be exercised by the OSH Officer for the purposes of this Act.

(2) A person required to give reasonable help under subsection (1) shall not, without reasonable excuse, refuse or fail to comply with the requirement.

(3) Subsection (2) places an evidential burden on the accused to show a reasonable excuse.

Persons assisting OSH Officers.

146. - (1) A person (the "assistant"), including an interpreter and a police officer, may accompany the OSH Officer entering a workplace under section 143 to assist the OSH Officer if the OSH Officer considers the assistance is necessary.

(2) The assistant -

(a) may do the things at the workplace and in the manner that the OSH Officer reasonably requires to assist the OSH Officer to exercise compliance powers; but

(b) shall not do anything that the OSH Officer does not have power to do, except as permitted under a search warrant.

(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the OSH Officer.

Search warrant.

147. - (1) Where a Justice of the Peace is satisfied by information on oath by an OSH Officer that there is reasonable ground for suspecting that a provision of this Act has been or is being or is about to be contravened in or about any premises, the Justice of the Peace may grant a search warrant in accordance with subsection (2).

(2) A warrant referred to in subsection (1) shall authorize the OSH officer named in the warrant, at any time or times within one month from

the date of the warrant, to enter the premises mentioned in subsection (1), if need be by force, and seize and detain any thing that the authorized officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence.

Places used for residential purposes.

148. Despite anything else in this Act the powers of an OSH Officer under this Part in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes, except -

- (a) with the consent of the person with management or control of the place;
- (b) under the authority conferred by a search warrant; or
- (c) for the purpose only of gaining access to a suspected workplace, but only -
 - (i) if the OSH Officer reasonably believes that no reasonable alternative access is available; and
 - (ii) at a reasonable time having regard to the times at which the OSH Officer believes work is being carried out at the place to which access is sought.

Specific Powers on Entry

Power to require production of documents and answers to questions.

149. - (1) An OSH Officer who enters a workplace under this Part may -

- (a) require any person to tell the OSH Officer the name of the person who has custody of, or access to, a document;
- (b) require a person who has custody of, or access to, a document to produce that document to the OSH Officer while the OSH Officer is at that workplace or within a specified period; or
- (c) require a person at the workplace to answer any questions put by the OSH Officer.

(2) A requirement under subsection (1) (b) shall be made by written notice unless the circumstances require the OSH Officer to have immediate

access to the document.

(3) An interview conducted by an OSH Officer under subsection (1) (c) shall be conducted in private if -

- (a) the OSH Officer considers it appropriate, or
- (b) the person being interviewed so requests.

(4) Subsection (3) does not limit the operation of section 145 or prevent a representative of the person being interviewed from being present at the interview.

(5) Subsection (3) may be invoked during an interview by -

- (a) the OSH Officer; or
- (b) the person being interviewed,

in which case the subsection applies to the remainder of the interview.

(6) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

(8) A person who contravenes subsection (6) commits an offence and shall be liable on conviction to the penalty specified in relation to that

Third Schedule. offence in the Third Schedule.

Abrogation of privilege against self-incrimination.

150. - (1) A person is not excused from answering a question or providing information or a document under this Part on the ground that the answer to the question, or the information or document, may tend to incriminate the person or expose the person to a penalty.

(2) However, the answer to a question or information or a document provided by an individual is not admissible as evidence against that individual in civil or criminal proceedings other than proceedings arising out of the false or misleading nature of the answer, information or document.

Warning to be given.

151. - (1) Before requiring a person to answer a question or provide

information or a document under this Part, an OSH Officer shall -

- (a) identify himself to the person as an OSH Officer by producing the OSH Officer's identification card;
- (b) warn the person that failure to comply with the requirement or to answer the question, without reasonable excuse, would constitute an offence;
- (c) warn the person about the effect of section 150; and
- (d) advise the person that the Act does not affect legal professional privilege.

(2) It is not an offence for an individual to refuse to answer a question put by an OSH Officer or provide information or a document to an OSH Officer under this Part on the ground that the question, information or document might tend to incriminate him, unless he or she was first given the warning in subsection (1) (c).

(3) Nothing in this section prevents an OSH Officer from obtaining and using evidence given to the OSH Officer voluntarily by any person.

Powers to copy and retain documents.

152. - (1) An OSH Officer may -

- (a) make copies of, or take extracts from, a document given to the OSH Officer in accordance with a requirement under this Act, and
- (b) keep that document for the period that the OSH Officer considers necessary.

(2) While an OSH Officer retains custody of a document, the OSH Officer shall permit the following persons to inspect or make copies of the document at all reasonable times -

- (a) the person who produced the document;
- (b) the owner of the document; or
- (c) a person authorized by a person referred to in paragraph (a) or (b).

Power to seize evidence, etc.

153. - (1) An OSH Officer who enters a workplace under this Part may-

- (a) seize anything (including a document) at the place if the OSH Officer reasonably believes the thing is evidence of an offence against this Act; or
- (b) take and remove for analysis, testing or examination a sample of any substance or thing without paying for it.

(2) An OSH Officer who enters a place with a search warrant may seize the evidence for which the warrant was issued.

(3) An OSH Officer may also seize anything else at the place if the OSH Officer reasonably believes -

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

OSH Officer's powers to prohibit entry into dangerous workplaces and to seize dangerous plant, substances and structures.

154. - (1) This section applies if an OSH Officer who enters a workplace under this Part reasonably believes that -

- (a) the workplace or part of the workplace;
- (b) plant at the workplace;
- (c) a substance at the workplace or part of the workplace; or
- (d) a structure at a workplace,

is defective or hazardous to a degree likely to cause serious injury or illness or a dangerous incident to occur.

(2) The OSH Officer may close or seize the workplace or part, the plant, the substance or the structure.

Powers supporting seizure of dangerous plant, substances and structures.

155. - (1) Having seized a thing, an OSH Officer may -

- (a) move the thing from the place where it was seized (the "place of seizure");
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it; or
- (c) if the thing is plant or a structure, dismantle or cause the plant or

structure to be dismantled.

(2) If an OSH Officer restricts access to a seized thing, a person shall not tamper, or attempt to tamper, with the thing or something restricting access to the thing without an OSH Officer's approval.

(3) To enable a thing to be seized, an OSH Officer may require the person in control of it -

- (a) to take it to a stated reasonable place by a stated reasonable time, and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

(4) The further requirement under subsection 3-

- (a) shall be made by written notice; or
- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by written notice as soon as practicable.

(5) A further requirement may be made under this section in relation to the same thing if it is necessary and reasonable to make the further requirement.

(6) The person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (3) or (5).

(7) Subsection (6) places an evidential burden on the accused to show a reasonable excuse.

(8) A person who contravenes subsection (2) or (6) commits an offence and shall be liable on conviction to the penalty specified in relation

Third Schedule. to that offence in the Third Schedule.

Receipt for seized things.

156. - (1) As soon as practicable after an OSH Officer seizes a thing, the OSH Officer shall give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to give a receipt to the person, the OSH Officer shall leave the receipt in a conspicuous position

and in a reasonably secure way at the place of seizure.

(3) The receipt shall describe each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by this section (given the thing's nature, condition and value).

Forfeiture of seized things.

157. - (1) A seized thing is forfeited to the Crown if the Director -

- (a) cannot find the person entitled to the thing after making reasonable inquiries;
- (b) cannot return it to the person entitled to it, after making reasonable efforts; or
- (c) reasonably believes it is necessary to forfeit the thing to prevent it being used to commit an offence against this Act.

(2) Subsection (1) (a) does not require the Director to make inquiries if it would be unreasonable to make inquiries to find the person entitled to the thing.

(3) Subsection (1) (b) does not require the Director to make efforts if it would be unreasonable to make efforts to return the thing to the person entitled to it.

(4) If the Director decides to forfeit the thing under subsection (1) (c), the Director shall tell the person entitled to the thing of the decision by written notice.

(5) Subsection (4) does not apply if -

- (a) the Director cannot find the person entitled to the thing, after making reasonable inquiries; or
- (b) it is impracticable or would be unreasonable to give the notice.

(6) The notice shall state -

- (a) the reasons for the decision;

- (b) that the person entitled to the thing may apply within forty-five days after the date of the notice for the decision to be reviewed;
- (c) how the person may apply for the review; and
- (d) that the person may apply for a stay of the decision if the person applies for a review.

(7) In deciding whether and, if so, what inquiries and efforts are reasonable or whether it would be unreasonable to give notice about a thing, regard shall be had to the thing's nature, condition and value.

(8) Any costs reasonably incurred by the State in storing or disposing of a thing forfeited under subsection (1) (c) may be recovered in a court of competent jurisdiction as a debt due to the Crown from that person.

(9) In this section, "person entitled" to a thing means the person from whom it was seized unless that person is not entitled to possess it in which case it means the owner of the thing.

Return of seized things.

158. - (1) If a seized thing has not been forfeited, the person entitled to the thing may apply to the Director for the return of the thing.

(2) The Director shall return the thing to the applicant under subsection (1) unless the Director has reasonable grounds to retain the thing.

(3) The Director may impose any conditions on the return of the thing under this section that the Director considers appropriate to eliminate or minimize any risk to occupational health or safety related to the thing.

(4) In this section, "person entitled" to a thing means the person entitled to possess the thing or the owner of the thing.

Access to seized things.

159. - (1) Until a seized thing is forfeited or returned, the Director shall permit the following persons to inspect it and, if it is a document, to make copies of it at all reasonable times -

- (a) the person from whom the thing was seized;
- (b) the owner of the thing; and

(c) a person authorized by a person referred to in paragraph (a) or (b).

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow inspection or copying.

Damage and Compensation

Damage etc. to be minimized.

160. In the exercise, or purported exercise, of a compliance power, an OSH Officer shall take all reasonable steps to ensure that the OSH Officer, and any assistant to the OSH Officer, cause as little inconvenience, detriment and damage as is practicable.

OSH Officer to give notice of damage.

161. - (1) This section applies if an OSH Officer or an assistant to an OSH Officer damages a thing when exercising or purporting to exercise a compliance power.

(2) The OSH Officer shall, as soon as practicable, give written notice of the damage to the person who the OSH Officer believes on reasonable grounds, is the person in control of the thing.

(3) If the OSH Officer believes the damage was caused by a latent defect in the thing or circumstances beyond the OSH Officer's or assistant's control, the OSH Officer may state it in the notice.

(4) If, for any reason, it is impracticable to comply with subsection (2), the OSH Officer shall leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

Compensation.

