

LAWS OF MALAYSIA
Act 514
OCCUPATIONAL SAFETY AND HEALTH ACT 1994

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LAWS OF MALAYSIA

Act 514

OCCUPATIONAL SAFETY AND HEALTH ACT 1994

An Act to make further provisions for securing the safety, health and welfare of persons at work, for protecting others against risks to safety or health in connection with the activities of persons at work, to establish the National Council for Occupational Safety and Health, and for matters connected therewith.

[]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and application.

1. (1) This Act may be cited as the Occupational Safety and Health Act 1994.

(2) Subject to subsection (3), this Act shall apply to all places of work throughout Malaysia including in the public services and statutory authorities.

(3) Nothing in this Act shall apply to the work specified in the First Schedule.

Prevailing laws.

2. (1) The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other written law relating to occupational safety and health.

(2) In the event of any conflict or inconsistency between the provisions of this Act and that of any other written law pertaining to occupational safety and health, the provisions of this Act shall prevail and the conflicting or inconsistent provisions of such other written law shall, to the extent of the conflict or inconsistency, be construed as superseded.

Interpretation.

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

“certificate of fitness” means a certificate issued under section 27D;

“competent person” means a competent person registered under section 31C;

“contract of service” means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract;

“contractor” means any person who contracts with a principal to carry out in whole or in part any work undertaken by the principal in the course of or for the purposes of the principal’s trade, business, profession or undertaking;

“Council” means the National Council for Occupational Safety and Health established under section 8;

“Director General” means the Director General of Occupational Safety and Health appointed under subsection 5(1);

“employee” means any person who has entered into a contract of service with an employer;

“employer” means any person who has entered into a contract of service to employ any other person as an employee;

“government” means the Federal Government, the Government of a State or a local government;

“occupier”, in relation to a place of work, means a person who has the management or control of the place of work;

“licensed person” means a person who is granted a licence under subsection 7A(1);

“occupational health service” includes service for the protection of an employee’s health at work, for the promotion of health and well-being at place of work, as well as for the prevention of occupational diseases, occupational poisoning and accidents;

“officer” means the officer appointed under subsection 5(1) or (3);

“place of work” means premises where persons work or premises used for the storage of plant or substance;

“plant” includes any machinery, equipment, appliance, implement or tool, any component thereof and anything fitted, connected or appurtenant thereto;

“practicable” means practicable having regard to—

(a) the severity of the hazard or risk in question;

(b) the state of knowledge about the hazard or risk and any way of removing or mitigating the hazard or risk;

(c) the availability and suitability of ways to remove or mitigate the hazard or risk; and

(d) the cost of removing or mitigating the hazard or risk;

“premises” include—

(a) any land, building or part of any building;

(b) any vehicle, vessel, hovercraft or aircraft;

(c) any installation on land, offshore installation or other installation whether on the bed of or floating on any water; and

(d) any tent or movable structure;

“prescribed” means prescribed by this Act or the regulations;

“principal” means any person who in the course of or for the purposes of his trade, business, profession or undertaking contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;

“registered medical practitioner” means a medical practitioner registered under the Medical Act 1971 [*Act 50*];

“registered training provider” means a training provider registered under section 31C;

“self-employed person” means an individual who works for gain or reward otherwise than under a contract of service, whether or not he himself employs others;

“serious bodily injury” means any injury as specified in the Fourth Schedule;

“substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour or any combination thereof;

“substance for use at work” means any substance intended or supplied for use, whether exclusively or not, by persons at work;

“supply”, in relation to any plant or substance, means the supply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent for another;

“trade union” means any association or combination of workmen or employers within the meaning of the Trade Unions Act 1959 [Act 262].

(2) For the purposes of this Act, risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

(3) For the purposes of this Act—

(a) “work” means work as an employee or as a self-employed person;

- (b) an employee is deemed to be at work throughout the time when he is at his place of work but not otherwise; and
- (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person.

Objects of the Act.

4. The objects of this Act are —

- (a) to secure the safety, health and welfare of persons at work against risks to safety or health arising out of the activities of persons at work;
- (b) to protect persons at a place of work other than persons at work against risks to safety or health arising out of the activities of persons at work;
- (c) to promote an occupational environment for persons at work which is adapted to their physiological and psychological needs;
- (d) to provide the means whereby the associated occupational safety and health legislations may be progressively replaced by a system of regulations and approved industry codes of practice operating in combination with the provisions of this Act designed to maintain or improve the standards of safety and health.

PART II

**APPOINTMENT OF OFFICERS, INDEPENDENT INSPECTING
BODY AND LICENSED PERSON**

Appointment of
officers, etc.

**5. (1) The Minister shall appoint from amongst the officers in the
Factory and Machinery Inspector Scheme of Service —**

(a) a Director General for the purpose of exercising the powers and performing the duties assigned to him under this Act; and

(b) such numbers of Deputy Director General, Directors, Deputy Directors, Assistant Directors and other occupational safety and health officers as may be necessary for the purposes of this Act.

(2) If for any reason the Director General is unable to exercise the powers or perform the duties of his office, such powers or duties shall be exercised or performed by the Deputy Director General.

(3) The Minister may appoint any public officer from any scheme of service other than specified in subsection (1) to be an officer for all or any of the purposes of this Act as specified in the instrument of appointment.

