
OCCUPATIONAL SAFETY AND HEALTH ACT, 2026

ARRANGEMENT OF SECTIONS**PART I****PRELIMINARY***Section*

1. Short title.
2. Application and Object of Act.
3. Interpretation.

PART II**ADMINISTRATION OF OCCUPATIONAL SAFETY AND HEALTH SYSTEM**

4. Establishment of Occupational Safety and Health Department.
5. Establishment of Medical Bureau of Occupational Diseases.
6. Duties of Bureau.
7. Remuneration of Bureau.
8. Summoning and examining witnesses by Bureau.
9. Decision of Bureau to be binding.

PART III**SAFETY AND HEALTH SERVICES IN WORKPLACE**

10. Occupational health services.
11. Prohibition of employment of workers in specified working environment.
12. Promotion of occupational safety and health.

PART IV**SAFETY AND HEALTH ROLES, DUTIES AND RESPONSIBILITIES**

13. Roles, duties and responsibilities of employers.
14. Rights, roles, duties and responsibilities of workers.
15. Roles, duties and responsibilities of designers, manufacturers, importers, sellers, distributors and suppliers.
16. Prohibition of victimisation and wages deduction in relation to occupational safety and health.

PART V**REGISTRATION AND CONTROL OF WORKPLACES**

17. Registration of workplaces.
18. Register of workplace premises.
19. Transfer and surrender of certificate of registration.
20. Submission of plans for building or alteration of building.
21. Machinery safety and registration.
22. Register and notification and occupational accidents and diseases.

PART VI

ENFORCEMENT

Section

23. Appointment of inspectors.
24. Powers of inspectors.
25. Powers of entry and search.
26. Investigations of accidents by inspectors.
27. Disclosure of confidential information.
28. Improvement notice.
29. Prohibition notice.
30. Powers of inspector as to certain defects remediable by other competent authorities.
31. Service of notice under this Act.
32. Establishment of Occupational Safety and Health Appeals Board
33. Offences and penalties.
34. Disclosure of certain information prohibited.
35. Locking of workplaces.
36. General prohibitions.

PART VII

FINANCES

37. Fund.
38. Funding of occupational safety and health programmes.
39. Audit.

PART VIII

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL

40. Establishment of the Zimbabwe Occupational Safety and Health and Advisory Council.

PART IX

GENERAL

41. Powers of Court in relation to convicted persons.
42. Limitation of liability.
43. Accreditation of occupational safety and health services providers.
44. Approval of codes of practice by Authority.
45. Appeals against decisions of Authority.
46. Power of Minister to issue directives.
47. Regulations.
48. Repeal of Cap. 14:08 and Cap. 15:08, transitional provisions and savings.

FIRST SCHEDULE: Civil penalty orders.

SECOND SCHEDULE: Improvement notice.

THIRD SCHEDULE: Prohibition notice.

FOURTH SCHEDULE: Accident Prevention and Workers' Compensation Insurance Fund.



ZIMBABWE

ACT

To provide for the safety and health of persons at work; to provide for the protection of persons other than persons at work against hazards to safety and health arising out of or in connection with activities of persons at work; to regulate and control the use of plant, machinery and hazardous substances at workplaces; to provide for the establishment of the Occupational Safety and Health Department; to provide for the Accident Prevention and Workers Compensation Fund; to provide for the establishment of the Zimbabwe Occupational Safety and Health Advisory Council; to repeal the Factories and Works Act [*Chapter 14:08*] and the Pneumoconiosis Act [*Chapter 15:08*] and to provide for matters connected with or incidental to the foregoing.

WHEREAS, section 65 of the constitution provides that “every person has the right to fair and safe labour practices and standards...”

NOW THEREFORE, be it enacted by the Parliament and President of Zimbabwe as follows—

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Occupational Safety and Health Act, 2026.

2 Application and object of Act

(1) This Act shall apply to all workplaces, whether such workplaces are temporary or permanent.

(2) Subject to subsection (1), no access by the department or an inspector to a protected place, area or military cantonment shall be permitted except—

- (a) upon not less than 72 hours written notice by the Director to the authority responsible for the protected place, area or military cantonment (unless the responsible authority has waived notice and have given them permission so as to come as soon as possible);
- (b) subject to such conditions as that authority may reasonably impose on the work of the inspector without however frustrating the purpose of the inspection (including conditions relating to the safeguarding by the department and inspector of information pertinent to national security).

(3) The object of the Act is to ensure occupational safety and health.

3 Interpretation

In this Act—

“accident” means an occupational accident or an undesired event giving rise to death, injury, ill health, damage or other loss;

“Authority” means the National Social Security Authority established in terms of the National Social Security Authority Act [*Chapter 17:04*];

“Board” means Board of the Authority established in terms of section 5 of the National Social Security Authority Act [*Chapter 17:04*];

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

“building” includes—

- (a) any structure attached to the ground;
- (b) any building or such structure or part thereof which is in the process of being erected; or
- (c) any prefabricated building or structure not attached to the soil;

“Bureau” means the Medical Bureau of Occupational Diseases established in terms of section 5;

“chief executive officer” in relation to a company, private business corporation, an enterprise, an organisation or to a public entity or government agency, means the person who (by whatever title is used to refer to him or her) either alone or jointly with one or more other persons, is the principal officer and agent of the company private business corporation, an enterprise, an organisation or to a public entity or government agency with authority to represent and bind the company or corporation in transactions with other parties and includes, manager or employer in charge of premises and is the person responsible for the overall management and control of the business of such an enterprise, company, organisation, body corporate or public entity;

“competent authority” means a government agency that has the legal power to make decisions or enforce laws in terms of their respective legislation;

“competent person” means a person who has served an apprenticeship or recognised training in an appropriate trade and who has had not less than

five years' practical experience working with machinery or activities specified by the Act and who has a thorough knowledge of the machinery or activity of which he or she is in charge, or which he or she is required to examine;

“contractor” means a person who renders services to the employer which are related to or connected with those of the employer’s undertaking and is not under the general control or management of the employer;

“Council” means the Zimbabwe Occupational Safety and Health Advisory Council established in terms of section 40;

“Department” means the Department of Occupational Safety and Health of Authority established in terms of section 4;

“Director” means the Director of Occupational Safety and Health Department appointed in terms of section 4;

“employee” means any person (other than those in private residence) who is employed by or works for an employer and who receives or is entitled to receive any remuneration in respect of such employment or work;

“employer” means, any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him or her, and includes the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed;

“ergonomics” means the adaptation or matching of work to the capabilities of employees in light of their physical and mental health;

“Fund” means Accident Prevention and Workers Compensation Fund established in terms of section 37;

“General Manager” means General Manager of the National Social Security Authority appointed in terms of section 25 of the National Social Security Authority Act [*Chapter 17:04*];

“government agency” means any Ministry, department, organisation or agency of the State or government including local authority;

“hazard” means a source or situation with a potential to cause harm in terms of human injury or ill health, damage to property, damage to the work environment or any combination of these;

“hazardous substance” means any chemical, waste, gas or gaseous matter, plant or micro-organism which is injurious to health or the environment;

“health” means a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity;

“imminent danger” means a dangerous situation which is about to happen or threatening to happen;

“ill-health” means identifiable, adverse physiological or mental condition arising from or made worse by a work occupation or work-related situation;

“incident” means work-related event in which an injury or ill health (regardless of severity) or fatality occurred, or could have occurred;

“inspector” means an inspector appointed in terms of section 23;

“local authority” means —

- (a) a city, municipality, town council or local board established in terms of the Urban Councils Act [*Chapter 29:15*]; or
- (b) a rural district council established in terms of the Rural District Councils Act [*Chapter 29:13*];

“machinery” means —

- (a) any locomotive or any stationary or portable engine, boiler or other steam apparatus; and
- (b) any appliance or combination of appliances intended for developing, receiving, storing, transmitting or converting power, including a plant mobile equipment used at a workplace.

“Medical Bureau” or “Bureau” means the Medical Bureau of Occupational Health Services established in terms of section 5;

“Minister” means the Minister responsible for labour or any other Minister to whom the President may from time to time assign the administration of this Act

“occupational medical practitioner” means a person who is registered as a medical practitioner under the Health Professions Act [*Chapter 27:19*] with postgraduate training in occupational medicine or occupational health;

“occupational health” means the promotion and maintenance of the highest degree of physical, mental and social well-being of employees, temporary workers, contractor personnel, visitors and any other person in the workplace;

“occupational medical practitioner” means a person who is registered as a medical practitioner under the Health Professions Act [*Chapter 27:19*] with postgraduate training in occupational medicine or occupational health;

“occupational health services” means services entrusted with preventive functions and also responsible for advising the employers and workers on the requirements for establishing and maintaining a safe and healthy working environment which facilitates optimal physical and mental health in the workplace;

“occupational safety” means freedom from unacceptable risk of harm at work;

“occupational safety and health” means the discipline dealing with prevention of work related injuries and diseases as well as the protection and promotion of the safety and health of workers including contractor personnel, visitors or any other person in the workplace;

“occupational safety and health management system” means part of an organisation’s management system used to develop and implement the organisation’s safety and health policy, objectives, targets, programmes and procedures to manage occupational safety and health hazards and risks;

“occupational disease” means a disease contracted as a result of an exposure to risk factors arising from any occupational activity;

“occupational injury” means an injury suffered as a result of one’s employment or by such injury as the Minister may prescribe, by statutory instrument;

“premises” includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land, including the foreshore and other land intermittently covered by water and any other installation, whether floating or resting on other land covered with water or subsoil; and
- (c) any tent, or movable structure;