162. - (1) A person may claim compensation from the Crown if the person incurs loss or expense because of the exercise or purported exercise of a power under this Part.

(2) Compensation may be claimed and ordered in a proceeding -

(a) brought in a court of competent jurisdiction; or

(b) for an offence against this Act brought against the person claiming compensation.

(3) The court may order compensation to be paid only if it is satisfied it

is just to make the order in the circumstances of the particular case.

(4) The regulations may prescribe matters that may, or shall, be taken into account by the court when considering whether it is just to make the order.

Other Matters

**Power to
require name
and address.**

163. - (1) An OSH Officer may require a person to provide the person's name and residential address if -

- (a) the OSH Officer finds the person committing an offence against this Act; or
- (b) the OSH Officer finds the person in circumstances that lead, or has information that leads, the OSH Officer to reasonably suspect the person has committed an offence against this Act.

(2) When asking a person to provide his name and residential address, the OSH Officer shall -

- (a) tell the person the reason for the requirement to provide their name and residential address; and
- (b) warn the person that it is an offence to fail to state that name and residential address, unless the person has a reasonable excuse.

(3) If the OSH Officer reasonably believes that the name or residential address is false, the OSH Officer may ask the person to give evidence of its correctness.

(4) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

(5) Subsection (4) places an evidential burden on the accused person to show a reasonable excuse.

(6) A person who contravenes subsection (4) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

**Third
Schedule.**

OSH Officer may take affidavits. 164. An OSH Officer is authorized to take affidavits for any purpose relating or incidental to the exercise of his compliance powers.

Power of OSH Officer to conduct formal investigations. 165. An OSH Officer may, where it is expedient to do so, hold or cause to be held a formal investigation in respect of an accident or disease contracted or suspected of having been contracted in a workplace, and of its causes and circumstances.

Offences Relating to OSH Officers and Labour Officers

Offence of hindering or obstructing OSH Officer, etc. 166. - (1) A person shall not intentionally hinder or obstruct an OSH Officer or a Labour Officer in the exercise of the officer's compliance powers, or induce or attempt to induce any other person to do so.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Offence of impersonating OSH Officer, etc. 167. - (1) A person who is not an OSH Officer or a Labour Officer shall not, in any way, hold himself out to be an OSH Officer or a Labour Officer.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Offence of assaulting, threatening or intimidating OSH Officer, etc. 168. - (1) A person shall not assault, threaten or intimidate, or attempt to assault, threaten or intimidate, an OSH Officer or an assistant to an OSH Officer or a Labour Officer.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

PART X. *Enforcement Measures*

Improvement Notices

Issue of improvement 169. - (1) This section applies if an OSH Officer reasonably believes that a

notices.

person -

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

(2) The OSH Officer may issue an improvement notice requiring the

person to -

- (a) remedy the contravention;
- (b) prevent a likely contravention from occurring; or
- (c) remedy the things or operations causing the contravention or likely contravention.

Contents of improvement notices.

170. - (1) An improvement notice shall state -

- (a) that the OSH Officer believes the person -
 - (i) is contravening a provision of this Act; or
 - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
- (b) the provision of this Act that the OSH Officer believes is being, or has been, contravened;
- (c) briefly, how the provision of this Act is being, or has been, contravened; and
- (d) the date by which the person is required to remedy the contravention or likely contravention of this Act .

(2) An improvement notice may include directions concerning the measures to be taken to remedy the contravention or prevent the likely contravention, or the matters or activities causing the contravention or likely contravention, to which the notice relates.

(3) The day stated for compliance with the improvement notice shall be reasonable in all the circumstances.

Compliance with improvement notice.

171. - (1) The person to whom an improvement notice is issued shall comply with the notice within the period specified in the notice.

(2) A person who fails to comply with a notice under subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Extension of time for compliance with improvement notice.

172. - (1) This section applies if a person has been issued with an improvement notice.

(2) An OSH Officer may, by written notice given to the person, extend the compliance period for the improvement notice.

(3) However, the OSH Officer may extend the compliance period only if the period has not ended.

(4) In this section, "compliance period" means the period stated in the improvement notice under section 171, and includes that period as extended under subsection (2).

Prohibition Notices

Issue of prohibition notice.

173. - (1) This section applies if an OSH Officer reasonably believes that -

- (a) an activity is occurring at a workplace that involves or will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard; or
- (b) an activity may occur at a workplace that, if it occurs, will involve a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

(2) The OSH Officer may give a person who has control over the activity a direction prohibiting the carrying on of the activity, or the carrying on of the activity in a specified way, until an OSH Officer is satisfied that the matters that give or will give rise to the risk have been remedied.

(3) The direction may be given orally, but shall be confirmed by written notice (a prohibition notice) issued to the person as soon as

practicable.

Contents of prohibition notice.

174. - (1) A prohibition notice shall state -

- (a) that the OSH Officer believes that grounds for the issue of the prohibition notice exist and the basis for that belief;
- (b) briefly, the activity that the OSH Officer believes involves or will involve the risk and the matters that give or will give rise to the risk; and
- (c) the provision of this Act that the OSH Officer believes is being, or is likely to be, contravened by that activity.

(2) A prohibition notice may include directions on the measures to be taken to remedy the risk, activities or matters to which the notice relates, or the contravention or likely contravention referred to in subsection (1) (c).

(3) Without limiting section 173, a prohibition notice that prohibits the carrying on of an activity in a specified way may do so by specifying one or more of the following-

- (a) a workplace, or part of a workplace, at which the activity is not to be carried out;
- (b) anything that is not to be used in connection with the activity; or
- (c) any procedure that is not to be followed in connection with the activity.

Compliance with prohibition notice.

175. - (1) The person to whom a direction is given under section 173(2) or a prohibition notice is issued shall comply with the direction or notice.

(2) A person who fails to comply with the direction or notice under subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Non-Disturbance Notices

Issue of non-disturbance notice.

176. An OSH Officer may issue a non-disturbance notice to the person with management or control of a workplace if the OSH Officer reasonably

believes that it is necessary to do so to facilitate the exercise of his compliance powers.

Contents of non-disturbance notice.

177. - (1) A non-disturbance notice may require the person to-

- (a) preserve the site at which a notifiable incident has occurred for a specified period; or
- (b) prevent the disturbance of a particular site (including the operation of plant) in other circumstances for a specified period that is reasonable in the circumstances.

(2) A non-disturbance notice shall specify the period (of no more than seven days) for which it applies and set out -

- (a) the obligations of the person to whom the notice is issued;
- (b) the measures to be taken to preserve a site or prevent disturbance of a site; and
- (c) the provision of the Act that the OSH Officer believes is being, or is likely to be, contravened by that activity.

(3) In subsection (1), a reference to a site includes any plant, substance, structure or thing associated with the site.

(4) A non-disturbance notice does not prevent any action -

- (a) to assist an injured person;
- (b) to remove a deceased person;
- (c) that is essential to make the site safe or to prevent a further incident;
- (d) that is associated with a police investigation; or
- (e) for which an OSH Officer has given permission.

Compliance with non-disturbance notice.

178. - (1) A person shall not, without reasonable excuse, refuse or fail to comply with a non-disturbance notice issued to the person.

(2) A person who fails to comply with the direction or notice under subsection (1) commits an offence and shall be liable on conviction to the

Third Schedule. penalty specified in relation to that offence in the Third Schedule.

(3) Subsection (1) places an evidential burden on the accused to show a reasonable excuse.

Issue of subsequent notices non-disturbance notices.

179. If an OSH Officer considers it necessary to do so, he or she may issue one or more subsequent non-disturbance notices to a person, whether before or after the expiry of the previous notice, each of which shall comply with section 176.

General Requirements Applying to Notices

Application of sections 181 to 188.

180. In sections 181 to 188, "notice" means an improvement notice, a prohibition notice or a non-disturbance notice.

Notice to be in writing. Directions in notices.

181. A notice shall be in writing.

182. A direction included in an improvement notice or a prohibition notice may -

- (a) refer to a code of practice; and
- (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention.

Recommendations in notice.

183. - (1) An improvement notice or a prohibition notice may include recommendations.

(2) It is not an offence to fail to comply with recommendations in a notice.

Changes to notice by OSH Officer.

184. - (1) An OSH Officer may make minor changes to a notice-

- (a) for clarification;
- (b) to correct errors or references; or
- (c) to reflect changes of address or other circumstances.

(2) An OSH Officer may also, in accordance with section 172, extend the compliance period for an improvement notice.

Director may vary or cancel notice.

185. Except as provided in section 184, a notice issued by an OSH Officer may only be varied or cancelled by the Director.

Formal irregularities or defects in notice.

186. A notice is not invalid only because of -

- (a) a formal defect or irregularity in the notice unless the defect or irregularity causes or is likely to cause substantial injustice; or
- (b) a failure to use the correct name of the person to whom the notice is issued if the notice sufficiently identifies the person and is issued or given to the person in accordance with section 187.

Issue of notice.

187. - (1) A notice may be issued or given to a person -

- (a) by delivering it personally to the person or sending it by post or facsimile or other modes of electronic transmission to the person's usual or last known place of residence or business;
- (b) by leaving it for the person at the person's usual or last known place of residence or business with a person who appears to be over eighteen years and who appears to reside or work there;
- (c) by leaving it for the person at the workplace to which the notice relates with an officer or a person who is or appears to be the person with management or control of the workplace; or
- (d) in a prescribed manner.

(2) The regulations may prescribe -

- (a) the manner of issuing a notice; and
- (b) the steps a person to whom a notice is issued shall take to bring it to the attention of other persons.

Display of notice.

188. - (1) A person to whom a notice is issued shall display a copy of the notice in a prominent place at or near the workplace, or part of the workplace, at which work is being carried out that is affected adversely by the notice.

(2) A person who fails to comply with subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

(3) A person shall not intentionally remove, destroy, damage or deface a notice displayed under subsection (1) while the notice is in force.

(4) A person who fails to comply with subsection (3) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Remedial Action

When Director may take Remedial action.

189. - (1) This section applies if a person to whom a prohibition notice is issued fails to take reasonable steps to comply with the notice.

(2) The Director may take any remedial action the Director believes reasonable to make the workplace or situation safe after giving written notice to the person to whom the prohibition notice was issued of -

- (a) the Director's intention to take that action; and
- (b) the owner's or person's liability for the costs of that action.

Power of Director to take other remedial action.

190. - (1) This section applies if the Director reasonably believes that -

- (a) circumstances in which a prohibition notice can be issued exist; and
- (b) a prohibition notice cannot be issued at a workplace because, after taking reasonable steps, the person with management or control of the workplace cannot be found.