(4) Subject to such limitations as may be prescribed, the officers appointed under paragraph (1)(b) and subsection (3) shall perform all the duties assigned, and may exercise all the powers conferred, upon the Director General under this Act, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Act.

(5) The officers appointed under paragraph (1)(b) and subsection (3) shall be subject to the control, direction and supervision of the Director General.

Appointment of
independent
inspecting body

6. (1) The Director General may, as he deems fit, appoint a person or an independent inspecting body from any of the industries to advise or assist him in carrying out the objects and purposes of this Act.

(2) A person or an independent inspecting body appointed under subsection (1) shall be paid such allowance, fee or reimbursement as the Minister may determine.

(3) A person or an independent inspecting body appointed under subsection (1) shall be subject to the control, direction and supervision of the Director General.

(4) A person or an independent inspecting body appointed under subsection (1), shall be deemed to be public servants within the meaning of the Penal Code [Act 574].

Certificate of
authorization.

7. (1) The Director General shall issue to every officer appointed under paragraph 5(1)(b) and subsection 5(3) a certificate of authorization which shall be produced on demand to the occupier or any person in charge of a place of work which the officer intends to enter pursuant to this Act.

(2) In the case of the Director General, his certificate of authorization shall be issued by the Minister.

Appointment of
licensed person,
etc.

7A. (1) Notwithstanding any other provisions of this Act, the Minister shall have the power to grant a licence on such conditions as he may think fit to any person to carry out inspection of any plant prescribed by the Minister and issue a certificate of fitness in respect of the plant inspected.

(2) The Minister may, for the purposes of subsection (1) and without prejudice to the generality of subsection (1), make an order published in the *Gazette* for the following purposes:

- (a) to prescribe the qualification and standards of competency of persons to be employed by a licensed person;
- (b) to prescribe the powers of a person employed by a licensed person to carry out the functions of a licensed person;
- (c) to prescribe the records to be kept by a licensed person;
- (d) to prescribe the returns to be submitted by a licensed person to the Director General at certain intervals;
- (e) to regulate the inspection by the Director General of the premises of a licensed person and the records kept thereat;
- (f) to prescribe inspection standards for a licensed person to comply with; and
- (g) to prescribe the functions or duties to be carried out by a licensed person.

(3) The Minister may, by order published in the *Gazette*, authorize a licensed person to demand, prescribe, collect and retain charges, fees or levy in respect of the services provided by the licensed person.

(4) An order made under subsection (3) shall specify —

- (a) the type of services in respect of which charges, fees or levy may be demanded, collected and retained; and
- (b) the duration of the authorization to demand, collect and retain the charges, fees or levy.

(5) A licensed person authorized under subsection (3) shall —

- (a) maintain such account, books and records in respect of the payment and collection of charges, fees or levy as the Director General may require;
- (b) furnish to the Director General such information, returns and accounts in respect of the payment and collection of charges, fees or levy as the Director General may require; and
- (c) permit the Director General or any other person authorized in writing by the Director General to have access to or examine or inspect any document, machinery or equipment maintained or used for the payment and collection of charges, fees or levy.

(6) The authorization of a licensed person under subsection (3) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the licensed person to carry out his obligations under this Act in respect of which charges, fees or levy are demanded, collected and retained.

(7) If a licensed person contravenes any condition of the licence or any of the provisions of any order made under this section or any of the provisions of subsection (5) with which he is required to comply, the licensed person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(8) Notwithstanding the licensing of a person under this section, the Minister may give directions to the Director General to exercise any

of the functions which under the terms of the licence are to be carried out by such person.

Revocation
licence of

7B. (1) If the Director General is satisfied that a licensed person has breached any condition of the licence, the Director General may give a notice in writing to the licensed person requiring him to comply with the condition which he has breached and take all measures stipulated in the notice within the period stated in the notice.

(2) If by the time the period stipulated in the notice expires the licensed person has failed to comply with the notice, the Director General shall present a report to the Minister on such failure.

(3) If after considering the report from the Director General, the Minister is satisfied that the breach is serious in nature or affects or may affect the safety and health of employees or members of the public and that the licensed person has failed or refused to take or has not taken all measures stipulated in the notice for the purpose of ensuring compliance with the condition which the licensed person has breached, the Minister may give the licensed person a notice stating that he proposes to revoke the licence granted to such person and the notice shall also state —

(a) the breach alleged against the licensed person and the actions or omissions that constitute the breach; and

(b) the period (which shall not be less than thirty days from the date of the notice) within which the licensed person may make representations pertaining to the revocation.

(4) After the expiry of the period stated in the notice and after considering any representations made by the licensed person, the

Minister may decide whether to continue with the proposed revocation or take no further action.

(5) Where the Minister decides to revoke the licence or take no further action, the Minister shall give a notice to the licensed person to inform him of the decision, and the decision shall come into force on the date the notice is delivered to the licensed person.

(6) A licensed person shall surrender the revoked licence to the Director General within seven days from the date of receipt of the notice under subsection (5).

(7) Notwithstanding the revocation of the licence, the validity of any certificate of fitness issued by the licensed person shall continue to be valid until the expiry date of the certificate of fitness and the licensed person shall continue to assume any obligation, duty and responsibility imposed by or in connection with the issuance of the certificate of fitness.

Granting of new
licence upon
revocation.