“plant” includes fixtures, fittings, implements, equipment, tools and appliances, machinery and anything which is used for any purpose in connection with such plant;

“properly used” means used with reasonable care, and with due regard to any information, instruction, or advice supplied by the designer, manufacturer, importer, distributor, seller or supplier;

“responsible person” means a competent person or a qualified person placed in charge of the safety and health of machinery and equipment, laboratory, civil works, power plant or any other field deemed necessary by the Director;

“risk” means the likelihood that an injury, ill-health or damage will occur and includes the severity and frequency of occurrence of the injury, ill-health or damage;

“risk assessment” means the overall process of estimating the magnitude of risk and deciding whether or not the risk is tolerable;

“safety and health representative” means a person appointed or elected in terms of section 12;

“self-employed person” means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not employing others;

“scheme” means the Accident Prevention and Workers Compensation Scheme established in terms of the National Social Security Authority Act [*Chapter 17:04*];

“sell” means sell by wholesale or retail and includes—

- (a) advertise, expose or offer for sale;
- (b) supply, barter, donate or dispose to any person;

“specified working environment” means any working environment declared as such by statutory instrument;

“standard” means any provision occurring—

- (a) in a specification, compulsory specification, code of practice or standard laid down by the Standards Association of Zimbabwe or any other recognised standards body whether locally or internationally; or
- (b) in any specification, code or any other directive having standardisation as its aim and issued by an institution or organisation inside or outside Zimbabwe which, whether generally or with respect to any substance or matter and whether internationally or in a particular country seeks to promote standardisation as approved by the Authority or standards making body;

“structural work” means any work in connection with the erection, alteration, renovation, repair or demolition of any structure, bridge or building, and includes any railway line, road or irrigation, sewerage, excavation or similar work;

“substance” means any substance, solid, liquid, vapour, gas aerosol or combination thereof;

“surveillance” means the ongoing systematic collection, analysis, interpretation and dissemination of occupational health data for the purpose of prevention;

“user” in relation to machinery, means the person who uses machinery for his or her own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with that machinery;

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

“worker” includes —

- (a) a contractor or subcontractor;
- (b) an employee of a contractor or subcontractor;
- (c) an employee of a labour hire company who has been assigned to work in the business or undertaking;
- (d) an apprentice or a trainee;
- (e) a person gaining work experience or undertaking a work trial;
- (f) a volunteer worker;

“working environment” means any premises or place where a person performs or is likely to perform work in the course of his or her employment as a worker or as a self-employed person;

“workplace” means all places where workers need to be or to go by reason of their work and which are under the direct or indirect control of the employer.

PART II

ADMINISTRATION OF OCCUPATIONAL SAFETY AND HEALTH SYSTEM

ESTABLISHMENT AND FUNCTIONS OF OCCUPATIONAL SAFETY AND HEALTH

DEPARTMENT

4 Establishment of Occupational Safety and Health Department

(1) There is hereby established a Department to be known as the Department of Occupational Safety and Health.

(2) The Department referred to in subsection (1) shall be a department in the Authority.

(3) The functions of the Department shall be the following—

- (a) promoting occupational safety and health;

- (b) formulating and ensuring safety and health standards and guidelines on the working environment after consultation with relevant organisations;
 - (c) enforcing occupational safety and health requirements in terms of this Act;
 - (d) arranging for the collection, compilation, tabulation and recording of statistics relating to the incidents or cases of occupational diseases and injuries;
 - (e) recommending to the Minister on matters related to occupational safety and health;
 - (f) implementing the National Social Security Authority (Accident Prevention and Workers' Compensation Scheme) (Prescribed Matters) Notice, 1990;
 - (g) carrying out and supporting research in occupational safety and health; and
 - (h) performing any other function necessary for the achievement of occupational safety and health.
- (4) The Department shall be headed by a Director who shall—
- (a) exercise general supervision and direction of the Department; and
 - (b) be responsible for the occupational safety and health functions of the Authority and accountable to the General Manager.

(5) The Director shall be assisted by such number of staff as may be necessary for the purpose of implementing the provisions of this Act.

(6) Notwithstanding any other Act, the competent authority for the occupational safety and health shall be the Authority.

5 Establishment of Medical Bureau of Occupational Diseases

(1) There is hereby established a Bureau of the Department to be called the Medical Bureau of Occupational Diseases which shall be appointed by the Authority.

(2) The Bureau shall consist of the following five members—

- (a) one medical practitioner with specialised knowledge and experience in occupational health medicine; and
- (b) one physician who shall be knowledgeable and experienced in occupational lung conditions; and
- (c) one radiologist; appointed by the Authority from a list of three names respectively submitted to it by Medical and Dental Practitioners Council of Zimbabwe;
- (d) one medical practitioner employed as a mine medical practitioner and specialised in occupational medicine chosen by the Authority from a list of three names submitted to it by organisation representing employers in the mining industry;
- (e) the Director or his or her delegate, who shall be an *ex-officio* member of the Bureau.

(3) The members shall amongst themselves elect a chairperson.

(4) Members of the Bureau shall hold office for a period of three years subject to reappointment for one further period of three years;

(5) In appointing the members of the Bureau, the Authority shall endeavour to ensure that half of the members are women.

(6) Every substantive member of the Bureau shall have a suitable alternate member appointed by the Authority.

(7) The alternate member specified in subsection (6) shall act as a member of the Medical Bureau only when the substantive member to whom he or she is alternate is unable to exercise his or her functions on the Medical Bureau by reason of illness, absence from Zimbabwe or other cause.

(8) The Bureau may meet for the dispatch of business in line with the terms and conditions set out by the Authority.

(9) Three members of the Bureau excluding the *ex-officio* member shall form a quorum at any meeting.

(10) At every meeting of the Bureau the chairperson shall chair the meeting and in his or her absence, the vice chairperson shall be the chair.

(11) The decision of the majority of members of the Bureau present at any meeting shall constitute the decision of the Bureau:

Provided that, in the event of an equality of votes at any such meeting, the chairperson at the meeting shall have a casting vote in addition to his or her deliberate vote.

(12) The Authority may invite other medical specialist to assist in the functions of the Bureau.

6 Duties of Bureau

(1) The Bureau shall—

- (a) make such recommendations as by this Act are required to be made by it;
- (b) conduct or direct and control all medical examinations under this Act;
- (c) issue certificates to workers under this Act;
- (d) grant permission in writing to any person who is suffering or has suffered from occupational diseases to enter any place or premises where a hazardous occupation is carried on and to attach to such permission such conditions as it may think fit;
- (e) upon finding any person to have suffered or to be suffering from occupational diseases, certify that fact to the Authority.

(2) The Bureau is authorised to perform any medical examination and to issue any medical certificates and to give any decision or express any findings on any medical question for the purposes of this Act, and may base any such certificate, decision or finding upon facts ascertained by the Bureau itself or by a member thereof or by an approved medical practitioner or by any other person who, in its opinion, is qualified to ascertain those facts.

7 Remuneration of Bureau

A member of the Bureau shall be paid out of the Authority funds such allowance as approved by the Authority.

8 Summoning and examining of witnesses by Bureau

(1) The Bureau, in the performance of any duty or the exercise of its functions, shall have power to—

- (a) summon and examine under oath any witnesses;
- (b) call for the production of and authorise the inspection of any relevant documents.

(2) Summons issued in the exercise of the powers of the Bureau may call upon any person who, in the opinion of the Bureau, may be able to give material information concerning the matter under investigation or whom the Bureau suspects or believes has in his or her possession or custody or under his or her control any record, which has any bearing on the matter under investigation to appear before the Bureau at a time and place to be specified in the summons to be interrogated or to produce that record, document or thing.

(3) The Bureau may retain for examination any relevant documents produced in pursuance of summons referred to in subsection (2).

(4) Summons issued in terms of this section shall be served in the prescribed manner.

(5) The chairperson at a meeting of the Bureau at which any witness appears, whether the witness has been served with summons or not, shall have power to administer an oath to the witness and may require him or her to produce any record, document or thing in his or her possession or custody or under his or her control.

(6) The Bureau at which any witness appears and any member of the Bureau present at the meeting may put any question to the witness.

(7) The interrogation of any witness under this section shall be privately conducted unless the Bureau decides otherwise:

Provided that—

- (a) at the request of any witnesses the interrogation of that witness shall be privately conducted;
- (b) the Bureau may, in its discretion and with the consent of the witness, authorise the presence of any specified person at the interrogation of that witness.

(8) If a person being duly summoned under this section fails without sufficient cause to attend at the time and place specified in the summons or to remain in attendance until excused from attendance by the chairperson of the Bureau or if any person, when lawfully required to do so under this section, without sufficient cause, refuses to be sworn as a witness or fails, without sufficient cause, to answer fully and satisfactorily to the best of his or her knowledge and belief all questions lawfully put to him or her to produce relevant documents in his or her possession or custody or under his or her control, he or she shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or both to such fine and such imprisonment.

(9) Any witness who, after having been sworn in, gives a false answer to any question put to him or her under this section or makes a false statement on any matter knowing that answer or statement to be false or not knowing or believing it to be true shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or both to such fine and such imprisonment.

(10) Any person summoned in terms of this section to appear before the Bureau may, if the Bureau is satisfied that he or she has, by reason of his or her appearance in obedience to the summons, suffered any pecuniary loss or has been put to any expense, be paid out of the Authority funds—

- (a) any allowance as may be prescribed by the Minister; or
 - (b) the amount of such loss and such expense;
- whichever is the lesser.