(2) The Director may take any remedial action necessary to make the workplace safe.

Costs of remedial or other action.

191. The Director may recover the reasonable costs of any remedial action taken under -

- (a) section 189 from the person to whom the notice is issued; or
- (b) section 190 from any person to whom the prohibition notice could have been issued in relation to the matter, as a debt due to the Crown.

Injunctions

Application of section 193.

192. In section 193, "notice" means improvement notice, prohibition notice or non-disturbance notice.

Injunctions for non-compliance with notices.

193. - (1) The Director may apply to the Supreme Court for an injunction -
- (a) compelling a person to comply with a notice; or
 - (b) restraining a person from contravening a notice.
- (2) The Director may do so -
- (a) whether or not proceedings have been brought for an offence against this Act in connection with any matter in relation to which the notice was issued; and
 - (b) whether any period for compliance with the notice has expired.

PART XI. Enforceable Undertakings

Director may accept OSH undertakings.

194. - (1) The Director may accept a written undertaking (an “OSH undertaking”) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

(2) An OSH undertaking cannot be accepted for a contravention or alleged contravention that is failure to comply with a safety and health duty exposing an individual to risk of death or serious injury or illness and the individual is reckless as to the risk.

(3) The giving of an OSH undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

Notice of decision and reasons for decision.

195. - (1) The Director shall give the person seeking to make an OSH undertaking written notice of the Director’s decision to accept or reject the OSH undertaking and of the reasons for the decision.

(2) The Director shall publish, on a website to be maintained by the Department, notice of a decision to accept an OSH undertaking and the reasons for that decision.

When an OSH undertaking is enforceable.

196. An OSH undertaking takes effect and becomes enforceable when the Director’s decision to accept the undertaking is given to the person who made the undertaking or at any later date specified by the Director.

- Compliance with OSH undertaking.** 197. - (1) A person shall not contravene an OSH undertaking made by him that is in effect.
- (2) A person who fails to comply with subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.
- Third Schedule.**
- Contravention of OSH undertaking.** 198. - (1) The Director may apply to the Court for an order if a person contravenes an OSH undertaking.
- (2) If the Court is satisfied that the person who made the OSH undertaking has contravened the undertaking, the Court, in addition to the imposition of any penalty, may make one or both of the following orders -
- (a) an order directing the person to comply with the undertaking; or
- (b) an order discharging the undertaking.
- (3) In addition to the orders referred to in subsection (2), the court may make any other order that the court considers appropriate in the circumstances, including orders directing the person to pay to the Crown -
- (a) the costs of the proceedings; and
- (b) the reasonable costs of the Director in monitoring compliance with the OSH undertaking in the future.
- (4) Nothing in this section prevents proceedings being brought for the contravention or alleged contravention of this Act to which the OSH undertaking relates.
- Withdrawal or variation of OSH undertaking.** 199. - (1) A person who has made an OSH undertaking may, at any time, with the written agreement of the Director -
- (a) withdraw the undertaking; or
- (b) vary the undertaking.
- (2) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of the Act.
- (3) The Director shall publish, on a website maintained by the

Department, notice of the withdrawal or variation of an OSH undertaking.

**Proceeding for
alleged
contravention.**

200. - (1) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an OSH undertaking is in effect in relation to that contravention.

(2) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an OSH undertaking in relation to that contravention and has completely discharged the OSH undertaking.

(3) The Director may accept an OSH undertaking in relation to a contravention or an alleged contravention before proceedings in relation to that contravention have been finalized.

(4) If the Director accepts an OSH undertaking before the proceedings are finalised, the Director shall take all reasonable steps to have the proceedings discontinued as soon as possible.

PART XII. *Review of Decisions*

**Decisions that
are reviewable.**

201. - (1) The Seventh Schedule sets out -

- (a) decisions made under this Act that are reviewable in accordance with this Part ("reviewable decisions"); and
- (b) who is eligible to apply for review of a reviewable decision (the "eligible person").

(2) Unless the contrary intention appears, a reference in this Part to a decision includes a reference to -

- (a) making, suspending, revoking or refusing to make an order, determination or decision;
- (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue an authorization;
- (d) imposing a condition;

**Seventh
Schedule.**

- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, a thing; or
- (g) doing or refusing to do any other act or thing.

(3) In this section, "person entitled" to a thing means the person from whom it was seized unless that person is not entitled to possess it, in which case it means the owner of the thing.

Application for internal review.

202. - (1) An eligible person in relation to a reviewable decision, other than a decision made by the Director or a person authorised by the Director, may apply to the Director for review (an "internal review") of the decision within

- (a) the prescribed time after the day on which the decision first came to the eligible person's notice; or
- (b) such longer period as the Director allows.

(2) The application shall be made in the manner and form prescribed by the regulations.

(3) For the purposes of this section, the "prescribed time" is -

- (a) in the case of a decision to issue an improvement notice the period specified in the notice for compliance with the notice or fourteen days, whichever is the lesser; and
- (b) in any other case, fourteen days.

PART XIII. Fixed Penalty

Payment of fixed penalty.

203. - (1) The Director may give to any person who contravenes sections 13(7), 38(7), 39(4), 41(2), 42(3), 43(3), 44(3), 47(4), 52(6), 57(3), 61(5), 70(3), 71(3), 72(8), 74(3), 75(2), 79(2), (5) and (7), 97(2), 97(4), 99(3), 117(5), 126(2), 127(2), 129(2), 130(2), 148(8), 155(8), 163(6), 171(2), 175(2), 178(2), 188(2) and (4), 203(8) and 214(6) a notice in writing in the prescribed form offering that person the opportunity to discharge any liability to conviction by payment of a fixed penalty under this section.

(2) A person shall not be liable to be convicted of contravening a provision to which subsection (1) relates if the fixed penalty is paid in accordance with this section and the requirement in respect of which the offence was committed is complied with before the expiration of fourteen days following the date of the notice referred to in subsection (1) or any longer period as may be specified in that notice.

(3) Where a person is given notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence before the expiration of the fourteen days following the date of the notice or any longer period as may have been specified in the notice.

(4) Payment of a fixed penalty under this section shall be made to the Collector of Taxes in accordance with subsection (6); and in any proceedings a certificate that payment of a fixed penalty was made to the Collector of Taxes by a date specified in the certificate shall, if the certificate purports to be signed by the Collector of Taxes, be admissible as evidence of the facts stated in the certificate.

(5) A notice under subsection (1) shall –

- (a) specify the offence alleged;
- (b) give particulars of the offence as are necessary for giving reasonable information of the allegation;
- (c) state –
 - (i) the period (whether fourteen days or a longer period) during which, by virtue of subsection (3), proceedings shall not be taken for the offence; and
 - (ii) the amount of the fixed penalty and the Collector of Taxes to whom and the address at which it shall be paid.

(6) The fixed penalty for the offences specified in the first column of

the Eighth Schedule shall be the penalty in relation to the offences specified in the second column of that Schedule.

(7) In any proceedings for an offence to which this section applies, no reference shall be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty unless in the course of the proceedings or in some document that is before the court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of the notice or, as the case may be, to the payment or non-payment.

(8) The Minister may, by order, make provision as to any matter incidental to the operation of this section, and in particular, the order may prescribe –

- (a) the form of notice under subsection (1) and the Collector of Taxes to whom a fixed penalty is payable;
- (b) the nature of the information to be furnished to the Collector of Taxes along with any payment; and
- (c) the arrangements for the Collector of Taxes to furnish to the Director information with regard to any payment in accordance with a notice under this section.

(9) In this section, "proceedings" means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (1) and "convicted" shall be construed in relation to the act or omission.

**Imputing
conduct to
bodies
corporate.**

204. - (1) For the purposes of this Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his employment, or within his actual or apparent authority, is conduct also engaged in by the body

corporate.

(2) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against a body corporate for that offence to prove that the person referred to in subsection (1) had the relevant knowledge, intention or recklessness.

(3) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against a body corporate for that offence if the person referred to in subsection (1) made that mistake of fact.

The Crown

Offences and the Crown.

205. - (1) If the Court is satisfied, on an application by the Attorney-General, that the Crown, acting in the capacity of a person conducting a business or undertaking, has committed an offence against this Act, the Crown shall be liable to the monetary penalty specified as imposable on a body corporate in relation to that offence in the Third Schedule.

Third Schedule.

(2) For the purposes of this Act, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his employment, or within his actual or apparent authority, is conduct also engaged in by the Crown.

(3) If an offence under this Act requires proof of knowledge, intention or recklessness, it is sufficient in proceedings against the Crown for that offence to prove that the person referred to in subsection (2) had the relevant knowledge, intention or recklessness.

(4) If for an offence against this Act mistake of fact is relevant to determining liability, it is sufficient in proceedings against the Crown for that offence if the person referred to in subsection (2) made that mistake of fact.

Fixed penalty provisions and the Crown.

206. - (1) If the Crown contravenes a fixed penalty provision, the monetary penalty to be imposed on the Crown is the penalty applicable to a body

corporate.

(2) For the purposes of a fixed penalty provision, any conduct engaged in on behalf of the Crown by an employee, agent or officer of the Crown acting within the actual or apparent scope of his employment, or within his actual or apparent authority, is conduct also engaged in by the Crown.

(3) If a fixed penalty provision requires proof of knowledge, it is sufficient in proceedings against the Crown for a contravention of that provision to prove that the person referred to in subsection (2) had that knowledge.

When person taken to be Officer of the Crown.

207. A person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or undertaking of the Crown is taken to be an officer of the Crown for the purposes of this Act.

Responsible agency for the Crown.

208. – (1) A provisional improvement notice, improvement notice, prohibition notice, non-disturbance notice, penalty notice or notice of entry under Part VII to be given to, or served on the Crown, under this Act may be given to or served on the public body to which it relates.

(2) If a penalty notice is to be served on the Crown for an offence against this Act, the responsible agency may be specified in the penalty notice.

(3) If proceedings are brought against the Crown for an offence against this Act or in relation to a contravention of this Act, the responsible agency in relation to the offence or contravention may be specified in any document initiating, or relating to, the proceedings.

(4) The responsible agency in relation to an offence or a contravention of this Act is entitled to act in proceedings against the Crown for the offence or relating to the contravention and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused or defendant in

the proceedings are conferred or imposed on the responsible agency.

(5) The person prosecuting the offence or bringing the proceedings may change the responsible agency during the proceedings, with the leave of the court.