7C. (1) Upon the revocation of a licence under section 7B, the Minister may, after consulting the Director General, appoint another person to carry out, discharge, assume or perform any of the functions, obligations, duties, responsibilities and conditions conferred or imposed by the revoked licence, and to receive any payments, benefits or privileges which the person whose licence is revoked is entitled to receive or enjoy under the terms and conditions of the licence.

(2) The person whose licence is revoked shall render all necessary assistance and cooperation to the person appointed by the Minister under subsection (1).

Representing as
licensed person.

7D. (1) A person shall not represent himself as a licensed person if he was never granted a licence under section 7A or the licence granted to him has been revoked under section 7B.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART III

NATIONAL COUNCIL FOR OCCUPATIONAL SAFETY AND HEALTH

Establishment of
the Council.

8. There shall be established a council called the “National Council for Occupational Safety and Health”.

Membership of the
Council.

9. (1) The Council shall consist of not less than twenty-two and not more than twenty-five members who shall be appointed by the Minister as follows:

(a) five persons from organizations representing employers who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;

(b) five persons from organizations representing employees who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;

(c) the Secretary General of the Ministry of Human Resources;

(d) the Director General;

(e) five representatives of the Government, consisting of—

(i) the Director General of Health Malaysia; and

(ii) representatives from the Ministry or Department whose responsibility is related to occupational safety and health, who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health;

(f) the Executive Director of the National Institute of Occupational Safety and Health;

(g) the Chief Executive Officer of the Social Security Organization; and

(h) three or more persons, of whom at least one shall be a woman, from organizations or professional bodies the activities of whose members are related to occupational safety and health, and who, in the opinion of the Minister, have wide experience or special knowledge in matters relating to occupational safety and health.

(2) The Minister shall appoint the Chairman and the Deputy Chairman of the Council from among the persons mentioned in subsection (1), except the person mentioned in paragraph (1)(d).

Second Schedule
to apply.

10. The provisions of the Second Schedule shall apply to the members of the Council.

Powers and
functions of the
Council.

11. (1) The Council shall have power to do all things expedient or reasonably necessary for or incidental to the carrying out of the objects of this Act.

(2) The Council may, and when requested by the Minister to do so shall, carry out investigations and make reports and recommendations to him with regard to any matter relating to the objects of this Act and, in particular, but without prejudice to the generality of the foregoing provisions, with regard to —

- (a) changes it considers desirable to occupational safety and health legislation;
- (b) the improvement of the administration and enforcement of occupational safety and health legislation;
- (c) the fostering of a co-operative consultative relationship between management and labour on the safety, health and welfare of persons at work;
- (d) the special problems with respect to occupational safety, health and welfare of women, handicapped persons and other groups in the community;
- (e) the establishment of adequate methods of control of industrial chemicals at a place of work;
- (f) the statistical analysis of occupationally related deaths and injuries;
- (g) the provision of health care facilities at a place of work;
- (h) the fostering of the development and adoption by law of industry codes of practice related to occupational safety, health and welfare;

- (i) the development of rehabilitation plans and facilities to assist persons injured at a place of work;
- (j) the procedures, arrangements, training, education or appropriate measures to be taken to enhance community awareness on occupational safety, health and welfare;
- (k) the area of occupational safety and health research to be developed by relevant institutions and the publication of the results of such research;
- (l) the development and establishment of a mechanism to generate, process, store and disseminate information on occupational safety, health and welfare.

(3) The Council shall coordinate all matters and activities relating to occupational safety and health which are implemented or carried out by the Government.

Appointment of
secretary to the
Council

12. (1) The Director General, who is a member of the Council under paragraph 9(1)(d), shall be the secretary to the Council.

(2) The Council may, with the approval of the Minister, arrange for the use of the services of any staff or facility of the office of the Director General.

Committees.

13. (1) The Council may—

- (a) establish committees in respect of different industries for the purpose of assisting the Council to perform its functions in relation to industry codes of practice; and

(b) establish such other committees as it thinks fit for the purpose of assisting the Council to perform its other functions.

(2) A committee shall consist of such number of persons as may be appointed by the Council from among its members.

(3) Notwithstanding the provision of subsection (2), the Council may invite any person or a representative of any organization to advise a committee established under subsection (1) in the carrying out of its functions.

(4) A person appointed under subsection (2) or invited to be a member of a committee under subsection (3) may be paid such allowance as may be determined by the Council with the approval of the Minister.

Annual report.

14. The Council shall, after the 31st December but before the 31st March of the following year, prepare and forward to the Minister a report of its activities for a period of twelve months ending on the 31st December of each year.

PART IV GENERAL DUTIES EMPLOYERS, SELF EMPLOYED PERSONS AND PRINCIPAL

General duties of employers.

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

(2) Without prejudice to the generality of subsection (1), the matters to which the duty extends include in particular—

- (a) the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risks to health;
- (b) the making of arrangements for ensuring, so far as is practicable, safety and absence of risks to health in connection with the use or operation, handling, storage and transport of plant and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health at work of his employees;
- (d) so far as is practicable, as regards any place of work under the control of the employer, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is practicable, safe, without risks to health, and adequate as regards facilities for their welfare at work; and
- (f) the development and implementation of procedures for dealing with emergencies that may arise while his employees are at work.

(3) [deleted]

Duty of employer to formulate safety and health policy.

16. Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the safety and health at work of his employees and the organization and

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

General duties of
employers and
self-employed
persons to
persons
other than their
employees

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

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

Duties of an
occupier of a
place of work to
persons other
than his
employees

18. (1) An occupier of non-domestic premises which has been made available to persons, not being his employees, as a place of work, or as a place where they may use a plant or substance provided for their use there, shall take such measures as are practicable to ensure that the premises, all means of access thereto and egress therefrom available for use by persons using the premises, and any plant or substance in the premises or provided for use there, is or are safe and without risks to health.

(2) A person who has, by virtue of a contract or lease or otherwise, an obligation of any extent in relation to —

(a) the maintenance or repair of a place of work or any means of access thereto or egress therefrom; or

(b) the prevention of risks to safety and health that may arise from the use of any plant or substance in the place of work,

shall for the purpose of subsection (1) be deemed to have control of the matters to which his obligation extends.

Duties
principal.

of **18A.** (1) It shall be the duty of every principal to take, so far as is practicable, such measures as are necessary to ensure the safety and health of —

(a) any contractor engaged by the principal when at work;

(b) any subcontractor or indirect subcontractor when at work; and

(c) any employee employed by such contractor or subcontractor when at work.

(2) The duty imposed on the principal in subsection (1) shall only apply where the contractor, subcontractor or employee referred to in that subsection is working under the direction of the principal as to the manner in which the work is carried out.

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of the persons at work include—

(a) the provision and maintenance of plant and systems of work that are, so far as is practicable, safe and without risk to health;

(b) the making of arrangements including the allocation of sufficient time, budget and other resources for ensuring, so far as is practicable, safety and absence of risks to health in

connection with construction work activities, use or operation, handling, storage or transport of plant and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is practicable, the safety and health of the persons at work;

(d) so far as is practicable, as regards to any place of work under the control of the principal, the maintenance of the place of work in a condition that is safe and without risks to health and the provision and maintenance of the means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for the persons at work that is, so far as is practicable, safe and without risks to health; and

(f) the development and implementation of procedures for dealing with emergencies that may arise while the persons are at work.

(4) It shall be the duty of every principal to take, so far as is practicable, necessary measures to ensure the safety and health of persons, other than a person referred to in paragraph (1)(a), (b) or (c) working under the principal's direction, who may be affected by any undertaking carried on by him at the place of work.

(5) It shall be the duty of every principal, in the prescribed circumstances and in the prescribed manner, to give to persons, other than a person referred to in paragraph (1)(a), (b) or (c) working under the principal's direction, the prescribed information on such aspects of the manner in which he conducts his undertaking as might affect their safety or health.

(6) For the purposes of this section, “subcontractor” means any person who contracts with a contractor for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a subcontractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor.

Duty to conduct
and implement
risk assessment.

18B. (1) Every employer, self-employed person or principal shall conduct a risk assessment in relation to the safety and health risk posed to any person who may be affected by his undertaking at the place of work.

(2) Where a risk assessment indicates that risk control is required to eliminate or reduce the safety and health risk, the employer, self-employed person or principal shall implement such control.

(3) For the purposes of this section, “risk assessment” means the process of evaluating the risks to safety and health arising from hazards at work and determining the appropriate measures for risk control.

Penalty for an
offence under
section 15, 16, 17,
18, 18A or 18B.

19. A person who contravenes the provisions of section 15, 16, 17, 18, 18A or 18B shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART V

GENERAL DUTIES OF DESIGNERS, MANUFACTURERS AND SUPPLIERS.

General duties of
manufacturers,
etc., as regards
plant for use
at work

20. (1) It shall be the duty of a person who designs, manufactures, imports or supplies any plant for use at work—

- (a) to ensure, so far as is practicable, that the plant is so designed and constructed as to be safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a);
- (c) to take such steps as are necessary to secure that there will be available in connection with the use of the plant at work adequate information about the use for which it is designed and has been tested, and about any condition necessary to ensure that, when put to that use, it will be safe and without risks to health; and
- (d) to take such steps as are necessary to secure, so far as is practicable, that the persons supplied with the plant are provided with all such revisions of information provided to them under paragraph (c) as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.

(2) It shall be the duty of a person who undertakes the design or manufacture of any plant for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimization of any risk to safety or health to which the design or plant may give rise.

(3) It shall be the duty of a person who erects or installs any plant for use by persons at work to ensure, so far as is practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

21. (1) It shall be the duty of a person who formulates, manufactures, imports or supplies any substance for use at work—

- (a) to ensure, so far as is practicable, that the substance is safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by paragraph (a);
- (c) to take such steps as are necessary to ensure that there will be available in connection with the use of the substance at work adequate information about the results of any relevant test which has been carried out on or in connection with the substance and about any condition necessary to ensure that it will be safe and without risks to health when properly used; and
- (d) to take such steps as are necessary to secure, so far as is practicable, that the persons supplied with the substance are provided with all such revisions of information provided to them under paragraph (c) as are necessary by reason of it becoming known that there is a new risk that could give rise to a serious risk to safety or health.

(2) It shall be the duty of a person who undertakes the formulation or manufacture of any substance for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is practicable, the elimination or minimization of any risk to safety or health to which the substance may give rise.

22. (1) Nothing in section 20 or 21 shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of the section.

(2) Any duty imposed on a person by any of the preceding provisions of this Part shall extend only to things done in the course of a trade, business or other undertaking carried on by him, whether for profit or not, and to matters within his control.