(11) Any person who willfully hinders the chairperson or any member of the Bureau in the exercise of the powers conferred upon him or her by this section shall be guilty of an offence and liable to a fine not exceeding level five or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

9 Decision of Bureau to be binding

(1) On all purely medical questions the decisions of the Bureau shall, subject to section (8), be accepted by the Authority or by any person for the purposes of this Act.

(2) A person who is dissatisfied with the decision of the Bureau given in respect of himself or herself may, if his or her own medical advisor was not heard by the Bureau in connection with that decision, apply in writing and subject to such conditions as may be prescribed by the Bureau to reconsider his or her case.

(3) Upon an application being made to it in terms of subsection (2) the Bureau shall afford the medical advisor of the applicant an opportunity of being heard by the Bureau and shall thereafter reconsider its decision in relation to the applicant.

(4) A person who is dissatisfied with the decision of the Bureau made in terms of subsection (3) may appeal to the Occupational Safety and Health Appeals Board established in section 32.

PART III

SAFETY AND HEALTH SERVICES IN WORKPLACE

10 Occupational Health Services

(1) The Department shall take necessary measures to ensure that every employer and employee is kept informed of and adequately advised on matters which they ought to take reasonable steps concerning the safeguarding and improvement of the health of workers and persons at the workplace.

(2) Every employer must have occupational health services programmes and systems for the purposes of surveillance of the working environment which include—

- (a) hazard identification and risk assessment;
- (b) assessment of personal protective equipment and clothing;
- (c) assessment of exposure of workers to hazardous agents by valid and generally accepted monitoring methods;
- (d) assessment of control systems designed to eliminate or reduce exposure.

(3) Every employer shall carry out risk based surveillance of workers' health assessments to protect the health of workers as prescribed.

(4) Every employer shall—

- (a) keep a record of data resulting from the surveillance of the working environment and make such data available to the employees and their representatives;
- (b) use the data referred to in paragraph (a) solely to provide guidance on measures to improve the working environment conditions;
- (c) upon demand by an inspector give access to the working environment surveillance data to such inspector.

(5) Every worker's health data with personal information shall remain confidential and may be communicated to others only with the informed consent of the worker concerned.

(6) The employer shall report all diseases to the Bureau in accordance with the procedures that may be prescribed by the Minister.

11 Prohibition of employment of workers in specified working environment

(1) An employer may only employ a worker in a specified working environment, where the employer is satisfied that the prescribed requirements are met.

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

12 Promotion of occupational safety and health

(1) Every employer must put in place occupational safety and health programmes to promote safe and healthy work environments.

(2) Every employer who has five or more workers in his or her employ at any workplace, shall allow the workers to appoint or elect one of their number in every section or department to be their safety and health representative.

(3) Every employer shall in respect of each workplace where two or more safety and health representatives have been appointed or elected, establish one or more safety and health committees.

(4) The Minister may prescribe, from time to time, certain workplaces to have in their employment a safety and health professional.

(5) The expenses for the implementation of this section shall be borne by the employer.

PART IV

SAFETY AND HEALTH ROLES, DUTIES AND RESPONSIBILITIES

13 Roles, Duties and Responsibilities of Employers

(1) Every employer shall provide and maintain, a working environment that is safe and without unacceptable risk to the health of the employees and workers.

(2) Without limiting the generality of subsection (1), the employer must establish, implement and maintain occupational safety and health management system as may be prescribed from time to time.

(3) Any employer who contravenes section (1) and (2), thereby causing any person to be injured at a workplace, or, in the case of a person employed by him or her, to be injured at any place in the course of his or her employment, or any person who

does or omits to do anything for which it is his or her responsibility to do or not to do, thereby causing any person to be injured, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

14 Rights, roles, duties and responsibilities of workers

(1) Every worker, shall have the right to refuse to do work which is likely to cause imminent danger to his or her safety or health which has not been rendered safe.

(2) Workers and their representatives in an undertaking shall be entitled to adequate information on measures taken by the employer to secure occupational safety and health and may consult their representative organisations about such information.

(3) Workers and their representatives in the undertaking shall be entitled to appropriate training in occupational safety and health during paid working hours.

(4) Workers shall be entitled to be consulted by the employers on all aspects of occupational safety and health associated with their work and may propose preventive measures.

(5) Workers shall be entitled to protection from dismissal and other measures prejudicial to them while exercising their functions in the field of occupational safety and health.

(6) Workers shall be entitled to contribute their views regarding occupational safety and health issues in the organisation.

(7) Workers shall not be levied for anything done or provided in pursuant of this Act.

(8) Workers may have recourse to specialist advice on particular occupational safety and health issues.

(9) It shall be the duty of every worker while at work to—

- (a) take reasonable care for the safety and health of himself or herself and of other persons who may be affected by his or her acts or omissions at work; and
- (b) as regards any duty or requirement imposed on his or her employer or any other person by or under any relevant statutory provisions, co-operate with him or her so far as is necessary to enable that duty or requirement to be performed or complied with;
- (c) subject to subsection (2), carry out any lawful order given to him or her;
- (d) obey the safety and health rules and procedures and codes of practice laid down by the employer or anyone authorised to do so by the employer;
- (e) report to the employer, supervisor, safety and health professional or safety and health representative—
 - (i) an accident; or
 - (ii) the existence of any situation which may adversely affect safety or health;

(10) No person shall—

- (a) wilfully or negligently injure or interfere with; or
- (b) misuse; or
- (c) in a negligent manner use;

any means, appliance, convenience or other thing provided in pursuance of this Act for securing the safety and health of employees in any workplace.

(11) Any person who contravenes subsection (10) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(12) The Minister may by statutory instrument prescribe further duties of workers to ensure the effectiveness of this Act.

15 Roles, duties and responsibilities of designers, manufacturers, importers, sellers, distributors and suppliers

(1) Any person who designs, manufactures, imports, sells, distributes or supplies any substance, machinery or equipment for use at work shall ensure—

- (a) that it is safe and without risk to health when properly used and that it complies with all prescribed requirements;
- (b) every substance, machinery or equipment when delivered is accompanied by the necessary information and instructions concerning its use, assembly and maintenance and procedures to be followed in the event of an accident, in a language easily understood by all the workers and any other person who may have access to or come into contact with it.

(2) At the request of the inspector or whenever the situation calls for it, the designer, manufacturer, importer, seller, distributor or supplier of any substance, machinery or equipment shall arrange for the carrying out of examinations, tests or surveys, with the assistance of experts, to ascertain whether the substance, machinery or equipment is safe and without unacceptable risk to safety and health.

(3) The Minister may by statutory instrument prescribe any substance, machinery or equipment, further rules on the duties of designers, manufacturers, importers, sellers, distributors and suppliers to ensure the effectiveness of the provisions of this Act.

(4) Any person who designs, manufactures, imports, sells, distributes or supplies any substance, machinery or equipment for use at work shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to safety or health to which the substance, machinery or equipment may give rise.

(5) Any person who erects or installs any substance, machinery or equipment for use at work in any premises where the substance, machinery or equipment is to be used by persons at work shall ensure, so far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

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

(7) Any person who designs, manufactures, imports, sells, distributes or supplies any substance, machinery or equipment for use at work and fails to comply with this section shall be liable to a category 1 civil penalty as specified in the First Schedule.

16 Prohibition of victimisation and wages deduction in relation to occupational safety and health

(1) No employer who in respect of anything required to be done or provided by him or her in pursuance of this Act may make any deduction from or reduce the

remuneration of any employee, or require any employee to make a payment in respect of such requirement to any other person.

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

(3) An employer who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level fourteen (14) or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment.

PART V

REGISTRATION AND CONTROL OF WORKPLACES

17 Registration of workplaces

(1) No person shall occupy or use a workplace premise unless he or she is the holder of a registration certificate or a provisional registration certificate issued in terms of this Act.

(2) Any person occupying or who intends to occupy a workplace premise shall make an application for registration of a workplace premise accompanied with the prescribed particulars and plans to the Authority in the prescribed form subject to the payment of a prescribed fee.

(3) As soon as practicable after receipt of an application and the particulars and plans referred to in subsection (2) and after consultation with the local authority concerned, if any, the Authority shall—

- (a) register the premises in respect of which the application is made by issuing a registration certificate in the prescribed form, specifying the activity in respect of which the workplace premise is registered, the name of the employer and any other prescribed particulars; or
- (b) refuse to register the premises on all or any of the following grounds—
 - (i) that the premises are unsuitable in terms of the regulations for use as a workplace premise;
 - (ii) that, subject to section 24(2) of the Regional, Town and Country Planning Act [*Chapter 29:12*], the activity to be carried on in the workplace premise or the siting of the workplace premise would be in contravention of any approved scheme, operative regional plan, operative master plan or operative local plan as defined in that Act;
 - (iii) that the applicant has not obtained any licence or permit required under any other enactment in respect of the operations to be carried on the premises; or
- (c) register a portion of the premises in the manner prescribed in paragraph (a) and, on the ground of prescribed unsuitability, refuse to register the remaining portion.

(4) Whenever the Authority has refused to register the whole or any portion of the premises in respect of which application has been made, the Authority may issue a provisional workplace premise permit in the prescribed form in respect of the whole

or any specified portion of the premises which the Authority has refused to register, to be valid for a period to be stated in the permit, and subject to such conditions as the Authority may specify.

(5) The Authority may in terms of the regulations at any time by notice in writing to the employer of a workplace premise vary any period, prescribed particulars or conditions specified in a registration certificate or provisional workplace premise permit.

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

(7) Any person who contravenes subsection (6) shall be liable to a category 1 civil penalty as specified in the First Schedule.