(6) In this section, the responsible agency -

(a) in relation to a notice referred to in subsection (1) is -

- (i) in the case of a provisional improvement notice, improvement notice or penalty notice, the agency of the Crown the acts or omissions of which are alleged to contravene this Act;
- (ii) in the case of a prohibition notice, the agency of the Crown which has control over the activity referred to in section 191 (1) (a) or (b);
- (iii) in the case of a non-disturbance notice, the agency of the Crown with the management and control of the workplace;
- (iv) in the case of a notice of entry under Part VII, the agency of the Crown conducting the relevant business or undertaking or with the management and control of the workplace; and

(b) in relation to an offence or proceedings for a contravention of this Act, is the agency of the Crown -

- (i) the acts or omissions of which are alleged to constitute the offence or contravention;
- (ii) if that agency has ceased to exist, that is the successor of that agency; or
- (iii) if that agency has ceased to exist and there is no clear successor, that the

court declares to be the responsible agency.

(7) In this Section, responsible agency includes a public authority that is a body corporate.

PART XIV. *General*

Obligation for secrecy.

209. - (1) Every person having any official duty or being employed in the administration of this Act shall –

- (a) regard and deal with as secret and confidential any information acquired in the exercise of a duty under this Act, relating to –
 - (i) any report required to be furnished under this Act or the results of any examination or test or inquiry carried out under this Act; or
 - (ii) any confidential business information secret manufacturing process or trade secret; and
- (b) make and subscribe a declaration to that effect before a Justice of the Peace.

(2) The findings of an OSH Officer or an assistant who accompanies or assists an OSH Officer in the carrying out of an inspection under this Act shall not be admissible as evidence in any court except where the proceedings are under this Act, the *Offences Against the Person Act*, the *Coroner's Act* or any civil proceedings arising from any injury at the workplace.

(3) It shall be a defence to any proceedings under this section to prove that the obligation for secrecy was breached –

- (a) in the presence of a medical emergency in order to facilitate diagnosis and treatment; or
- (b) in the presence of a disaster as defined by the *Disaster Risk Management Act* in order to facilitate evacuation or mitigation.

(4) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to the penalty specified in relation to that offence in the Third Schedule.

Third Schedule.

Expenses.

210. All expenses necessary for giving effect to the purposes and provisions of this Act (including any damages or costs recovered against an OSH Officer in any action or other legal proceedings) shall be defrayed out of the Consolidated Fund.

Returns, reports and other information.

211. – (1) The owner of a registered business or undertaking shall furnish the Director with such returns, reports and other information as the Director may require with respect to the activities of the business or undertaking, and shall afford the Director facilities for verifying the information in such manner and at such times as the Director may reasonably require.

(2) The Director may, upon receipt of a request in writing and the prescribed fee from the person conducting the business or undertaking (who has entered into an agreement to sell the business or undertaking), furnish to the owner or a person designated by the owner, copies of reports or orders made under this Act in respect of that workplace as to its compliance with the provisions of this Act.

(3) A person who contravenes subsection (1) commits an offence.

Breach of offence for which no penalty is provided.

212. Every person who commits an offence under this Act or the regulations in respect of which no special penalty is provided, shall be liable on summary conviction in a Parish Court to a fine not exceeding one million dollars.

Regulations.

213. – (1) The Minister may make regulations in relation to -

- (a) any matter relating to occupational safety and health; and
- (b) any matter or thing required or permitted by this Act to be prescribed or that is necessary to be prescribed to give effect to this Act.

(2) Without limiting subsection (1), the regulations may make

provision for or in relation to matters set out in the Ninth Schedule.

**Ninth
Schedule.**

(3) The regulations may -

- (a) be of general or limited application;
- (b) differ according to differences in time, place or circumstance;
- (c) leave any matter or thing to be, from time to time, determined, applied or approved by the Director, an OSH Officer, a Labour Officer or any other person;
- (d) apply, adopt or incorporate any matter contained in any document formulated, issued or published by a person or body whether -
 - (i) with or without modification; or
 - (ii) as in force at a particular time or as in force or remade from time to time;
- (e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed;
- (f) allow the Director to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the Director; or
- (g) prescribe fees for doing any act or providing any service for the purposes of this Act and prescribe the circumstances and way in which fees can be refunded, waived or reduced.

(4) Regulations made under this section shall be subject to affirmative resolution.

(5) Regulations made under this section may provide in respect of a breach of any of the provisions of the regulations for the imposition of penalties on summary conviction in a Parish Court of a fine not exceeding one million dollars.

**Code of
practice.**

214. - (1) The Minister may approve a code of practice for the purposes of

this Act and may vary or revoke an approved code of practice.

(2) The Minister may only approve, vary or revoke a code of practice under subsection (1) if that code of practice, variation or revocation was developed by a process that involved consultation among -

- (a) the Government;
- (b) the most representative organizations of employers; and
- (c) the most representative organizations of workers.

(3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person whether

- (a) with or without modification; or
- (b) as in force at a particular time or from time to time.

(4) An approval of a code of practice, or a variation or revocation of an approved code of practice, takes effect when notice of it is published in the *Gazette* or on a later date as is specified in the approval, variation or revocation.

(5) As soon as practicable after approving a code of practice, or varying or revoking an approved code of practice, the Minister shall ensure that notice of the approval, variation or revocation is published in the *Gazette* and a newspaper circulating generally throughout Jamaica.

(6) The Director shall ensure that a copy of -

- (a) each code of practice that is currently approved, and
- (b) each document applied, adopted or incorporated (to any extent) by an approved code of practice,

is available for inspection by members of the public without charge, on a website maintained by the Director of Occupational Safety and Health, during normal business hours.

Use of code of practice of practice in

215. - (1) This section applies in a proceeding for an offence against this

proceedings.

Act.

(2) An approved code of practice is admissible in the proceeding as evidence of whether or not a duty or obligation under this Act has been complied with.

(3) The Court may -

- (a) have regard to the code of practice as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates; and
- (b) rely on the code of practice in determining what is reasonably practicable in the circumstances to which the code of practice relates.

(4) Nothing in this section prevents a person from introducing evidence of compliance with this Act in a manner that is different from the code but provides a standard of occupational safety and health that is equivalent to or higher than the standard required in the code.

Minister may amend monetary penalties and Schedules.

216. The Minister may by order, subject to affirmative resolution, amend -

- (a) any monetary penalty imposed in this Act; or
- (b) the Schedules to this Act.

Review of Act by Joint Select Committee.

217. - (1) This Act shall be reviewed, from time to time, by a Joint Select Committee of Parliament.

(2) The first review of this Act shall be conducted not later than five years after the appointed day.

Amendment and construction of enactments. Tenth Schedule.

218. - (1) The provisions of the enactments specified in the first column of the Tenth Schedule are amended in the manner specified respectively in relation to them in the second column of the Tenth Schedule.

(2) Each amendment shall be construed as one with the enactment specified in relation to the amendment.

PART XV. *Transitional Arrangements*

**Repeal of
Factories Act
and application
to certain
breaches, etc.**

219. - (1) The *Factories Act* is repealed.

(2) The *Factories Act* continues to apply in relation to a breach of the *Factories Act* that occurred before the appointed day, or is alleged to have occurred before that day, as if the *Factories Act* had not been repealed.

(3) However, if the action or failure to act that constitutes the breach continues on or after the appointed day then, subject to this section, the *Factories Act* does not apply to that continued action or failure to act to the extent that it occurs on or after the appointed day.

**Notifiable
incidents, etc.**

220. This Act applies in relation to a notifiable incident arising out of the conduct of a business or undertaking of which the person conducting the business or undertaking becomes aware on or after the appointed day, even if the incident occurred before the appointed day.

**Accidents and
dangerous
occurrences.**

221. If, before the appointed day, a person was required to maintain a record of an accident or dangerous occurrence under any Act then, on and after the appointed day, that section and any regulations made under that Act continue to apply in relation to the accident or dangerous occurrence.

**Residual
operation of the
Factories Act.**

222. Residual operation of the *Factories Act* means the operation of the *Factories Act* -

(a) in relation to actions and failures to act that occur before the appointed day; and

(b) to the extent that the *Factories Act* continues to apply in relation to actions and failures to act that occur on or after the appointed day because of a provision of this Act or any other law, in relation to those actions and failures to act.

**Appointed
Factory
Inspector
deemed OSH
Officer.**

223. A public officer who held office immediately before the appointed day as a Factory Inspector under the *Factories Act* is deemed to have been appointed as an OSH Officer under this Act.

**Use of OSH
Officer to
enforce**

224 - (1) An OSH Officer may, on or after the appointed day, perform a

Factories Act,
etc.

function under this Act in relation to anything arising in connection with the residual operation of the *Factories Act*.

(2) This Act will apply in relation to the performance of a function under this Act in relation to anything arising in connection with the residual operation of the *Factories Act* as if a reference to this Act included a reference to the *Factories Act*.

(3) Without limiting subsection (2), a reference in this Act to an offence against this Act will be taken to include a reference to an offence against the *Factories Act*.

(4) Any action taken or information acquired under this Act or because of the operation of this section may be used in relation to the residual operation of the *Factories Act*.

(5) Nothing in this section affects or limits any action that may be taken under or with respect to the *Factories Act*.

(6) This Act will apply in relation to the exercise of the power as if a reference to this Act included a reference to the *Factories Act*.

FIRST SCHEDULE

(Section 4)

Economic Activities to Which Act Applies

The Occupational Safety and Health Act Applies to Economic Activities Under the following Acts -

1. The *Airports Authority Act*.
2. The *Aquaculture, Inland and Marine Products and By-products (Inspection, Licensing and Export) Act*.
3. The *Beach Control Act*.
4. The *Child Care and Protection Act*.
5. The *Clean Air Act*.
6. The *Constabulary Force Act*.
7. The *Defence Act*.
8. The *Electricity Act*.

9. *The Fire Brigade Act.*
10. *The Fishing Industry Act.*
11. *The Land Development and Utilization Act.*
12. *The Local Governance Act.*
13. *The Mining Act.*
14. *The National Solid Waste Management Act.*
15. *The Natural Resources Conservation Authority Act.*
16. *The Pesticides Act.*
17. *The Petroleum (Quality Control) Act.*
18. *The Petroleum Act.*
19. *The Processed Food Act.*
20. *The Public Health Act.*
21. *The Quarantine Act.*
22. *The Quarries Control Act.*
23. *The Rural Agricultural Development Authority Act.*
24. *The Shipping Act.*
25. *The Standards Act.*
26. *The Town and Country Planning Act.*
27. *The Wild Life Protection Act.*

SECOND SCHEDULE**(Section 4)***List of Occupational Diseases*

(In the application of this list the degree and type of exposure and the work or occupation involving a particular risk of exposure should be taken into account when appropriate.)