(3) Where a person designs, formulates, manufactures, imports or supplies any plant or substance for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is practicable, that the plant or substance will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first mentioned person from the duty imposed by paragraphs 20(1)(a) and 21(1)(a) to such extent as is reasonable having regard to the terms of the undertaking.

(4) Where a person (hereinafter referred to as the “ostensible supplier”) supplies any plant or substance for use at work to another (hereinafter referred to as the “customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier—

(a) carries on the business of financing the acquisition of goods by others by means of such agreements; and

(b) in the course of that business acquired his interest in the plant or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (hereinafter referred to as the “effective supplier”),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this Part as supplying the plant or substance to the customer, and any duty imposed by sections 20 and 21 on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

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

Penalty for an
offence under
section 20 or 21.

23. A person who contravenes the provisions of section 20 or 21 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

PART VI GENERAL DUTIES AND RIGHTS OF EMPLOYEES

General duties of
employees at
work

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

- (a) to take reasonable care for the safety and health of himself and of other persons who may be affected by his acts or omissions at work;
- (b) to co-operate with his employer or any other person in the discharge of any duty or requirement imposed on the employer or that other person by this Act or any regulation made thereunder;

(c) to wear or use at all times any protective equipment or clothing provided by the employer for the purpose of preventing risks to his safety and health; and

(d) to comply with any instruction or measure on occupational safety and health instituted by his employer or any other person by or under this Act or any regulation made thereunder.

(2) A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding three months or to both.

Duty not to interfere with or misuse things provided pursuant to certain provisions.

25. A person who intentionally, recklessly or negligently interferes with or misuses anything provided or done in the interests of safety, health and welfare in pursuance of this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Duty not to charge employees for things done or provided.

26. No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of this Act or any regulation made thereunder.

Rights of employees.

26A. (1) An employee, after informing his employer or his representative that he has reasonable justification to believe there exist an imminent danger at his place of work, shall have the right to remove himself from the danger or the work if the employer fails to take any action to remove the danger.

(2) An employee who removes himself from the danger in accordance with subsection (1) shall be protected against undue consequences and shall not be discriminated against.

(3) For the purposes of this section, "imminent danger" means a serious risk of death or serious bodily injury to any person that is caused by any plant, substance, condition, activity, process, practice, procedure or place of work hazard.

Discrimination
against employee,
etc.

27. (1) No employer shall dismiss an employee, injure him in his employment, or alter his position to his detriment by reason only that the employee —

(a) makes a complaint about a matter which he considers is not safe or is a risk to health;

(b) is a member of a safety and health committee established pursuant to this Act;

(c) exercises any of his functions as a member of the safety and health committee; or

(d) has assisted an officer or assessor in any inquiry in the conduct of any inspection or investigation under this Act.

(2) No trade union shall take any action on any of its members who, being an employee at a place of work—

(a) makes a complaint about a matter which he considers is not safe or is a risk to health;

(b) is a member of a safety and health committee established pursuant to this Act; or

(c) exercises any of his functions as a member of the safety and health committee;

(3) An employer who, or a trade union which, contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to a term of imprisonment not exceeding one year or to both.

(4) Notwithstanding any written law to the contrary, where a person is convicted of an offence under this section the Court may, in addition to imposing a penalty on the offender, make one or both of the following orders:

(a) an order that the offender pays within a specific period to the person against whom the offender has discriminated such damages as it thinks fit to compensate that person;

(b) an order that the employee be reinstated or re-employed in his former position or, where that position is not available, in a similar position.

PART VIA

NOTIFICATION OF OCCUPATION OF PLACE OF WORK, INSTALLATION AND INSPECTION OF PLANT, ETC.

Notice
of
occupation
of
place of work.

27A. (1) Subject to subsection (2), any person who occupies or uses any premises as a place of work or undertakes any activity in a place of work shall give notice to an officer containing such particulars, and in such manner and within such time, as the Director General may determine.

(2) The requirement of giving notice under subsection (1) shall apply only to places of work and activities as may be prescribed by the Minister.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Prescription of
plant requiring
certificate of
fitness.

27B. The Minister may prescribe any plant for which a certificate of fitness is required.

Installation of
plant.

27C. (1) No person shall install or cause to be installed any prescribed plant under section 27B unless the person ensures that the plant has fulfilled all the requirements prescribed by the Minister and has obtained the written approval from the Director General.

(2) A person may apply for the approval referred to in subsection (1) by submitting to the Director General such particulars in such manner and within such time as the Director General may determine.

(3) Upon receiving and considering an application under subsection (2), the Director General may grant an approval subject to such terms and conditions as the Director General may impose.

(4) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

27D. (1) No person shall operate or cause or permit to be operated any plant that has been installed under section 27C unless the plant has a certificate of fitness issued by an officer or a licensed person.

(2) When a prescribed plant has been installed under section 27C, the person shall serve a written notice on an officer or a licensed person who, after receiving such notice, shall make an inspection of the plant.

(3) If, upon inspection, the officer or the licensed person finds that the plant —

(a) complies with all the requirements prescribed by the Minister in respect of the plant, the officer or the licensed person shall issue a certificate of fitness upon the payment of such fees by the person as the Minister may prescribe; or

(b) does not comply with any of the requirements prescribed by the Minister in respect of the plant, the person shall pay to the officer or the licensed person such fees as may be prescribed by the Minister for the services rendered despite the non-issuance of a certificate of fitness.

(4) A certificate of fitness issued under subsection (3) shall be in such form and subject to such terms and conditions, and shall be valid for such period, as the Minister may prescribe.