(8) If the employer of a workplace premise loses the registration certificate or the provisional workplace premise permit or a duplicate registration certificate or duplicate provisional workplace premise permit issued to him or her under this section, he or she shall, not later than fourteen days after the discovery of such loss, obtain a duplicate registration certificate or duplicate provisional workplace premise permit, as the case may be, from the Authority upon payment of the prescribed fee.

(9) The employer of a workplace premise shall display the registration certificate or provisional workplace premise permit issued to him or her in terms of this section in a conspicuous place on the workplace premises.

(10) Any person who contravenes subsection (9) shall be liable to a category 1 civil penalty as specified in the First Schedule.

18 Register of workplace premises

The Authority shall keep a register of workplace premises (in hard or electronic form or both) in which he or she shall cause to be entered such particulars in relation to every workplace premises required to be registered under this Act as he or she may consider necessary.

19 Transfer and surrender of certificate of registration

(1) A registration certificate issued may, with the approval of the Authority, be transferred by the employer of the workplace concerned to another person intending to be the employer.

(2) If the employer of a registered workplace premise ceases to use the premises as a workplace, the premises shall, unless the registration certificate has in terms of subsection (1) been transferred to another employer, forthwith cease to be a registered workplace premise, and the employer shall, within seven (7) days of his or her ceasing to use the premises as a workplace, notify the Authority in writing thereof and return the registration certificate to the Authority:

Provided that, in the event of the death or insolvency of any person or the liquidation or winding-up of any company which is an employer of a workplace premise, the appointed trustee, liquidator or executor may continue to occupy such workplace premise for a period not exceeding three (3) months after such appointment and for any additional period authorised in writing by the Authority.

(3) Any person who contravenes subsection (1) shall be liable to a category 2 civil penalty as specified in the First Schedule.

20 Submission of plans for building or alteration of building

(1) No person shall—

- (a) effect any structural or other alterations to any workplace premise registered as such under this Act; or
- (b) erect or cause to be erected any building for use as a workplace premise; or
- (c) alter or add to any existing building not registered as a workplace premise under this Act with the intention of using such building or a portion thereof as a workplace premise;

unless he or she has submitted to the Authority, in duplicate, plans in the prescribed form of the site and of the proposed building, alterations or additions, together with the prescribed particulars and obtained Authority's approval.

(2) Any person who contravenes subsection (1) shall be liable to a category 2 civil penalty as specified in the First Schedule.

(3) The Authority shall advise the person submitting such plans and particulars whether he or she considers that—

- (a) the proposed structural or other alterations to any workplace premise registered as such under this Act would or would not result in such workplace premise being unsuitable for use as a workplace premise in respect of the occupation which is specified in the registration certificate for such workplace premise; or
- (b) the proposed building or additions or the building altered in the manner proposed would or would not be suitable for use as a workplace premise of the nature proposed:

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

(4) If the Authority considers that—

- (a) the proposed structural or other alterations to any workplace premise registered as such under this Act would result in such workplace premise being unsuitable for use as a workplace premise in respect of the occupation which is specified in the registration certificate for such workplace premise; or
- (b) the proposed building or additions or the building altered in the manner proposed would not be suitable for use as a workplace premise of the nature proposed:

it shall give the person submitting such plans and particulars the reasons for his or her opinion.

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

21 Machinery safety and registration

(1) All machinery and equipment shall be subject to examination and inspection by an inspector appointed in terms of section 23.

(2) No person shall use prescribed machinery without a valid registration certificate or provisional registration certificate issued by the Authority.

(3) Any person who contravenes subsection (2) shall be liable to a category 3 civil penalty as specified in the First Schedule.

22 Register and notification of occupational accidents and diseases

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

(2) Every employer shall retain any register kept in terms of subsection (1) for a period not less than fifty years subsequent to the last date upon which an entry was made therein and shall, on demand by an inspector made at any reasonable time during the said period, produce such register for inspection.

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

(4) Every employer shall keep in the form and manner prescribed a disease register and shall record in such register the particulars of any disease which he or she is required to notify in terms of subsection (6).

(5) Every employer shall retain any register kept in terms of subsection (4) for a period of fifty (50) years subsequent to the last date upon which an entry was made therein and shall, on demand by an inspector made at any reasonable time during the said period, produce such register for inspection.

(6) Whenever any employee suffers from any disease at the workplace, the employer, shall, as soon as possible thereafter in the manner and in the form prescribed notify the Authority in writing of the disease and of the prescribed particulars.

(7) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level fourteen (14) or to imprisonment for a period not exceeding five (5) years or to both such fine and such imprisonment.

PART VI

ENFORCEMENT

23 Appointment of inspectors

(1) For the purpose of assisting the Director to exercise the functions of his or her department, the Authority may appoint as inspectors—

- (a) any of its employees; or
- (b) subject to the Public Service Act [*Chapter 16:04*], any members of the Public Service; or

- (c) any other person who, in the Authority's opinion, has the necessary experience, qualifications or skill to exercise all the functions of an inspector or any such particular function, as the case may be.

(2) The Authority may appoint a body corporate as an inspector in terms of subsection (1) and where it does so all officers and employees of the body corporate who are designated by the body corporate head shall be inspectors.

(3) The Authority shall provide every inspector with a document identifying him or her as an inspector, and he or she shall produce it on request.

24 Powers of Inspectors

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

- (a) without previous notice, at any time enter any workplace;
- (b) while he or she is on the workplace or at any other reasonable time require from any person the production then and there, or at a reasonable time and place fixed by the inspector, of the registration certificate or provisional workplace permit, if any, issued in respect of the premises or of any book, notice, record, list or other document which by this Act is required to be kept or displayed;
- (c) at any reasonable time and at any place require from any person who has the possession or custody or control of any such book, notice, record, list or other document the production thereof then and there, or at a reasonable time and place fixed by the inspector;
- (d) examine and make extracts from and copies of such books, records, lists or documents and may require from any person an explanation of any entries therein and may seize any such books, records, lists or documents as in the inspector's opinion may afford evidence of any offence under this Act;
- (e) take or remove for purposes of analysis—
 - (i) samples of any substance produced, used, handled or stored on the premises;
 - (ii) equipment or machinery used or stored on the premises;

Provided that the employer shall be notified of any samples, equipment or machinery so taken or removed; and take with him or her on to any premises an interpreter or other assistant;

- (f) take with him or her a police officer if he or she has reasonable cause to foresee or encounter any serious obstruction in the execution of his or her duty;
- (g) as regards any premises which he or she has power to enter, direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation;
- (h) in the case of any equipment or machinery found in any premises which he or she enters, being any equipment or machinery which appears to him or her to have caused or to be likely to cause danger to safety or health, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary).

(2) Any employer shall at all reasonable times furnish such facilities as are required by the inspector for entering the premises and for the exercise of his or her powers under subsection (1).

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

(4) An inspector may question any person, either alone or in the presence of any other person, as he or she thinks fit, with respect to matters dealt with in this Act.

(5) An inspector shall perform the functions imposed and duties conferred upon him or her by this Act subject to such general or special instructions as the Authority may from time to time issue.

(6) The procedure for taking of samples referred to this section shall be as prescribed.

(7) Every employer of any workplace intended to be entered by an inspector shall at all reasonable times furnish such facilities as are required by the inspector for entering the premises to exercise his or her powers under subsection (1).

(8) Subject to this section, anything required to be done by the inspector in terms of this section shall be of full force and effect until it is withdrawn.

25 Powers of entry and search

(1) An inspector appointed or designated in terms of this Act shall have unlimited and unrestricted access to enter and inspect any workplace without warrant or the consent of the employer or occupier thereof (but subject to the production on demand of an identity document issued by the Authority), if he or she has reasonable grounds for believing that—

- (a) the inspection, entry or search is necessary in the interests of safety and health; or
- (b) the inspection, search or entry is necessary for the prevention, investigation or detection of an offence under this Act, or for the seizure of any equipment or machinery or the taking of a sample of any substance which is the subject matter of such an offence or evidence relating to such an offence.

(2) Any person who—

- (a) hinders, obstructs or resists an inspector or police officer in the performance of any function in terms of this Act; or
- (b) fails or refuses to produce any document or thing when required to do so by an inspector or police officer in terms of this Act;

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

26 Investigations of accidents by inspectors

(1) Whenever in or about a workplace or in connection with the activities of a workplace—

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

an inspector shall hold an investigation into such incident or accident or occurrence.

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

(3) In the case of an incident or accident causing loss of life or serious bodily injury or where the inquiry reveals a contravention of any provision of this Act, the Director shall send a copy of his or her report and of the evidence to the Police.

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

27 Disclosure of confidential information

Any inspector or, employee or agent of the Authority who—

- (a) for personal gain, makes use of any information which he or she has acquired in the exercise of his or her functions and which relates to—
 - (i) the financial affairs of any person; or
 - (ii) any manufacturing process or commercial secret;

shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding (5) five years or to both such fine and such imprisonment;

- (b) discloses any information referred to in paragraph (a) to any person except—
 - (i) for the purposes of legal proceedings under this Act or any scheme; or
 - (ii) to the extent that it may be necessary to do so for the purposes of this Act or any scheme, to another inspector or, employee or agent of the Authority;

shall be guilty of an offence and liable to a fine not exceeding level (6) six or to imprisonment for a period not exceeding (1) one year or to both such fine and such imprisonment.