1. Occupational diseases caused by exposure to agents arising from work activities**1.1. Diseases caused by chemical agents**

1.1.1. Diseases caused by beryllium or its compounds

1.1.2. Diseases caused by cadmium or its compounds

1.1.3. Diseases caused by phosphorus or its compounds

1.1.4. Diseases caused by chromium or its compounds

1.1.5. Diseases caused by manganese or its compounds

1.1.6. Diseases caused by arsenic or its compounds

1.1.7. Diseases caused by mercury or its compounds

1.1.8. Diseases caused by lead or its compounds

1.1.9. Diseases caused by fluorine or its compounds

1.1.10. Diseases caused by carbon disulfide

1.1.11. Diseases caused by halogen derivatives of aliphatic or aromatic hydrocarbons

1.1.12. Diseases caused by benzene or its homologues

1.1.13. Diseases caused by nitro- and amino-derivatives of benzene or its homologues

1.1.14. Diseases caused by nitroglycerine or other nitric acid esters

1.1.15. Diseases caused by alcohols, glycols or ketones

1.1.16. Diseases caused by asphyxiants like carbon monoxide, hydrogen sulfide, hydrogen cyanide or its derivatives

1.1.17. Diseases caused by acrylonitrile

1.1.18. Diseases caused by oxides of nitrogen

1.1.19. Diseases caused by vanadium or its compounds

1.1.20. Diseases caused by antimony or its compounds

1.1.21. Diseases caused by hexane

- 1.1.22. Diseases caused by mineral acids
 - 1.1.23. Diseases caused by pharmaceutical agents
 - 1.1.24. Diseases caused by nickel or its compounds
 - 1.1.25. Diseases caused by thallium or its compounds
 - 1.1.26. Diseases caused by osmium or its compounds
 - 1.1.27. Diseases caused by selenium or its compounds
 - 1.1.28. Diseases caused by copper or its compounds
 - 1.1.29. Diseases caused by platinum or its compounds
 - 1.1.30. Diseases caused by tin or its compounds
 - 1.1.31. Diseases caused by zinc or its compounds
 - 1.1.32. Diseases caused by phosgene
 - 1.1.33. Diseases caused by corneal irritants like benzoquinone
 - 1.1.34. Diseases caused by ammonia
 - 1.1.35. Diseases caused by isocyanates
 - 1.1.36. Diseases caused by pesticides
 - 1.1.37. Diseases caused by sulphur oxides
 - 1.1.38. Diseases caused by organic solvents
 - 1.1.39. Diseases caused by latex or latex-containing products
 - 1.1.40. Diseases caused by chlorine
 - 1.1.41. Diseases caused by other chemical agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these chemical agents arising from work activities and the disease(s) contracted by the worker
- 1.2. Diseases caused by physical agents
 - 1.2.1. Hearing impairment caused by noise
 - 1.2.2. Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)
 - 1.2.3. Diseases caused by compressed or decompressed air
 - 1.2.4. Diseases caused by ionizing radiations
 - 1.2.5. Diseases caused by optical (ultraviolet, visible light, infrared) radiations including laser
 - 1.2.6. Diseases caused by exposure to extreme temperatures

- 1.2.7. Diseases caused by other physical agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these physical agents arising from work activities and the disease(s) contracted by the worker

1.3. Biological agents and infectious or parasitic diseases

1.3.1. Brucellosis

1.3.2. Hepatitis viruses

1.3.3. Human immunodeficiency virus (HIV)

1.3.4. Tetanus

1.3.5. Tuberculosis

1.3.6. Toxic or inflammatory syndromes associated with bacterial or fungal contaminants

1.3.7. Anthrax

1.3.8. Leptospirosis

- 1.3.9. Diseases caused by other biological agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these biological agents arising from work activities and the disease(s) contracted by the worker

2. Occupational diseases by target organ systems

2.1. Respiratory diseases

- 2.1.1. Pneumoconioses caused by fibrogenic mineral dust (silicosis, anthracosilicosis, asbestosis)
- 2.1.2. Silicotuberculosis
- 2.1.3. Pneumoconioses caused by non-fibrogenic mineral dust
- 2.1.4. Siderosis
- 2.1.5. Bronchopulmonary diseases caused by hard-metal dust
- 2.1.6. Bronchopulmonary diseases caused by dust of cotton (byssinosis), flax, hemp, sisal or sugar cane (bagassosis)
- 2.1.7. Asthma caused by recognized sensitizing agents or irritants inherent to the work process
- 2.1.8. Extrinsic allergic alveolitis caused by the inhalation of organic dusts or microbially contaminated aerosols, arising from work activities
- 2.1.9. Chronic obstructive pulmonary diseases caused by inhalation of coal dust, dust from stone quarries, wood dust, dust from cereals and agricultural undertaking or work, dust in animal stables, dust from textiles, and paper dust, arising from work activities

2.1.10. Diseases of the lung caused by aluminium

2.1.11. Upper airways disorders caused by recognized sensitizing agents or irritants inherent to the work process

2.1.12. Other respiratory diseases not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the disease(s) contracted by the worker

2.2. Skin diseases

2.2.1. Allergic contact dermatoses and contact urticaria caused by other recognized allergy-provoking agents arising from work activities not included in other items

2.2.2. Irritant contact dermatoses caused by other recognized irritant agents arising from work activities not included in other items

2.2.3. Vitiligo caused by other recognized agents arising from work activities not included in other items

2.2.4. Other skin diseases caused by physical, chemical or biological agents at work not included under other items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the skin disease(s) contracted by the worker

2.3. Musculoskeletal disorders

2.3.1. Radial styloid tenosynovitis due to repetitive movements, forceful exertions and extreme postures of the wrist

2.3.2. Chronic tenosynovitis of the wrist due to repetitive movements, forceful exertions and extreme postures of the wrist

2.3.3. Olecranon bursitis due to prolonged pressure of the elbow region

2.3.4. Prepatellar bursitis due to prolonged stay in kneeling position

2.3.5. Epicondylitis due to repetitive forceful work

2.3.6. Meniscus lesions following extended periods of work in a kneeling or squatting position

2.3.7. Carpal tunnel syndrome due to extended periods of repetitive forceful work, work involving vibration, extreme postures of the wrist, or a combination of the three

2.3.8. Other musculoskeletal disorders not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the musculoskeletal disorder(s) contracted by the worker

2.4. Mental and behavioural disorders

2.4.1. Post-traumatic stress disorder

- 2.4.2. Other mental or behavioural disorders not mentioned in the preceding item where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to risk factors arising from work activities and the mental and behavioural disorder(s) contracted by the worker

3. Occupational cancer

3.1. Cancer caused by the following agents

- 3.1.1. Asbestos
- 3.1.2. Benzidine and its salts
- 3.1.3. Bis-chloromethyl ether (BCME)
- 3.1.4. Chromium VI compounds
- 3.1.5. Coal tars, coal tar pitches or soots
- 3.1.6. Beta-naphthylamine
- 3.1.7. Vinyl chloride
- 3.1.8. Benzene
- 3.1.9. Toxic nitro- and amino-derivatives of benzene or its homologues
- 3.1.10. Ionizing radiations
- 3.1.11. Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances
- 3.1.12. Coke oven emissions
- 3.1.13. Nickel compounds
- 3.1.14. Wood dust
- 3.1.15. Arsenic and its compounds
- 3.1.16. Beryllium and its compounds
- 3.1.17. Cadmium and its compounds
- 3.1.18. Erionite
- 3.1.19. Ethylene oxide
- 3.1.20. Hepatitis B virus (HBV) and hepatitis C virus (HCV)
- 3.1.21. Cancers caused by other agents at work not mentioned in the preceding items where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure to these agents arising from work activities and the cancer(s) contracted by the worker

4. Other diseases

- 4.1. Miners' nystagmus

4.2. Other specific diseases caused by occupations or processes not mentioned in this list where a direct link is established scientifically, or determined by methods appropriate to national conditions and practice, between the exposure arising from work activities and the disease contracted by the worker.

THIRD SCHEDULE

(Sections 13(7), 31(2), 32(2), 33(2), 38(7), 39(4), 41(2), 42(3), 43(3), 44(3), 45(2), 47(4), 52(6), 53(3), 57(3), 61(5), 70(3), 71(4), 72(7), 74(3), 75(2), 79(2), 79(5), 79(7), 97(2), 97(4), 99(3), 103(2), 106(2), 107(2), 108(3), 117(4), 126(2), 127(2), 129(2), 130(2), 135(8), 149(8), 155(8), 163(6), 166(2), 167(2), 168(2), 171(2), 175(2), 178(2), 188(2), 188(4), 197(2) and 209(4)).

Offences and Penalties

First Column		Second Column
Brief Description of Offence	Relevant Section	Penalty
Imposing levy or charge on worker (or permitting levy or charge to be imposed on a worker) for anything done, or provided, in relation to safety and health	13(7)	<p>On summary conviction in a Parish Court –</p> <p>(a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars;</p> <p>(b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.</p>
Having a safety and health duty and without reasonable excuse, engaging in conduct that exposes an individual to whom that duty is owed to a risk of death or serious injury or illness and being reckless as to that risk.	31(2)	<p>On conviction on indictment in the Circuit court –</p> <p>(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), a fine;</p> <p>(b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine;</p> <p>(c) in the case of an offence committed by a body corporate, a fine.</p>
Failure to comply with safety and health duty exposing individual to risk of death or serious injury, etc.	32(2)	<p>On conviction on indictment in the Circuit court –</p> <p>(a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or</p>

- as an officer of a person conducting a business or undertaking), to a fine;
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, on conviction on indictment in the Circuit court to a fine;
- (c) in the case of an offence committed by a body corporate, on conviction on indictment in the Circuit court to a fine.
- Failure to comply with safety and health duty. 33(3) On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), to a fine;
- (b) in the case of an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, to a fine;
- (c) in the case of an offence committed by a body corporate, to a fine.
- Failure to ensure that the Director is notified immediately after becoming aware that a notifiable incident has occurred. 38(7) 1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by individual, to a fine not exceeding one million dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding three million dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to keep a record of each notifiable incident for at least six years 38(8) 1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not

exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to ensure, so far as is reasonably practicable, that the site where a notifiable incident occurred is not disturbed

39(4)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Conducting a business or undertaking at a workplace or directing or allowing a worker to carry out work at a workplace contrary to law.