(5) A person who contravenes subsection (1) shall be guilty an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(6) In the case of any contravention of subsection (1), an officer shall immediately serve to the person who operates or causes or permits to be operated the plant a written notice prohibiting the operation of the plant or may render the plant inoperative until a certificate of fitness is issued.

(7) A person who fails to comply with the notice issued under subsection (6) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(8) A certificate of fitness in respect of any plant which is being dismantled or repaired or is damaged for any reason shall terminate upon such dismantlement, repair or damage, but the Director General may exempt any plant from the application of this subsection if in his opinion the plant will not cause any danger to any person or property.

(9) For the purposes of subsection (8) —

(a) “damage” means any physical defect caused to any plant during operation or otherwise which may affect the strength and integrity of the plant during subsequent operation;

(b) “dismantle” means to undo any part of any plant which may affect the strength, integrity or functional capability of the plant;

(c) “repair” means any work done to make good any part of any plant which has been damaged.

Periodical
inspection of plant

27E. (1) A plant prescribed under section 27B shall be inspected by an officer or a licensed person at such periods and in such manner as the Minister may prescribe.

(2) An inspection under subsection (1) shall be subject to the payment of such fees as the Minister may prescribe.

Special scheme of
inspection.

27F. (1) Notwithstanding section 27E, an occupier may apply to the Director General for an approval for a special scheme of inspection pertaining to inspections for certain classes of plant and its auxiliary together with such fees as the Minister may prescribe.

(2) The Director General may approve an application under subsection (1) if he is satisfied that the requirements prescribed by the Minister in respect of the plant have been fulfilled.

(3) When the approval under subsection (2) is granted, the inspection of the plant shall be conducted according to the special scheme of inspection.

Director General
may make orders
in certain
circumstances.

27G. (1) The Director General may make special orders for the conduct and guidance of persons employed in any service involving the management or operation of, or attendance on, or proximity to, any plant or process carried on in any place of work as appear to him necessary to ensure their safety and health.

(2) The employer shall ensure by all reasonable means that the persons exposed to danger are aware of any such special orders made under subsection (1) and those persons shall observe the special orders.

(3) For the purposes of subsection (2), a copy of the Director General's special orders printed or written in the appropriate

languages and posted in conspicuous places in the vicinity of the plant or process to which the special orders refer, so that all persons referred to shall have free access and opportunity to read the same, shall be deemed to constitute reasonable means.

PART VII SAFETY AND HEALTH ORGANISATIONS

Occupational
health service.

28. (1) Where it appears to the Minister that in any of the place of work or class or description of place of work —

- (a) cases of illness have occurred which he has reason to believe may be due to the nature of the process or other conditions of work;
- (b) by reason of changes in any process or in the substances used in any process or by reason of the introduction of any new process or new substance for use in a process, there may be risk of adverse effect to the health of persons employed in the process; or
- (c) [deleted]
- (d) there may be risk of adverse effect to the health of persons employed in any of the occupations specified in the Third Schedule, or from any substance or material brought to the place of work to be used or handled therein or from any change in the conditions in the place of work,

he may make regulations requiring such arrangements for the occupational health services.

No action against
person carrying
out occupational
health
service.

28A. No employer shall take any action against any person who carries out an occupational health service for—

(a) making a complaint about any matter which is considered as a risk to health; or

(b) making a report to the Director General regarding any patient whom he believes to be suffering from any occupational disease or occupational poisoning.

Safety and health
officer.

29. (1) This section shall apply to such class or description of places of work as the Minister may, by order published in the *Gazette*, specify.

(2) An occupier of a place of work to which this section applies shall appoint a person who is competent to act as a safety and health officer at the place of work.

(3) The safety and health officer shall be appointed exclusively for the purpose of ensuring the due observance at the place of work of the provisions of this Act and any regulation made thereunder and the promotion of a safe conduct of work at the place of work.

(4) A person shall be appointed as a safety and health officer only for one place of work at any one time, unless permitted otherwise by the Director General.

(5) An occupier who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to a term of imprisonment not exceeding six months or to both.

Occupational
safety and health
coordinator.

29A. (1) An employer whose place of work is not included in any class or description of place of work as published in the *Gazette* under subsection 29(1) shall appoint one of his employees to act as an occupational safety and health coordinator if he employs five or more employees at his place of work.

(2) An employee appointed as an occupational safety and health coordinator under subsection (1) shall be appointed for the purpose of coordinating occupational safety and health issues at the place of work.

(3) Notwithstanding subsection (1), an employer referred to in subsection (1) who has appointed a safety and health officer at the place of work shall be deemed to have complied with subsection (1).

(4) An employer who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Establishment of
safety and health
committee at
place of work.

30. (1) Every employer shall establish a safety and health committee at the place of work in accordance with this section if —

(a) there are forty or more persons employed at the place of work; or

(b) the Director General directs the establishment of such a committee at the place of work.

(2) The composition of a safety and health committee established under subsection (1), the election or appointment of persons to the committee, the powers of the members of the committee and any

other matter relating to the establishment or procedure of the committee shall be as prescribed.

(3) Every employer shall consult the safety and health committee with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the safety and health at the place of work of the employees, and in checking the effectiveness of such measures.

(4) A person who contravenes the provisions of this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Functions of
safety and health
committee.