28 Improvement notice

(1) If, in the opinion of an inspector, the employer has failed to comply with this Act, he or she may—

- (a) by notice in writing as provided in the Second Schedule setting forth in what respect the employer has, in his or her opinion, failed to comply with this Act or in what respect the premises are, in his or her opinion, no longer suitable for use as a workplace premise, require such employer to take the steps and make the alterations mentioned in such notice; or
- (b) by a similar notice require such employer to submit to him or her a statement setting forth the steps which such employer proposes to take and, if alterations are proposed, also the proposed plans, showing the alterations which such employer proposes to make in order to comply with this Act or to render the premises suitable for use as a workplace; and
- (c) by further notice in writing require such employer to take the steps and make the alterations so proposed without modification or with such modification as the inspector may determine;

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

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

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

- (a) he or she shall be liable to a category 2 civil penalty specified in the First Schedule; and
- (b) without affecting any proceedings instituted for an offence in terms of paragraph (a), the Authority may by further notice in writing to the employer cancel the registration certificate in respect of the workplace premise concerned, whereupon the premises shall cease to be registered as a workplace premise under this Act.

(4) If the Authority establishes that the whole or part of any premises constituting a registered workplace premise are no longer suitable in terms of this Act for use as a workplace premise and cannot be rendered suitable, he or she may by notice in writing to the employer cancel the registration certificate in respect of that workplace premise, as from a date at least six months after the date of such notice, and the premises shall thereafter cease to be registered as a workplace premise under this Act.

(5) The Authority may vary or withdraw any such notice.

29 Prohibition Notice

(1) This section applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which any relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this section applies the Authority is of the opinion that, as carried on or about to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that employer a prohibition notice as specified in the Third Schedule.

(3) A prohibition notice shall—

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his or her opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his or her opinion any matter involves or, as the case may be, will involve a contravention of any relevant statutory provision, state that he or she is of the opinion, specify the provision or provisions as to which he or she is of that opinion, and give particulars of the reasons why he or she is of that opinion; and
- (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) and any associated contraventions of provisions so specified in pursuance of paragraph (c) have been remedied.

(4) A direction given in pursuance of subsection (3)(d) above shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious

personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case.

(5) Any person who contravenes the provisions of subsection (2), (3) or (4) shall be guilty of an offence and liable to a fine not exceeding level (14) fourteen or to an imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

30 Powers of Inspector as to certain defects remediable by other competent authorities

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

(2) When an inspector finds any such act or default as aforesaid he or she may take with him or her into the workplace a competent person of the relevant competent authority.

(3) If, after notice of an act or default is given by an inspector under this section to the relevant competent authority, proceedings are not taken for punishing or remedying the act or default, the inspector may take the like proceedings for the punishment or remedying thereof as the relevant competent authority may have taken and shall be entitled to recover from that competent authority all such expenses incurred by him or her.

31 Service of notice under this Act

A notice under this Act to any person may be served on him or her personally or by posting a registered letter addressed to him or her personally or under his or her usual business name or style at his or her place of business or his or her residence.

32 Establishment of Occupational Safety and Health Appeals Board

(1) Any person aggrieved by the decision of Bureau may appeal to the Minister within fourteen (14) days when the decision was made and the Minister shall, within a month of receiving the appeal establish a board, to be known as the Occupational Safety and Health Appeals Board, which shall consist of three (3) members, with each having not less than five (5) years experience, as follows—

- (a) one occupational medical practitioner;
- (b) one registered occupational safety and health practitioner;
- (c) one registered legal practitioner.

(2) The members of the Occupational Safety and Health Appeals Board shall be paid out of the Authority Funds such remuneration or allowances or both as the Minister in consultation with the National Social Security Authority Board of Directors, may from time to time determine.

(3) The members of the Board shall hold office for such period until the appeal has been finalised.

(4) Any person who is dissatisfied with the decision of the Occupational Safety and Health Appeals Board of Appeal may, within twenty-one (21) days, appeal to the Administrative Court.

33 Offences and penalties

(1) Subject to this Act, any person who—

- (a) contravenes any reasonable safety requirement imposed by an inspector in terms of this Act;
 - (b) prevents or attempts to prevent any other person from appearing before an inspector or from answering any question to which an inspector may in terms of this Act require an answer;
 - (c) tampers with or misuses any safety equipment installed or provided to any person by an employer or user;
 - (d) intentionally uses any safety equipment at a workplace or in the course of his or her employment in a manner that has the effect of injuring or killing any person at the workplace;
 - (e) knowingly makes a statement which is false—
 - (f) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or
 - (g) for the purpose of obtaining the issue of a document under any relevant statutory provision to himself or herself or another person;
 - (h) intentionally makes a false entry in any register, book, notice or other document required by or under any relevant statutory provision to be kept, served or given or, with intent to deceive, to make use of any such entry which he or she knows to be false;
 - (i) intentionally deceives, forges or uses a document issued or authorised to be issued under any or the relevant statutory provisions or required for any purpose there under or makes or be in possession of a document so closely resembling any such document as to be calculated to deceive;
 - (j) impersonates to be an inspector;
 - (k) willfully or recklessly does anything that threatens the safety and health of a person at a workplace or in connection with the use of plant, equipment or machinery;
 - (l) intimidates any authorised official in the exercise of the official's functions under this Act;
 - (m) refuses or fails to answer any lawful question which an inspector in the exercise of his or her functions has put to him or her;
 - (n) refuses or fails to comply with any lawful requirement or order made by an inspector;
 - (o) delays or hinders an inspector in the exercise of his or her functions;
 - (p) fails to comply with an order made by a court in terms of this Act;
- shall be guilty of an offence and liable to a fine not exceeding level seven or imprisonment for a period not exceeding two years or both to such fine and such imprisonment.

(2) Any person who causes the death of another person at the workplace shall be guilty of an offence and the provisions of section 49 of the Criminal Law (Codification

and Reform) Act, [Chapter 9:23] shall apply with necessary changes to the sentencing of such guilty person.

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

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

(4) If any employer, director of body corporate, manager, agent, architect, contractor, employee of any employer of a workplace who is facing allegations of causing workplace accident either through an act or omission proves that—

- (a) such act or omission occurred without the connivance or permission of the employer or builder;
- (b) all reasonable steps were taken by the employer or builder to prevent any act or omission of the kind in question;
- (c) it was not in any circumstance within the scope or authority or in the course of the employment of the manager, agent, architect, contractor, employee to do or to omit to do acts, whether lawful or unlawful, of the character of the act or omission charged;

Such proved facts shall constitute defence for the party proving such facts.

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

(6) Any such director of body corporate, manager, agent, architect, contractor, employee may be so convicted and sentenced in addition to the employer or builder.

(7) A worker shall be found guilty of an offence if they do not comply to safety and health regulations.

34 Disclosure of certain information prohibited

(1) No person in the exercise of his or her powers under this Act, or in the performance of his or her duties shall be permitted to disclose information to any other person, except:—

- (a) to a court of law or to any person who by law is empowered to compel the disclosure of such information; or
- (b) to the Minister or to any person acting in the execution of this Act;

in so far as such information may be necessary for the execution thereof.

(2) Any person who willfully contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level (6) six or to imprisonment for a period not exceeding (1) one year or to both such fine and such imprisonment.

35 Locking of workplaces

(1) No employer of a workplace or employer shall, without good reason, cause or permit all the entrances to his or her workplace at the same time to be locked or

otherwise rendered incapable of being opened from the outside or from inside while any work is being performed in such a workplace.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level (6) six or to imprisonment for a period not exceeding (1) one year or to both such fine and such imprisonment.

36 General prohibitions

(1) The Minister may by notice in the *Gazette* declare—

- (a) that no employer shall require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out of which in the opinion of the Minister is an activity which threatens or is likely to threaten the safety or health of an employee belonging to that category of employees, or that no employer shall require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;
- (b) that no employer shall require or permit any employee to perform any work in connection with the carrying out of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the safety or health of an employee, or that no employer shall require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and
- (c) that no employer shall require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on or in any premises where any substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is a substance or substance which threatens or is likely to threaten the safety or health of an employee.

(2) Before exercising his or her powers in terms of subsection (1) the Minister shall publish in the *gazette*, notice of intent and shall call for any objections thereto within a period specified in such notice.

PART VII

FINANCES

37 Fund

(1) The Accident Prevention and Workers' Compensation Scheme as established under the National Social Security Authority (NSSA) Act for the provision to workers of such compensation in respect of injury arising from their employment and for the promotion of occupational safety and health shall continue in operation under this Act.

(2) Part IX of the National Social Security Authority (Accident Prevention and Workers' Compensation Scheme)(Prescribed Matters) Notice, 1990 published in statutory instrument 68 of 1990 is hereby incorporated in this Act as the Fourth Schedule under the name Accident Prevention and Worker's Compensation Fund and Part IX of the statutory instrument is repealed without the interruption of continuity.

38 Funding of Occupational Safety and Health programmes

Occupational safety and health activities and programmes shall be funded—

- (a) by the Fund to the extent permitted under the Fourth Schedule;

- (b) monies appropriated by Parliament for the Authority in connection with this Act—
 - (i) fees charged by the Authority;
 - (ii) donations.

39 Audit

The Audit provisions of the National Social Security Authority Act [*Chapter 17:04*] shall apply to the Funds of the Authority established in terms of this Part.

PART VIII

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL

40 Establishment of the Zimbabwe Occupational Safety and Health Advisory Council

- (1) In this section—

“employees organisation” means any organisation, trade union or association formed to represent or advance the interests of any employees or class thereof in respect of their employment;

“employers organisation” means any organisation or association formed to represent or advance the interests of any employers or groups thereof in respect of matters relating to employment;

- (2) There shall be a tripartite body to be called Zimbabwe Occupational Safety and Health Advisory Council.