41(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine .

Failure to observe requirements for authorization of plant or substance

42(3)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to observe requirements for authorization of work

43(3)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to meet requirements for prescribed qualifications or experience

44(3)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- Failure to comply with conditions for authorization 45(2)
3. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.
 4. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.
 4. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (c) in the case of an offence committed by a body corporate, to a fine.
- Failure of person conducting a business or undertaking to comply with duty to consult workers 47(4)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.
 2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to commence negotiations within fourteen days after request for election of safety and health representative. 52(6)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or

- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to negotiate with the worker's representative or excluding the representative from negotiations 52(6)
1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure of a person conducting business or undertaking to notify workers of the outcome of negotiations within fourteen days 53(3)
1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure of a person conducting business or undertaking to notify workers of the outcome of 53(3)
1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by

for the variation of an agreement

an individual, to a fine not exceeding one hundred thousand dollars; or

- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure of person conducting a business or undertaking involved in negotiations for the variation of an agreement concerning the determination of a work group or groups, within fourteen days after the negotiations are completed, to notify work group of the outcome of the negotiations and of the variation (if any) to the agreement.

57(3)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure of a person conducting business or undertaking to provide resources, facilities and assistance reasonably necessary or prescribed by the regulations to enable elections to be conducted.

61(5)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure of person conducting business or undertaking to

70(3)

1. On summary conviction in a Parish Court –

fulfil obligations to safety
and health representatives

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Unauthorized disclosure of
worker's personal
information

71(4)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Offering financial assistance

71(4)

3. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

4. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure of a person conducting business or undertaking to fulfil obligation to train safety and health representative

72(7)

1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.

Failure of a person conducting business or undertaking to ensure a list of safety and health representatives is prepared, kept up-to-date, displayed and is readily accessible to worker in the relevant work group or groups

74(3)

1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.

Failure of a person conducting business or undertaking to establish joint safety and health committees

75(2)

1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed

by a body corporate, to a fine.

Failure of a person conducting business or undertaking to allow members of joint safety and health committee to attend meetings of committee or otherwise carry out functions as a member of the committee

79(2)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine dollars.

Failure of a person conducting business or undertaking to allow members of joint safety and health committee to access information relating to hazards at the workplace and the safety and health of workers at the workplace

79(5)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) In the case of an offence committed by a body corporate, to a fine.

Failure of a person conducting business or undertaking to ensure the safety and health representative only access workers personal and medical information in accordance with the Act.

79(7)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding one thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred and fifty thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or

- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to display a copy of provisional improvement notice in a prominent place 97(2)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
 2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.
- Intentionally removing, destroying, damaging or defacing a provisional improvement notice 97(4)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
 2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine; or
 - (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to comply with the provisional improvement notice 99(3)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding fifty thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one hundred thousand dollars.
 2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Engaging in discriminatory conduct for a prohibited reason 103(2)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.
 2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding one million dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding two million dollars.
- Requesting, instructing, inducing, encouraging, authorizing or assisting discriminatory conduct. 106 (2)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.
 2. On conviction on indictment in the Circuit court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding one million dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding two million dollars.
- Organizing, taking, or threatening to organize or take, any action against another person contrary to this Act 107(2)
1. On summary conviction in a Parish Court –
 - (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
 - (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Knowingly or recklessly make a false or misleading representation to another person

108(3)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Without reasonable excuse, refuse or fail to comply with a requirement of a Labour Officer

117(4)

1. On conviction on summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Refusing or delaying entry of Labour Officer

126(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by

a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Hindering or obstructing
Labour Officer

127(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Misrepresentation about
things authorized by the Act

129(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Unauthorized use or
disclosure of information or
documents

130(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by

- an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Failure to comply with a notice from the Director 135(8)
1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (b) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Without reasonable excuse, refuse or fail to comply with a requirement under this section 149 (8)
1. On summary conviction in a Parish Court –
- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.
2. On conviction on indictment in the Circuit court –
- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.
- Tampering or attempting to tamper with seized thing. 155(8)
1. On summary conviction in a Parish Court –

Failure to comply with a requirement to provide name and residential address

163(6)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Intentionally hindering or obstructing OSH Officer

166(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Impersonating an OSH Officer

167(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Assaulting, threatening or intimidating an OSH Officer

168(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to comply with an improvement notice

171(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to comply with prohibition notice

175(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by

an individual, to a fine not exceeding two hundred and fifty thousand dollars; or

- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or

- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to comply with non-disturbance notice

178(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred and fifty thousand dollars; or

- (b) in the case of an offence committed by a body corporate, to a fine not exceeding five hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or

- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to display copy notice in a prominent place

188(2)

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding one hundred thousand dollars; or

- (b) in the case of an offence committed by a body corporate, to a fine not exceeding two hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or

- (b) in the case of an offence committed by a body corporate, to a fine.

Intentionally removing,
destroying, damaging or
defacing a notice while the
notice is in force

188(4)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding two hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding four hundred thousand dollars.

2. On conviction on indictment in the Circuit court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Contravening OSH
undertaking

197(2)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in a Circuit Court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Failure to comply with
obligation for secrecy.

214(4)

1. On summary conviction in a Parish Court

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in a Circuit Court –

- (a) in the case of an offence committed by an individual, to a fine; or

- (b) in the case of an offence committed by a body corporate, to a fine.

Breach of Act for which no penalty provided. 217

1. On summary conviction in a Parish Court –

- (a) in the case of an offence committed by an individual, to a fine not exceeding five hundred thousand dollars; or
- (b) in the case of an offence committed by a body corporate, to a fine not exceeding one million dollars.

2. On conviction on indictment in a Circuit Court –

- (a) in the case of an offence committed by an individual, to a fine; or
- (b) in the case of an offence committed by a body corporate, to a fine.

Content of Systems for Recording and Notification

1. The requirements and procedures for recording shall determine -
 - (a) the responsibility of persons conducting businesses or undertakings and -
 - (i) record occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases;
 - (ii) provide appropriate information to workers and their representatives concerning the recording system;
 - (iii) ensure appropriate maintenance of these records and their use for the establishment of preventive measures; and
 - (iv) refrain from instituting retaliatory or disciplinary measures against a worker for reporting an occupational accident, occupational disease, dangerous occurrence, commuting accident or suspected case of occupational disease;
 - (b) the information to be recorded;
 - (c) the duration for maintaining these records; and
 - (d) measures to ensure the confidentiality of personal and medical data in the person conducting a business or undertaking's possession, in accordance with national laws and regulations, conditions and practice.
2. The requirements and procedures for the notification shall determine -
 - (a) the responsibility of person conducting businesses or undertakings-
 - (i) notify the competent authorities or other designated bodies of notifiable incidents, such as occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases; and
 - (ii) provide appropriate information to workers and their representatives concerning the notified cases;
 - (b) where appropriate, arrangements for notification of occupational accidents and occupational diseases by insurance institutions, occupational health services,

medical practitioners and other bodies directly concerned;

- (c) the criteria according to which occupational accidents, occupational diseases and, as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases are to be notified; and
- (d) the time limits for notification.

3. The notification shall include data on -

- (a) the enterprise, establishment and person conducting a business or undertaking;
- (b) if applicable, the injured persons and the nature of the injuries or disease; and
- (c) the workplace, the circumstances of the accident or the dangerous occurrence and, in the case of an occupational disease, the circumstances of the exposure to health hazards.

Content of Occupational Safety and Health Policy

1. The Occupational Safety and Health Policy shall take account of the following main spheres of action in so far as they affect occupational safety and health and the working environment -
 - (a) design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work (workplaces, working environment, tools, machinery and equipment, chemical, physical and biological substances and agents, work processes);
 - (b) relationships between the material elements of work and the persons who carry out or supervise the work, and adaptation of machinery, equipment, working time, organization of work and work processes to the physical and mental capacities of the workers;
 - (c) training, including necessary further training, qualifications and motivations of persons involved, in one capacity or another, in the achievement of adequate levels of safety and health;
 - (d) communication and cooperation at the levels of the working group and the undertaking and at all other appropriate levels up to and including the national level;
 - (e) the protection of workers and their representatives from disciplinary measures as a result of actions properly taken by them in conformity with the policy.
2. The formulation of the National Occupational Safety and Health Policy shall indicate the respective functions and responsibilities in respect of occupational safety and health and the working environment of public authorities, persons conducting businesses or undertakings, workers and others, taking account both of the complementary character of the responsibilities and of national conditions and practice.
3. The situation regarding occupational safety and health and the working environment shall be reviewed at appropriate intervals, either over-all or in respect of particular areas, with a view to identifying major problems, evolving effective methods for dealing with them and priorities of action, and evaluating results.

The Advisory Council on Occupational Safety and Health

- Constitution of Council. 1. - (1) The Advisory Council shall consist of -
- (a) the following members ex-officio -
- (i) the Director;
 - (ii) the Director of Legal Services in the Ministry responsible for Labour or a nominee;
 - (iii) the Chief Medical Officer;
 - (iv) the Chief Executive Officer of the Ministry responsible for the Environment;
 - (v) a nominee of the accredited Universities in Jamaica (the right to nominate shall be rotated among the Universities);
 - (vi) a representative of the Ministry of Agriculture and Fisheries;
 - (vii) a representative of the Maritime Authority of Jamaica;
- (b) the following appointed members -
- (i) six persons nominated by the organization representative of employers;
 - (ii) six persons nominated by the organization representative of workers;
 - (iii) two persons appointed by the Minister who are qualified in occupational safety and health law, medicine, engineering or any related discipline which the Minister may, from time to time, determine.
- Appointment. 2. - (1) The members of the Advisory Council referred to in paragraph 1(1) (hereinafter referred to as "appointed members") shall be appointed by the Minister by instrument in writing.
- (2) An appointed member shall, subject to the provisions of this Schedule, hold office for a period not exceeding three years, as the Minister may specify in the instrument of appointment and each appointed member shall be eligible for re-appointment.
- Chairman and vice-chairman. 3. The Minister shall appoint two of the appointed members to be chairman and vice-chairman of the Advisory Council, respectively.
- Acting appointments. 4. If the chairman, or any other appointed member is absent or unable to Act, the Minister may appoint any person to act in the place of the chairman or other appointed member, however, the temporary appointment shall be made in the same manner and from the category of persons as the appointment of the previous member.