31. The safety and health committee established at a place of work pursuant to section 30 —

(a) shall keep under review the measures taken to ensure the safety and health of persons at the place of work;

(b) shall investigate any matter at the place of work —

(i) which a member of the committee or a person employed thereat considers is not safe or is a risk to health; and

(ii) which has been brought to the attention of the employer;

(c) shall attempt to resolve any matter referred to in paragraph and, if it is unable to do so, shall request the Director General

to undertake an inspection of the place of work for that purpose; and

(d) shall have such other functions as may be prescribed.

Occupational
safety and health
training course.

31A. (1) The Minister may, by order published in the *Gazette*, require any class or description of persons to attend an occupational safety and health training course as specified in the order that is conducted by a registered training provider.

(2) The employer of any person required to attend any training course under subsection (1) shall ensure that the person has completed such training course before allowing that person to perform any work for which the training is required.

(3) Notwithstanding that a person has completed such safety and health training course as is required under this section, the Director General may, if he thinks that a refresher course is necessary, issue a written direction requiring that person to attend another such training course.

(4) An employer who contravenes subsection (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Part VIIA

COMPETENT PERSON AND REGISTERED TRAINING PROVIDER

Activities to be
carried out by
competent person
and registered
training provider.

31B. (1) For the purposes of this Act, no person shall—

(a) carry out any activity specified in the Fifth Schedule unless he has been registered as a competent person under this Act; or

(b) conduct any occupational safety and health training course unless he has been registered as a registered training provider under this Act.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit.

Application for
registration.

31C. (1) A person who intends to be registered as a competent person or a registered training provider shall submit an application for registration to the Director General in such manner as the Director General may determine.

(2) An application under subsection (1) shall be subject to the payment of such fees as prescribed by the Minister and shall be accompanied by such documents and information as may be required by the Director General.

(3) The Director General may, after considering the application, approve the application subject to such conditions as he thinks fit, or refuse the application.

(4) An application under subsection (1) may be withdrawn at any time before the application is approved or refused, in which event the fees paid shall not be refunded.

Validity of
registration.

31D. Every registration approved under section 31C shall be valid for a period of three years from the date specified in the approval.

31E. (1) A competent person or a registered training provider may make an application for the renewal of registration before the date of expiry of the registration at such time and in such manner as determined by the Director General.

(2) The application under subsection (1) shall be subject to the payment of such fees as prescribed by the Minister and shall be accompanied by such documents as may be required by the Director General.

(3) The Director General may, after considering the application under subsection (1) —

(a) renew the registration, with or without conditions; or

(b) refuse to renew the registration.

(4) The Director General may refuse to renew a registration if the Director General is satisfied that—

(a) the applicant has failed to comply with any of the provisions of this Act or any subsidiary legislation made under this Act;

(b) the applicant has failed to comply with any of the conditions of the registration; or

(c) the applicant has submitted any statement, information or document found to be false, irrespective of whether the applicant knows or believes such statement, information or document is false or otherwise.

(5) An application under subsection (1) may be withdrawn at any time before the application is approved or refused, in which event the fees paid shall not be refunded.

Cancellation of
registration.

31F. (1) The Director General may cancel the registration of a competent person or a registered training provider if the Director General is satisfied that he —

(a) has failed to comply with any of the provisions of this Act or any subsidiary legislation made under this Act;

(b) has failed to comply with any of the conditions imposed on the registration;

(c) has obtained or procured his registration by fraud or misrepresentation; or

(d) is no longer fit to act as a competent person or a registered training provider.

(2) Notwithstanding subsection (1), the Director General shall not cancel the registration of a competent person or a registered training provider unless the Director General is satisfied that, after giving the competent person or the registered training provider an opportunity of making any representation in writing he may wish to make, the registration should be cancelled.

(3) Where the registration of a competent person or a registered training provider is cancelled, the Director General shall issue a notice of cancellation of registration to the competent person or the registered training provider, and such cancellation shall take effect on the date specified in the notice.

PART VIII
NOTIFICATION OF ACCIDENTS, DANGEROUS OCCURRENCE,
OCCUPATIONAL POISONING AND OCCUPATIONAL
DISEASES, AND INQUIRY

Notification of
accidents,
dangerous
occurrence,
occupational
poisoning and
occupational
diseases, and
inquiry.

32. (1) An employer shall notify the nearest occupational safety and health office of any accident, dangerous occurrence, occupational poisoning or occupational disease which has occurred or is likely to occur at the place of work.

(2) Every registered medical practitioner or medical officer attending to, or called in to visit, a patient whom he believes to be suffering from any of the occupational diseases or occupational poisoning specified in any regulation or order made by the Minister under this Act, shall report the matter to the Director General.

Director General
may direct inquiry
to be held.

33. (1) If in the opinion of the Director General, an inquiry ought to be held into the nature and cause of the accident, dangerous occurrence, occupational poisoning or occupational disease, he may cause such an inquiry to be held by an occupational safety and health officer.

(2) The Director General may appoint one or more persons of engineering, medical or other appropriate skills or expertise to serve as assessors in any such inquiry.

(2A) The assessors appointed under subsection (2) shall have, for the purposes of the inquiry, the power to enter and inspect any premises, the entry or inspection of which is requisite for the purposes of the inquiry.

(3) Every person not being a public officer serving as an assessor in the inquiry may be paid an allowance at such rate or rates as the Minister may determine.

Power of
occupational
safety and health
officer at inquiry.