- (3) The Council shall consists of members appointed by the Minister not exceeding twenty-two namely—

- (a) six government representatives—
 - (i) one representative from the Ministry responsible for Labour;
 - (ii) one representative from the Ministry responsible for Health;
 - (iii) one representative from the Ministry responsible for Transport;
 - (iv) one representative from the Ministry responsible for Agriculture;
 - (v) one representative from the Ministry responsible for Mines;
 - (vi) one representative from the Ministry responsible for Industry and Commerce;
- (b) six representatives from the employer organisations;
- (c) six representatives from employees organisations;
selected for their competency, experience and suitability in occupational safety and health for appointment as members, excluding the chairperson.

- (4) The Director of Occupational Safety and Health shall be an *ex-officio* member.

- (5) The Chairperson shall be appointed by the Minister for his or her knowledge in occupational safety and health issues.

- (6) The Chairperson may invite the participation of other Government Ministries as and when Occupational Safety and Health issues relating to their portfolios are under discussion.

(7) The Chairperson may invite from time to time relevant professionals and other experts from national or international organisations or agencies to brief on specific topics during special sittings of the Council.

(8) The functions of the Council shall be—

- (a) to advise the Minister on all aspects of occupational safety and health management;
- (b) promoting social dialogue on Occupational Safety and Health matters amongst the social partners;
- (c) to do such research and conduct such investigations as it may deem necessary.

(9) The members of Council shall be appointed for a period of four years renewable once.

(10) Sitting allowances, that may be prescribed by the Board of the Authority shall be payable to members of the Council for attending the meetings.

(11) The Council shall convene meetings quarterly and extra-ordinary meetings can be convened when necessary.

(12) The Council may establish one or more committees in the exercise of its functions.

(13) A member of a technical committee shall be appointed by the Council by reason of his or her knowledge and experience of the matter for which the committee is established, and such a member need not necessarily be a member of the Council.

(14) The Authority shall provide the Council with such personnel as may be necessary for the effective discharge of the functions of the Council, and such person or persons shall perform their functions subject to the control and direction of the Director.

(15) A meeting of a technical committee shall be held at such time and place as may be determined by the chairperson of the Council, and in accordance with rules approved by the Council.

(16) A member of a technical committee who is not an officer of the Department may be paid from money appropriated for such purpose by the Authority.

PART IX

GENERAL

41 Powers of Court in relation to convicted persons

Whenever a person is convicted of an offence consisting of a failure to comply with a provision of this Act or of any direction or notice issued thereunder, the court convicting him or her may, in addition to any punishment imposed on him or her in respect of that offence, issue an order requiring him to comply with the said provision within a period determined by the court.

42 Limitation of liability

(1) No member of the Board, employee or agent of the Authority shall be liable in respect of an action or thing done or omitted in good faith in the exercise of a power or the performance of a duty action or thing in terms of this Act, or in respect of anything that may result there from.

(2) The provisions of subsection (1) shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act.

43 Accreditation of occupational safety and health service providers

(1) No person shall provide prescribed occupational safety and health service unless they are accredited by the Authority.

(2) The Authority may prescribe standards, procedures and other related matters for the accreditation of occupational safety and health service providers.

(3) Any accredited occupational safety and health service provider referred to in subsection (1) shall report in writing any occupational safety and health contraventions which require the attention of the Authority.

(4) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six (6) months or to both such fine and such imprisonment.

44 Approval of codes of practice by Authority

(1) For the purpose of providing practical guidance with respect to the requirements of any provision of safety and health regulations or of any existing statutory provision, the Authority may approve and issue such codes of practice as in its opinion are suitable for that purpose.

(2) The Authority may consult the Council, any government department or other bodies that appear to the Authority to be appropriate (and, in particular, in the case of a code relating to medical issues the Ministry of Health) and consult such government departments and other bodies, if any, as in relation to any matter dealt with in the code.

(3) Where a code of practice is approved by the Authority under subsection (1), the Authority shall issue a notice in writing—

- (a) identifying the code in question and stating the date on which its consideration by the Authority is to take effect; and
- (b) specifying the grounds for which the code may be approved or rejected.

(4) The Authority may—

- (a) from time to time, revise the whole or any part of any code of practice prepared by it or some other persons in pursuance of this part;
- (b) approve any revision or proposed revision of the whole or any part of any code of practice approved under this section;

and the provisions of subsections (2) and (3), shall with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1).

(5) The Authority may at any time withdraw its approval from any code of practice approved under this section, but before seeking such consent, the authority shall consult the same government departments and other bodies as it would be required to consult under subsection (2) if it were proposing to approve the code.

(6) Where under subsection (5), the Authority withdraws its approval from any code of practice approved under this section, the Authority shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.

45 Appeals against decisions of Authority

(1) Any person who is aggrieved by any decision of the Authority may, within fourteen days of the date of such decision, lodge an appeal in the prescribed form and manner.

(2) Appeals in respect of a decision, order or action of the Authority shall be made to any magistrate of the province appointed for the purpose of this section by the Minister responsible for justice, the Chief Magistrate or the provincial magistrate of the province in which the workplace is situated or, in respect of a requirement or decision under any of the other sections mentioned in subsection (1), to the Administrative Court.

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

46 Power of Minister to issue directives

(1) The Minister may give the Authority such general directions relating to the policy the Authority is to observe in the exercise of its functions as the Minister considers to be necessary in the national interest, which policy directions must—

- (a) not be inconsistent with any provision of this Act; and
 - (i) be issued in good faith, apply prospectively and not retrospectively, and be of general applicability; in particular the policy directions—
 - (ii) must not be issued in relation to any particular application or appeal pending before the Authority and must not apply so as to influence or direct the Authority on the outcome of any particular application, appeal or other matter that is being considered by the Authority immediately before the directions are issued, or
 - (iii) must not prejudice the application of the rules of natural justice by the Authority in the exercise of its quasi-judicial functions;
- (b) clearly delimit the scope of their application and must otherwise not be vague or ambiguous in their terms; and
- (c) clearly express the national interest at stake;
- (d) must be clear (whether expressly or by necessary implication) that they apply or are in force for a fixed or indefinite period, or that they expire on the happening of any event.

47 Regulations

(1) The Minister may by regulations prescribe all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be prescribed for the better carrying out of or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) licensing requirements;
- (b) registration and certification of workplaces;
- (c) designating registrable equipment and machinery;
- (d) prescribing health and welfare facilities at the workplace;
- (e) fees and charges to be paid in respect of registrations effected or certificates issued, services or facilities provided or any other matter or thing done under or for the purposes of this Act;

- (f) the manufacture, supply, keeping or use of any substance at the workplace;
- (g) the carrying on of any process or the carrying out of any operation at the workplace;
- (h) the requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing or inspection of any plant;
- (i) the requirements with respect to the testing, labeling or examination of any substance;
- (j) the requirements with respects to the carrying out of research;
- (k) the importation into Zimbabwe or the landing or unloading there of substances of any specified description;
- (l) the requirements with respect to the manner and means of transporting of substances of any specified description, including requirements with respect to the construction, testing and marking of containers and means of transport and the packaging and labeling of substances in connection with their transport;
- (m) the carrying on of any specified thing except under the authority and in accordance with the terms and conditions of a licence, or except with the consent or approval of a specified authority;
- (n) requiring any person, premises or thing to be registered in any specified circumstances or as a condition of the carrying on of any specified activity or the doing of any specified thing;
- (o) requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of person (or persons with specified qualifications or experience, or both) to perform specified functions, and imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions;
- (p) restricting the performance of specified functions to persons possessing specified qualifications or experience;
- (q) regulating or prohibiting the employment in specified circumstances of all persons or any class of persons;
- (r) requiring the making of arrangements for securing the health of persons at work or other persons, including arrangements for medical examinations and health surveys;
- (s) requiring the making of arrangements for monitoring the atmospheric or other conditions in which persons work;
- (t) regulating requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as the structural condition and stability of premises, the means of access to and egress from premises, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations, dust and fumes;
- (u) securing the provisions of specified welfare facilities for persons at work, including in particular such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshments facilities;
- (v) veniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshments facilities;

- (w) regulating requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including clothing affording protection against the weather;
- (x) requiring in specified circumstances the taking of specified precautions in connection with the risk of fire;
- (y) prohibiting or imposing requirements in connection with the emission into the atmosphere of any specified gas, smoke or dust or any other specified substances whatsoever;
- (z) providing for requirements with respect to the instruction, training and supervision of persons at work;
- (aa) regulating requirements with respect to the keeping and preservation of records and other documents, including plans and maps.

48 Repeal of Cap. 14:08 and Cap. 15:08, transitional provisions and savings

(1) In this section—

“repealed Acts” means the Pneumoconiosis Act [*Chapter 15:08*] and the Factories and Works Act [*Chapter 14:08*];

“effective date” means the date upon which this Act becomes operational.

(2) Subject to this section, the Pneumoconiosis Act [*Chapter 15:08*] and the Factories and Works Act [*Chapter 14:08*] are repealed.

(3) Any regulations, rules or by-laws which were made by the Minister under the repealed Acts and which were in force immediately before the effective date of this Act shall continue in force as if they had been made by the Minister under the appropriate provision of this Act.

(4) Any order, policy, notice, application, exemption, approval, permission or other thing which was lawfully made, granted, given, issued, done or commenced in terms of the repealed Acts and which, immediately before the effective date, had or was capable of acquiring legal effect, shall continue to have, or be capable of acquiring, as the case may be, the same effect as if it had been made, granted, given, issued, done or commenced, as the case may be, under the appropriate provision, if any, of this Act.