- Resignation. 5. - (1) An appointed member, other than the chairman may, at any time, resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of that instrument, that appointed member shall cease to be a member of the Advisory Council.
- (2) The chairman may, at any time, resign his office by instrument in writing addressed to the Minister and the resignation shall take effect from the date on which the Minister receives that instrument.
- Termination of appointment. 6. The Minister may terminate the appointment of any appointed member if the member –
- (a) becomes of unsound mind or becomes permanently unable to perform his functions by reason of ill health;
 - (b) is convicted and sentenced to a term of imprisonment;
 - (c) fails, without reasonable excuse, to carry out any of the functions conferred or imposed on him under this Act; or
 - (d) engages in activities as are reasonably considered prejudicial to the interest of the Advisory Council.
- Gazetting of appointments. 7. The names of all members of the Advisory Council as first constituted and every change of membership shall be published in the *Gazette*.
- Leave of absence. 8. The Minister may on the application of an appointed member grant leave of absence to that member.
- Vacancy. 9. If a vacancy occurs in the appointed membership of the Advisory Council, the vacancy shall be filled by the appointment of another appointed member who shall hold office for the remainder of the period for which the previous member was appointed, however, the appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.
- Cessation of membership. 10. Any appointed member who fails to attend four consecutive meetings of the Advisory Council, without excuse acceptable to the Advisory Council, shall cease to be a member of the Advisory Council.
- Meetings. 11. - (1) The Advisory Council shall meet at times, not being less than four times in every year as may be convenient or expedient for the transaction of business, and at places as the Advisory Council may determine.

(2) The chairman may, at any time, call a special meeting of the Advisory Council and shall call a special meeting within fourteen days on a requisition for that purpose addressed to him by any five members of the Advisory Council.

(3) The chairman shall preside at all meetings of the Advisory Council, and if the chairman is absent from a meeting the vice-chairman shall preside.

(4) In the absence of the chairman and the vice-chairman the members present and constituting a quorum shall elect one of their number to preside at that meeting.

(5) The quorum of the Advisory Council at any meeting shall be eleven.

(6) The decisions of the Advisory Council shall be by a majority of votes, and in addition to an original vote the chairman or other person presiding at the meeting shall have a casting vote in any case in which voting is equal.

(7) Minutes in proper form of each meeting shall be kept and shall be confirmed as soon as practicable at a subsequent meeting.

(8) The validity of the proceedings of the Advisory Council shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

(9) Subject to the provisions of this Schedule, the Advisory Council may regulate its own procedure, and may delegate to any member or committee of the Advisory Council the power and authority to carry out, on behalf of the Advisory Council, duties as the Advisory Council may determine.

Disclosure
of
interest.

12. A member who is, directly or indirectly, interested in any matter which is being dealt with by the Advisory Council –

- (a) shall disclose the nature of his interest at a meeting of the Advisory Council; and
- (b) shall not take part in any deliberation or decision of the Advisory Council with respect to that matter.

Report.

13. - (1) The Advisory Council shall submit to the Minister, no later than the first day of June in each year, an annual report on the operations of and the general activities of the Advisory Council.

(2) The Chairman may, at any time if it appears to

him to be desirable, prepare a special report on any matter incidental to his powers and duties under this Act.

(3) The Minister shall cause a copy of the report to be laid on the Table of the House of Representatives and of the Senate.

Protection
of members.

14. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Advisory Council in respect of any act done *bona fide* in pursuance or execution or intended execution of the Advisory Council's functions under this Act.

Remunera-
tion.

15. There shall be paid out of the Consolidated Fund to the members of the Advisory Council allowances and expenses as the Minister may specially or generally approve.

Reviewable Decisions

Item	Provision under which Reviewable Decision is Made	Eligible Person in Relation to Reviewable Decision
1	Section 54(2) (decision following failure to commence negotiations)	<p>(1) A worker whose interests are affected adversely by the decision or his representative appointed for the purpose of section 52(1)(b).</p> <p>(2) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(3) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p>
2	Section 72(7) (decision in relation to training of safety and health representative)	<p>(1) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(2) A safety and health representative whose interests are affected adversely by the decision.</p>
3	Section 76(6) (decision relating to joint safety and health committee)	<p>(1) A worker whose interests are affected adversely by the decision.</p> <p>(2) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(3) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p>
4	Section 101 (decision on review of provisional improvement notice)	<p>(1) The person to whom the provisional improvement notice was issued.</p> <p>(2) The safety and health representative who issued the provisional improvement notice.</p> <p>(3) A worker whose interests are affected adversely by the decision.</p>

Reviewable Decisions

Item	Provision under which Reviewable Decision is Made	Eligible Person in Relation to Reviewable Decision
		(4) A safety and health representative who represents a worker whose interests are affected adversely by the decision.
		(5) A person conducting a business or undertaking whose interests are affected adversely by the decision.
5	Section 157 (forfeiture of thing)	The person entitled to the thing.
6	Section 158 (Return of seized things)	The person entitled to the thing.
7	Section 169 (issue of improvement notice)	(1) The person to whom the notice was issued.
		(2) A person conducting a business or undertaking whose interests are affected adversely by the decision.
		(3) A worker whose interests are affected adversely by the decision.
		(4) A safety and health representative who represents a worker whose interests are affected adversely by the decision.
8	Section 172 (extension of time for compliance with improvement notice)	(1) The person to whom the notice was issued.
		(2) A person conducting a business or undertaking whose interests are affected adversely by the decision.
		(3) A worker whose interests are affected adversely by the decision.
		(4) A safety and health representative who represents a worker whose interests are affected adversely by the decision.
9	Section 173 (issue of prohibition notice)	(1) The person to whom the notice was issued.
		(2) The person with management or control of the workplace, plant or substance.

Reviewable Decisions

Item	Provision under which Reviewable Decision is Made	Eligible Person in Relation to Reviewable Decision
		<p>(3) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(4) A worker whose interests are affected adversely by the decision.</p> <p>(5) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p> <p>(6) A safety and health representative who gave a direction under section 85 to cease work, that is relevant to the prohibition notice.</p>
10	Section 176 (issue of a non-disturbance notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(4) A worker whose interests are affected adversely by the decision.</p> <p>(5) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p>
11	Section 179 (issue of subsequent notice)	<p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(4) A worker whose interests are affected adversely by the decision.</p>

Reviewable Decisions

Item	Provision under which Reviewable Decision is Made	Eligible Person in Relation to Reviewable Decision
12	Section 185 (Decision of Director to vary or cancel notice)	<p>(5) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p> <p>(1) The person to whom the notice was issued.</p> <p>(2) The person with management or control of the workplace.</p> <p>(3) A person conducting a business or undertaking whose interests are affected adversely by the decision.</p> <p>(4) A worker whose interests are affected adversely by the decision.</p> <p>(5) A safety and health representative who represents a worker whose interests are affected adversely by the decision.</p> <p>(6) In the case of a prohibition notice, a safety and health representative whose direction under section 85 to cease work gave rise to the notice.</p>
13	A prescribed provision of the regulations	A person prescribed by the regulations as eligible to apply for review of the reviewable decision.

EIGHTH SCHEDULE

(Section 203(7))

*Offences in Respect of which Liability
To Conviction may be Discharged by
Payment of Fixed Penalty*

First Column		Second Column
Brief Description of Offence	Relevant Section	Fixed Penalty
Imposing levy or charge on worker (or permitting levy or charge to be imposed on a worker) for anything done, or provided, in relation to safety and health	13(7)	\$200,000.00
Failure to ensure that the Director is notified immediately after becoming aware that a notifiable incident has occurred	38(7)	\$200,000.00
Failure to keep a record of each notifiable incident for at least six years	38(7)	\$200,000.00
Failure to ensure, so far as is reasonably practicable, that the site where a notifiable incident occurred is not disturbed	39(4)	\$200,000.00
Conducting a business or undertaking at a workplace or directing or allowing a worker to carry out work at a workplace contrary to law	41(2)	\$200,000.00
Failure to observe requirements for authorization of plant or substance	42(3)	\$200,000.00
Failure to observe requirements for authorization of work	43(3)	\$200,000.00
Failure to meet requirements for prescribed qualifications or experience	44(3)	\$200,000.00
Failure of person conducting a business or undertaking to comply with duty to consult worker	47(4)	\$200,000.00
Failure of a person conducting business or undertaking to negotiate with worker's representative upon so requested by the worker in determining a work group or groups	52(6)	\$200,000.00
Failure of a person conducting business or undertaking to notify workers as soon as is reasonable practicable of the	57(3)	\$200,000.00

outcome of negotiations to determine or vary a workgroup		
Failure of a person conducting business or undertaking to provide resources, facilities and assistance reasonably necessary or prescribed by the regulations to enable elections to be conducted	61(5)	\$200,000.00
Failure to –	70(3)	\$200,000.00
(a) allow safety a health representative time to perform functions under the act		
(a) compensate safety and health representative for time spent performing functions under the Act		
Failure of a person conducting business or undertaking to ensure that worker's personal information is not disclosed to safety and health representative without worker's consent	71(3)	\$200,000.00
Failure of a person conducting business or undertaking to observe obligation to train safety and health representative	72(8)	\$200,000.00
Failure of a person conducting business or undertaking to ensure a list of safety and health representatives is prepared, kept up-to-date, displayed and is readily accessible to worker in the relevant work group or groups	74(3)	\$200,000.00
Failure of a person conducting business or undertaking to establish joint safety and health committees	75(2)	\$200,000.00
Failure of a person conducting business or undertaking to allow members of joint safety and health committee to attend meetings of committee or otherwise carry out functions as a member of the committee	79(2)	\$200,000.00
Failure of a person conducting business or undertaking to allow members of joint safety and health committee to access information relating to hazards at the workplace and the safety and health workers at the workplace	79(5)	\$200,000.00
Failure of a person conducting business or undertaking to ensure the safety and health representative only access workers personal and medical in accordance with the Act	79(7)	\$200,000.00
Failure to display a copy of provisional improvement notice in a prominent	97(2)	\$200,000.00

place		
Intentionally removing, destroying, damaging or defacing a provisional improvement notice	97(4)	\$200,000.00
Failure to comply with the provisional improvement notice	99(3)	\$200,000.00
Without reasonable excuse, refuse or fail to comply with a requirement of a Labour Officer	117(5)	\$200,000.00
Refusing or delaying entry of Labour Officer	126(2)	\$200,000.00
Hindering or obstructing Labour Officer	127(2)	\$200,000.00
Misrepresentation about things authorized by the Act	129(2)	\$200,000.00
Unauthorized use or disclosure of information or documents	130(2)	\$200,000.00
Without reasonable excuse, refuse or fail to comply with a requirement under this section	148(8)	\$200,000.00
Tampering or attempting to tamper with seized thing	155(8)	\$200,000.00
Failure to comply with a requirement to provide name and residential address	163(6)	\$200,000.00
Failure to comply with an improvement notice	171(2)	\$200,000.00
Failure to comply with prohibition notice	175(2)	\$200,000.00
Failure to comply with non-disturbance notice	178(2)	\$200,000.00
Failure to display copy notice in a prominent place	188(2)	\$200,000.00
Intentionally removing, destroying, damaging or defacing a notice while the notice is in force	188(4)	\$200,000.00
Contravening provision of Act for which no penalty expressly provided	203(8)	\$200,000.00
Failure to comply with obligation for secrecy	214(6)	\$200,000.00

*Regulation Making Powers**Duties.*

- 1.1 Matters relating to the way in which duties imposed by this Act are to be performed.
- 1.2 Matters relating to the regulation or prohibition of specified activities or a specified class of activities -
 - (a) at workplaces or a specified class of workplaces; or
 - (b) by a specified class of persons on whom duties or obligations are imposed by this Act, to eliminate or minimize risks to safety and health.
- 1.3 Imposing duties on persons in relation to any matter provided for under the regulations.