FIRST SCHEDULE (*SECTION 15, 17, 19, 20, 21 and 28*)

CIVIL PENALTY ORDERS

ARRANGEMENT OF PARAGRAPHS

Section

1. Interpretation in First Schedule.
2. Power of Inspector to issue civil penalty orders and categories thereof.
3. Service and enforcement of civil penalties and destination of proceeds thereof.
4. Limitation on issuance and enforcement of civil penalty orders.
5. Civil penalties to be paid in foreign currency by certain defaulting workplaces or miners.
6. When hearings on question whether to serve civil penalty orders may be held.
7. Evidentiary provisions in connection with civil penalty orders.

Interpretation in First Schedule

1. In this Schedule, unless the context otherwise requires—

- “citation clause”, in relation to a civil penalty order, is the part of the order in which the Inspector names the defaulter and cites the provision of this Act in respect of which the default was made or is alleged, together with (if necessary) a brief statement of the facts constituting the default;
- “civil penalty register” means the register referred to in paragraphs 2, 3 and 6; (“Evidentiary provisions in connection with civil penalty orders”);
- “continuing default” means a default in complying with any statutory obligation or duty which is continuous in nature at the time it is detected and of which the remediation consists exclusively or primarily in ceasing to do the action complained of;
- “corporate defaulter” means a defaulter which is a company, syndicate or other corporate person (and includes a partnership for the purpose of paragraph 3(3) and (6));
- “date of issuance”, in relation to the service of a civil penalty order, means the date on which it is served;
- “defaulter” means the person on account of whose default a civil penalty order is served, and includes an alleged defaulter;
- “level”, in relation to a fine, means a level on the standard scale;
- “officer”, in relation to a corporate defaulter, means a member of its board or other governing body (by whatever name called), and if there is no such board or governing body, any employee or agent of the corporate defaulter acting on behalf of the corporate defaulter;
- “standard scale” means the standard scale of fines referred to in section 280 of the Criminal Law Code the thereto;
- “penalty clause”, in relation to a civil penalty order, is the part of the order that fixes the penalty to be paid by the defaulter, and “fixed penalty clause” and “cumulative penalty clause” shall be construed accordingly;
- “remediation clause” in relation to a civil penalty order, is the part of the order that stipulates the remedial action to be taken by the defaulter;
- “show cause clause” in relation to a civil penalty order is the part of the order that requires the defaulter to show cause why the civil penalty order should not have been served or should be withdrawn.

Power of Inspector to issue civil penalty orders and categories thereof

2. (1) Where default is made in complying with any provision of this Act or of any regulations or order made under this Act for which a civil penalty is specified to be leviable, the Inspector may, in addition to, and without derogating from, any criminal or non-criminal penalty that may be imposed by this Act or any other law for the conduct constituting the default, serve upon the defaulter a civil penalty order of the appropriate category specified in subparagraph (2), (3), (4), (5) or (6) or any combination of such orders as the provision in question may allow.

(2) A category 1 civil penalty order provides for—

- (a) a combination of a fixed penalty and a cumulative penalty over a period not exceeding ninety days for a specified completed and irremediable

default (that is to say a default in respect of which no remediation is sought by the Inspector or is possible), of which—

- (i) the fixed penalty shall be the maximum amount specified for level 7 (or the penalty specified in paragraph 3, as the case may be); and
 - (ii) the cumulative penalty shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the fixed penalty under paragraph (a);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Inspector why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown within that period the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it is shown that the order was issued in error the Inspector shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (3) A category 2 civil penalty order provides for—
- (a) a cumulative civil penalty for a specified completed but remediable default which—
- (i) must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her);
 - (ii) upon the civil penalty becoming operative because of non-compliance with the requested remedial action, shall provide for a penalty of the maximum amount of level three for each day, not exceeding ninety days, during which the defaulter continues to be in default (beginning on the day after the last day on which the defaulter fails to take the remedial action);
- (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Inspector why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it is shown that the order was issued in error the Inspector shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (4) A category 3 civil penalty order provides—
- (a) for a combination of a fixed penalty and potentially two cumulative penalties for a specified completed but partially remediable default, of which—

- (i) the fixed penalty shall be the maximum amount specified for level five; and
 - (ii) the cumulative penalty—
 - A. relating to subparagraph (i) shall be a penalty of the maximum amount of level three for each day (beginning on the day after the service of a civil penalty order) during which the defaulter fails to pay the civil penalty under subparagraph (i); and
 - B. relating to the taking of the specified remedial action—
 - I. shall be the maximum amount of level three for each day, not exceeding ninety days, that the defaulter fails to take the specified remedial action with effect from a specified date; and
 - II. must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order within the time specified in the order;
 - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Inspector why the order should not have been issued, that is to say, to show that the order was issued in error:
 - Provided that—
 - (i) if no such cause is shown within that period, the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it is shown that the order was issued in error, the Inspector shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (5) A category 4 civil penalty order provides for—
- (a) a cumulative penalty for a continuing default which—
 - (i) must be suspended conditionally upon the defaulter immediately (that is to say, within forty-eight hours after the civil penalty is served on him or her) ceasing the default;
 - (ii) upon the civil penalty becoming operative because of failure to cease the default immediately, shall be the maximum amount fixed for level six for each day during which the default continues, not exceeding a period of ninety days;
 - (b) the suspension of the operation of the civil penalty order for a period of 48 hours from the date of its issuance to enable the alleged defaulter to show cause to the Inspector why the order should not have been issued, that is to say, to show that the order was issued in error:
 - Provided that—
 - (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
 - (ii) if within that period it is shown that the order was issued in error the Inspector shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.
- (6) A category 5 civil penalty order provides for—

- (a) a combination of a fixed penalty and a cumulative penalty for a specified continuing default where the time of compliance is of the essence—
 - (i) both of which penalties must be suspended conditionally upon the defaulter taking the remedial action specified in the civil penalty order immediately (that is, within 24 hours of the issuance of the order, or a lesser specified time specified in the order);
 - (ii) which, upon the civil penalty becoming operative because of noncompliance with the requested remedial action, shall provide—
 - A. a fixed penalty of the maximum amount for level seven for not meeting the specified deadline; and
 - B. a cumulative penalty of the maximum amount of level three for each day, not exceeding ninety days during which the defaulter fails to pay the amount of the fixed penalty specified in—
 - I. subparagraph (i); and
 - II. subparagraph A;
- (b) the suspension of the operation of the civil penalty order for a period of 24 hours from the date of its issuance to enable the alleged defaulter to show cause to the Inspector why the order should not have been issued, that is to say, to show that the order was issued in error:

Provided that—

- (i) if no such cause is shown, within that period the order shall be deemed to have been issued with effect from the beginning of such period;
- (ii) if within that period it is shown that the order was issued in error the Inspector shall withdraw the order and make the appropriate notation of withdrawal in the civil penalty register.

Service and enforcement of civil penalties and destination of proceeds thereof

3. (1) References to the Inspector serving upon a defaulter any civil penalty order in terms of this Act, are to be interpreted as requiring the Inspector to serve such order (or such notice) in writing to the defaulter—

- (a) by hand delivery to the defaulter or his or her director, manager, secretary or accounting officer in person (or through an inspector or other person employed in the office of the Inspector, or a police officer), or to a responsible individual at the place of business of the defaulter; or
- (b) by delivery through a commercial courier service to the defaulter's place of business in the workplace concerned or his or her principal office in Zimbabwe or other place of business of the defaulter; or
- (c) by electronic mail address furnished by the defaulter to the Inspector; or
- (d) if after diligent inquiry service of the civil penalty order by any of the foregoing means has not been made, the defaulter shall be deemed to be notified of the civil penalty order if the Inspector posts a copy of it for fourteen continuous days on the notice board at his or her Office (in which event the civil penalty order shall be deemed to be served on the defaulter on the first date of such posting):

Provided that in this case the Inspector shall also depose in an affidavit to the following facts, namely that—

- (i) service of the civil penalty order could not be made by any of the means referred to in subparagraphs (a), (b), (c) or (d); and
- (ii) the first date on which the copy of the civil penalty order was posted on the notice board of his or her Office;

and the Inspector shall file such affidavit for record.

(2) The Inspector shall not extend the period specified in a civil penalty order for compliance therewith except upon good cause shown to him or her by the defaulter, and any extension of time so granted (not exceeding in any case 30 days) shall be noted by the Inspector in the civil penalty register.

(3) The Inspector may, if the defaulter is a corporate defaulter—

- (a) in the same civil penalty order, name the corporate defaulter and every officer of the company, syndicate, other corporate person or partnership concerned as being so liable separately, or issue separate civil penalty orders in respect of the defaulter and each of the officers concerned;
- (b) choose to serve the order only upon the corporate defaulter without naming the officers if, in his or her opinion (which opinion the Inspector shall note in the civil penalty register, there may be a substantial dispute of fact about the identity of the particular officer or officers who may be in default:

Provided that nothing in this subparagraph affects the default liability of officers of the defaulter mentioned in subparagraph (6).

(4) The Inspector may, in the citation clause of a single civil penalty order, cite two or more defaults relating to different provisions of this Act if the defaults in question—

- (a) occurred concurrently or within a period not exceeding six months from the first default or defaults to the last default or defaults; or
- (b) arose in connection with the same set of facts

(5) Where in this Act the same acts or omissions are liable to both criminal and civil penalty proceedings, the Inspector may serve a civil penalty order at any time before the commencement of the criminal proceedings in relation to that default, that is to say at any time before—

- (a) summons is issued to the accused person for the prosecution of the offence; or
- (b) a statement of the charge is lodged with the clerk of the magistrates court before which the accused is to be tried, where the offence is to be tried summarily; or
- (c) an indictment has been served upon the accused person, where the person is to be tried before the High Court;

as the case may be, but may not serve any civil penalty order after the commencement of the criminal proceedings until after those proceedings are concluded (the criminal proceedings are deemed for this purpose to be concluded if they result in a conviction or acquittal, even if they are appealed or taken on review). (For the avoidance of doubt it is declared that the acquittal of an alleged defaulter in criminal proceedings does not excuse the defaulter from liability for civil penalty proceedings).

(6) Every officer of a corporate defaulter mentioned in the civil penalty order by name or by office, is deemed to be in default and any one of them can, on the basis of joint and several liability, be made by the Inspector to pay the civil penalty in the event that the defaulter does not pay.

(7) Upon the expiry of the ninety day period within which any civil penalty order of any category must be paid or complied with, the defaulter shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both (in the case of a corporate defaulter, every one of its officer is liable to the penalty of imprisonment, and to the fine if the corporate defaulter fails to pay it).

(8) The amount of any civil penalty shall—

- (a) be payable to the Inspector and shall form part of the Funds of the Authority; and
- (b) be a debt due to the Authority and shall be sued for in any proceedings in the name of the Inspector acting for the Authority in any court of competent civil jurisdiction:

Provided that for this purpose, the court of the provincial magistrate for the location of the workplace concerned shall be deemed to have jurisdiction to hear the suit even if the monetary amount sought would otherwise exceed its prescribed jurisdiction.

(9) Proceedings in a court for the recovery of a civil penalty shall be deemed to be proceedings for the recovery of a debt as if the defaulter had acknowledged the debt in writing.

(10) If the Inspector in terms of subparagraph (8)(b) desires to institute proceedings to recover the amounts of two or more civil penalties in any court of competent civil jurisdiction, the Inspector may, after notice to all interested parties, bring a single action in relation to the recovery of those penalties if the orders relating to those penalties—

- (a) were all served within the period of twelve months preceding the institution of the proceedings; and
- (b) were served—
 - (i) on the same defaulter; or
 - (ii) in relation to the same default or set of defaults, whether committed by the same defaulter or different defaulters; or
 - (iii) on two or more defaulters whose registered offices are in the same area of jurisdiction of the court before which the proceedings are instituted.

(11) Unless the Inspector has earlier recovered in civil court the amount outstanding under a civil penalty order, a court convicting a person of an offence against subparagraph (7), may on its own motion or on the application of the prosecutor and in addition to any penalty which it may impose give summary judgement in favour of the Inspector for the amount of any outstanding civil penalty due from the convicted defaulter.

Limitation on issuance and enforcement of civil penalty orders

4. (1) No civil penalty order may be issued more than twelve months from the date when the default or alleged default occurred or ceased to occur.

(2) A single civil penalty order may be served in respect of two or more defaults committed by the defaulter within a single period not exceeding six months, but if the aggregate of such defaults results in the defaulter becoming liable to a penalty or combined penalties in excess of the equivalent of one hundred and twenty thousand United States dollars, the Inspector may select one or any combination of those defaults

which will not result in the defaulter becoming so liable, while reserving the right to serve a second or further additional civil penalty orders in respect of the defaults not so selected if the defaulter does not comply with the first civil penalty order.

(3) Any amount owing under a civil penalty order is a debt owed to the State for the purposes of section 15(b) of the Prescription Act [*Chapter 8:11*].

Civil penalties to be paid in foreign currency by certain defaulting workplaces

5. (1) A defaulter who for a workplace shall pay any monetary penalty under a civil penalty order in United States dollars or another foreign currency at the interbank rate of exchange of the Zimbabwe dollar for the United States dollar prevailing on the day the civil penalty order is issued.

Evidentiary provisions in connection with civil penalty orders

6. (1) For the purposes of this Schedule the Inspector shall keep a civil penalty register wherein shall be recorded—

- (a) the date of service of every civil penalty order, the name and the physical or registered office address of the person upon whom it was served, the civil penalty provision in relation to which the defaulter was in default, and the date on which the civil penalty order was complied with or the penalty thereunder was recovered as the case may be;
- (b) if the alleged defaulter responded to the show cause clause in the civil penalty order with the result that—
 - (i) the order was cancelled because it was issued in error, the fact and the date of such cancellation; or
 - (ii) a hearing was held in accordance with paragraph 5, then—
 - A. a record or an adequate summary of any representations made at the hearing by way of an entry or cross-reference in, or annexure to, the register (and if recorded by way of annexure or cross-reference, the representations must be preserved for a period of at least six years from the date when they were made to the Inspector);
 - B. a record of the outcome of the hearing, that is to say, whether or not the civil penalty order was cancelled, and if not the date from which it was to have effect and whether a different defaulter was served with it.

(2) A copy of—

- (a) any entry in the civil penalty register, and of any annexure thereto or record cross-referenced therein, authenticated by the Inspector as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be prima facie proof of the contents therein; or
- (b) any civil penalty order that has been served in terms of this Act, authenticated by the Inspector as a true copy of the original, shall on its mere production in any civil or criminal proceedings by any person, be prima facie proof of the service of the order on the date stated therein upon the defaulter named therein, and of the contents of the order.

SECOND SCHEDULE (*Section 28*)

IMPROVEMENT NOTICE

I _____ an Inspector appointed under section _____ of the Occupational Safety and Health Act, _____ and entitled to issue this notice I, hereby give you notice that I am of the opinion that at _____ you, as an employer/a self-employed person/a person wholly or partly in control of the premise/other* are contravening have contravened in circumstances that make it likely that the contravention will continue or to be repeated* the following provisions _____ and I hereby direct you to remedy the said contraventions or, as the case may be, the matters occasioning them by (and I direct that the measures specified in the inspection report which forms contraventions or matters)*

Signature _____ Date _____

THIRD SCHEDULE (*Section 29*)

PROHIBITION NOTICE

I, _____ an inspector appointed under section _____ of the Occupational Safety and Health Act No _____ of _____ and entitled to issue this notice. I, hereby give you notice that I am of the opinion that, the following activities namely:

Which are being carried on by you/likely to be carried on by you/under your control at, _____ involve, or will involve, a risk of serious personal injury, and that the matters which give rise/will give rise to the said risk(s) are: _____ and I direct that the said activities shall not be carries on by you or under your control, immediately/after unless the said contravention(s) and matters have been remedied. I further direct that the measures specified in the inspection report which forms part of this notice shall be taken to remedy the said contravention(s) or matters.

Signature _____ Date _____

FOURTH SCHEDULE (*Section 37*)ACCIDENT PREVENTION AND WORKERS'
COMPENSATION FUND*Continuance and vesting of Fund*

1. The Fund shall consist of—

- (a) the assessment paid by employers under this Scheme;
- (b) any moneys paid by employers to the general manager under this Scheme;
- (c) any moneys paid as penalties imposed under this Scheme other than penalties imposed by a court of law;
- (d) interest from investments of the Fund;
- (e) any moneys transferred in terms of paragraph 3(c);
- (f) any payments made to the general manager by employers individually liable;
- (g) any other sums to which the Fund may become entitled.

Application of fund

2. (1) The moneys of the Fund shall be applied by the general manager—
- (a) for the payment of compensation, medical aid or other pecuniary benefits to or on behalf of or in respect of workers or dependants under this Scheme wherever no other person is made liable for such payment;
 - (b) to fund the Occupational Safety and Health activities;
 - (c) for the repayment of moneys borrowed in terms of paragraph 3 and any interest on such borrowings;
 - (d) for the payment of expenditure connected with the reinsurance of the Fund;
 - (e) for the payment of expenditure properly incurred by the general manager in carrying out his functions under this Scheme;
 - (f) to pay any charges necessary for or in connection with the medical examination of worker;
 - (g) for any losses incurred in the realisation of any assets of the Fund;
 - (h) for any other expenditure lawfully appertaining to the Fund.

(2) Any surplus in the Fund may be applied in the reduction of future assessments made in terms of section 73 of the National Social Security Authority (Accident Prevention and Worker's Compensation Scheme)(Prescribed Matters) Notice, 1990 published in Statutory Instrument 68 of 1990 or may be transferred to reserves or may be allowed to remain in the Fund and any deficiency in the Fund may be made good by an increase in the amount of any future assessment on employers under this Scheme.

(3) There may be established within the Fund such reserve funds as the Board considers necessary for the purposes of this Scheme.

Power of general manager to acquire and borrow money

3. Subject to the approval of the Board, in consultation with the Minister responsible for finance, the general manager may—

- (a) borrow money within Zimbabwe if, in his opinion, it is necessary to do so in order to meet any unforeseen contingency or expenditure incurred by him in connection with the administration of this Scheme or to meet any liquid deficiencies in the Fund, at a rate of interest and on terms approved by the Minister responsible for finance;
- (b) purchase or otherwise acquire property required wholly or partly for the purposes of this Scheme and alienate any property so acquired. All properties so acquired shall be held in the name of the Authority in trust for the Fund;
- (c) pledge such portion of the assets of the Fund as may be necessary to provide security for loans received.

Holding of Fund

4. (1) All moneys received by the general manager on behalf of the Fund shall be paid into a banking account and no money shall be withdrawn therefrom except by means of cheques signed by such persons as may be specially authorized by the Board.

(2) A proportion of the Fund shall be held in liquid form and such proportion may be determined and varied from time to time by the general manager, having regard

to the due execution of the provision of this Scheme. Such liquid portion of the Fund may be held in a banking account or on deposit with banks or registered building societies or in Zimbabwe Government Treasury bills.

(3) The general manager shall hold the remainder of the Fund in investments approved by the Board and by the Minister responsible for finance.

Accounts of Fund

5. The general manager shall cause to be kept proper books of accounts and other books and records in relation thereto, in which he shall record all the financial transactions of the Fund.