Incidents.

2. Matters relating to incidents at workplaces including -
 - (a) regulating or requiring the taking of any action to avoid an incident at a workplace or in the course of conducting a business or undertaking; and
 - (b) regulating, requiring or prohibiting the taking of any action in the event of an incident at a workplace or in the conduct of a business or undertaking.

Plant, substances or structures.

3. Matters relating to plant, substances or structures, including -
 - (a) regulating the storage and handling of plant, substances and structures;
 - (b) regulating or requiring -
 - (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
 - (ii) the examination, testing, analysis or labelling of any substance; and
 - (c) major hazard installation.

Protection and welfare of workers.

4. Matters relating to the protection and welfare of workers, including -
 - (a) regulating or requiring the provision and use of protective clothing or equipment, or rescue equipment, in specified circumstances;
 - (b) regulating or requiring the provision of specified facilities for the welfare of workers at the workplace; and
 - (c) matters relating to -
 - (i) the examination, testing, labelling, maintenance or repair of plant and structures; or
nd structures; or
 - (ii) **the examination, testing, analysis or labelling of any substance.**
 - i) the examination, testing, analysis or labelling of any substance.
g of any substance.

5. *Elimination of child labour including the worst forms.*

6. *Hazards and risks.*

Matters relating to hazards and risks including -

- (a) the prescribing of standards relating to the use of or exposure to any physical, biological, chemical or psychological hazard;
- (b) matters relating to safety cases, safety management plans and safety management systems (however described); and
- (c) matters relating to measures to control risks.

Records and notices.

7.1 The keeping and availability of records of health and safety representatives and deputy health and safety representatives.

7.2 The keeping of records in relation to incidents.

7.3 The keeping of records of specified activities, matters or things to be kept by specified persons.

7.4 The giving of notice of or information about specified activities, matters or things to the Director, an inspector or other specified person.

Authorizations.

8.1. Matters relating to authorizations (including licences, registrations and permits) and qualifications, and experience for the purposes of Part IV or the regulations, including providing for -

r the purposes of Part IV or the regulations, including providing for -
roviding for -

- (a) applications for the grant, issue, renewal, variation, modification, suspension, revocation and cancellation of authorizations;
grant, issue, renewal, variation, modification, suspension, revocation and cancellation of authorizations;
- (b) the evidence and information to be provided in relation to applications, including the provision of statutory declarations;
provided in relation to applications, including the provision of statutory declarations;
rovided in relation to applications, including the provision of statutory declarations;
- (c) exemptions; and
- (d) variations of authorizations by the Director;
- (e) duration of authorization;

9. *Workgroups.*

Matters relating to work groups and variation of work groups and agreements or variations of agreements relating to the determination of work groups.

10. *Safety and health committees and safety and health representatives.*

Matters relating to health and safety committees and health and safety representatives.

11. *Issue resolution.*

Matters relating to issue resolution including -

- (a) the minimum requirements for an agreed procedure for resolving an issue; and

- (b) the requirements for a default issue resolution procedure where there is no agreed procedure.

Forfeiture.

12. Matters relating to -

- (a) costs of forfeiture and disposal of forfeited things; and
 (b) disposal of seized things and forfeited things.

Review of decisions.

13. Matters relating to the review of decisions under the regulations including -

- (a) prescribing decisions as reviewable decisions for the purposes of Part XII or for the purposes of the regulations;
 (b) prescribing procedures for internal and external review of decisions under the regulations; and
 (c) conferring jurisdiction on the Tribunal to conduct reviews under the regulations.

TENTH SCHEDULE

(Section 218(1))

Amendment or Repeal of Enactments

Enactment

How To Be Dealt With

***Labour Officers
(Powers) Act***

Schedule

Delete the words "The Factories Act" and substitute therefor the words "The Occupational Safety and Health Act".

***Labour
Relations and
Industrial
Disputes Act***

Section 2

Insert next after the definition of "collective bargaining" the following -

"complaint" means a complaint under the
Occupational Safety and Health Act;".

Section 7

In subsection (1), insert immediately after the word "Act" the words ", the *Occupational Safety and Health Act*, and for the purposes of any other enactment ascribing functions thereto,".

Section 8

Insert next after subsection (1) the following as subsection (1A) -

" (1A) The Tribunal, when exercising its

jurisdiction under the *Occupational Safety and Health Act*, shall sit in a Division to be known as the “Occupational Safety and Health Division”, and the provisions of subsection (2) (bb) shall apply to that Division.”.

2. Insert next after subsection (2)(b) the following –

“ (bb) the Occupational Safety and Health Division shall consist of –

(a) the Deputy Chairman, Occupational Safety and Health (appointed by the Minister after consultation with organizations representing employers and organizations representing workers) and who shall be a person appearing to the Minister to be knowledgeable of, or experienced in, occupational safety and health;

(ii) a member of the Tribunal appointed by the Minister –

(A) from a list of persons who are knowledgeable of, or experienced in, occupational safety and health supplied to the Minister by organizations representing employers; or

(B) from a panel constituted by the Minister under the Second Schedule;

(iii) one of the members of the Tribunal who was appointed by the Minister from a panel supplied to him by

organizations representing workers who is knowledgeable of, or experience in occupational safety and health, or from a panel constituted by the Minister in accordance with the Second Schedule,

who, as regards subparagraphs (bb)(ii) and (iii), shall be selected by the Deputy Chairman referred to in subparagraph (bb)(i);”.

3. Insert next after subsection (3) the following as subsection (3A)–

“ (3A) The Deputy Chairman, Occupational Safety and Health appointed in accordance with subsection (2)(bb) (i) shall preside over an inquiry arising under the *Occupational Safety and Health Act*.” .

4. Delete subsection (4) and substitute therefor the following–

“ (4) Where three members of the Tribunal constitute a division thereof and any one of those members dies or is incapacitated or ceases to be a member thereof for any other reason after the division begins to deal with the industrial dispute or complaint in relation to which it was constituted but before it has made its award, another person shall be selected in accordance with paragraph (c) of subsection (2) or paragraph (bb) of subsection (2) to fill the vacancy, thereafter the proceedings of the division shall be begun *de novo* unless all the parties to the dispute or complaint agree in writing that those proceedings may be continued as if they had not been interrupted by reason of

such death, incapacity or cessation.”.

Section 16 (1) Insert immediately after the words “industrial dispute” the words “or a complaint”.

Section 16A Delete the section and substitute therefor the following-

“ **Power of Tribunal to hear industrial disputes and complaints.** 16A. The Tribunal shall have power to hear an industrial dispute under this Act, or a complaint under the *Occupational Safety and Health Act*, referred to it for settlement or determination, as the case may be, on the Tribunal being satisfied that due notice of the hearing was served on a party to the dispute or complaint, notwithstanding that the party fails to appear before the Tribunal.”.

**Second
Schedule**

Paragraph 1

1. Insert next after subparagraph (c) the following -

“(d) for the purpose of dealing with complaints under the *Occupational Safety and Health Act*, a Deputy Chairman, Occupational Safety and Health and such other members appointed by the Minister under section 8 (2)(bb) of the Act.”.

2. In subparagraph (3), insert the words “or complaints” immediately after the words “industrial disputes”.

3. Delete subparagraph (5) and substitute

therefor the following -

“ (5) Subject to this Schedule, the members of the Tribunal referred to in sub-paragraphs (1) (a), (b) and (d) shall hold office for such period, not exceeding five years, as the Minister may determine, and the members shall be eligible for reappointment, and the additional members referred to in sub-paragraphs (3) shall hold office until the Minister revokes their appointments.”.

4. Insert next after subparagraph (5) the following –

“ (6) For the purposes of the Occupational Safety and Health Division, the Minister may appoint, in accordance with section 8(2)(bb)(i), more than one person as a Deputy Chairman, Occupational Safety and Health, if the Minister considers it necessary in order to more effectively manage the workload of the Division.”.

MEMORANDUM OF OBJECTS AND REASONS

The promotion and maintenance of a safe and healthy working environment is of importance to the Government, employers and workers alike. A decision was taken to enact legislation in order to provide the legal framework for the establishment of the system by which this will be achieved.

This Bill gives effect to that decision. The Bill creates joint responsibility for occupational safety and health on the part of the employers and workers alike. The Bill, among other things, contains provisions with respect to –

- (a) an Advisory Council which is to advise the Minister on a national policy for occupational safety and health;
- (b) the registration of every establishment, including mines and quarries operating in Jamaica;
- (c) the designation of qualified persons as Occupational Safety and Health Officers with the power to, among other things, conduct inspections at workplaces, remove articles or substances which may be a threat to the safety or health of workers, and order that a workplace be vacated where there is a threat to safety or health;
- (d) the establishment of committees of workers to identify situations in the workplace which are potential hazards;
- (e) steps to be taken by owners where critical substances are utilized at a construction site;
- (f) the duties of suppliers and distributors of hazardous substances or equipment to a workplace;
- (g) the duties of employers where hazardous substances are used at a workplace;
- (h) a worker's right to refuse to work where safety or health is threatened at the workplace;

- (i) a duty of confidentiality in relation to information acquired in the exercise of duties under the Act;
- (j) establish the minimum standards for workplaces; and
- (k) put in place a system of collaboration between workers and employer in achieving occupational safety and health in the workplace.

Shahine Robinson, M. P.
Minister of Labour and Social Security