34. For the purpose of holding an inquiry under this Act, an occupational safety and health officer shall have the power to administer oaths and affirmations and shall be vested with the powers of a First Class Magistrate for compelling the attendance of witnesses and the production of documents, maintaining order and otherwise duly conducting the inquiry, and all persons summoned to attend the inquiry shall be legally bound to attend.

PART IX

PROHIBITION AGAINST USE OF PLANT OR SUBSTANCE

Power to prohibit
the use of plant or
substance.

35. (1) Notwithstanding any written law to the contrary, the Director General may by order published in the *Gazette* prohibit the use of any plant or substance which in his opinion is likely to affect the safety and health of persons at work.

(2) Where the Director General proposes to exercise his power under subsection (1) he shall, before making the order, consult any Government department or other body which appears to him to be appropriate.

(3) A person who fails to comply with the order under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

36. [deleted]

PART X
INDUSTRY CODES OF PRACTICE

Approval of
industry codes of
practice.

37. (1) The Minister may, upon the recommendation of the Council or the Director General, approve industry codes of practice comprising such directions as may appear to him to be necessary or proper for the guidance of persons in complying with the requirements of the provisions of this Act.

(2) The Minister may, upon the recommendation of the Council or the Director General, from time to time revise the industry codes of practice by amending, deleting, varying or adding to the provisions of the industry codes of practice.

(3) An industry code of practice may—

(a) consist of any code, standard, rule, specification or provision relating to occupational safety or health approved by the Minister; or

(b) apply, incorporate or refer to any document formulated or published by any body or authority as in force at the time the industry code of practice is approved or as amended, formulated or published from time to time.

(4) The Minister shall cause to be published in the *Gazette* the approval of an industry code of practice and the amendment or revocation thereof.

Use of industry
codes of practice
in proceedings.

38. In any proceedings under this Act or any regulation made thereunder in which it is alleged that a person has contravened or failed to comply with a provision of the Act or any regulation made

thereunder in relation to which an approved industry code of practice was in effect at the time of the alleged contravention or failure —

(a) the approved industry code of practice shall be admissible in evidence in the proceedings; and

(b) if the court is satisfied in relation to any matter which it is necessary for the prosecution to prove in order to establish the alleged contravention or failure that—

(i) a provision of the approved industry code of practice is relevant to the matter; and

(ii) the person failed at any material time to observe the provision of the approved industry code of practice,

the matter shall be taken as proved unless the court is satisfied that in respect of the matter the person complied with a provision of the Act otherwise than by way of observance of the provision of the approved industry code of practice.

PART XI ENFORCEMENT AND INVESTIGATION

Powers of entry,
inspection,
examination,
seizure, etc.

39. (1) An occupational safety and health officer, in this Part referred to as the “officer”, may, for the purpose of carrying out the objects of this Act or any regulation made thereunder, at any reasonable time and upon the production of his certificate of authorization enter, inspect and examine any place of work other than a place used solely for residential purposes:

Provided that he may enter the residential place with the consent of the owner or if he has reasonable cause to believe that a contravention of this Act or any regulation made thereunder has or is likely to be committed.

(2) In exercising his powers under subsection (1), an officer may —

- (a) make an inspection, examination and investigation of any plant, substance, article or other thing whatsoever as may be necessary to ascertain whether or not this Act or any regulation made thereunder has been complied with;
- (b) direct that the place of work or any part thereof, or anything therein, shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purpose of any inspection, examination or investigation under paragraph (a);
- (c) take such measurements and photographs and make such recordings as he considers necessary for the purpose of any inspection, examination or investigation under paragraph (a);
- (d) take samples of any article or substance found in the place of work which he has power to enter, and of the atmosphere in or in the vicinity of the place of work;
- (e) require any person employed in a place of work in which any occupational disease or occupational poisoning specified in any regulation or order made by the Minister under this Act has occurred or is likely to occur, to be medically examined by a medical officer or a registered medical practitioner;
- (f) require the production of any book, record, certificate, notice, computerized data or document, or any certified copy thereof,

and make a copy thereof as he considers necessary for the purpose of any inspection, examination or investigation;

(g) assess the levels of noise, illumination, heat or harmful or hazardous substances in any place of work and the exposure levels of persons at work therein;

(h) require any hospital, medical clinic or mortuary to provide any information (including the medical reports) of any person who is or had been working in a place of work who is injured in an accident in a place of work or who is suspected of suffering from an occupational disease contracted from a place of work and is receiving treatment at the hospital or medical clinic.

(3) Where an officer is of the opinion that a plant or substance has caused or is likely to cause a danger to safety and health, he may

(a) cause it to be dismantled or subjected to any process or test at any convenient place and at such reasonable time as he may appoint, but not so as to damage or destroy it;

(b) take possession of it and detain it for so long as is necessary for all or any of the following purposes:

(i) to examine it and do to it anything which he has power to do;

(ii) to ensure that it is not tampered with before his examination of it is completed;

(iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the provisions of this Act or regulation made thereunder.

(4) Where an officer is a medical officer he may —

(a) carry out such medical examination as may be necessary for the purposes of his duties under this Act or regulation made thereunder; and

(b) exercise such other powers as may be necessary or as are conferred under subsections (2) and (3).

(5) An officer may for the purposes of this section seek whenever necessary the assistance of the police if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.

(6) Without prejudice to subsection (5), on entering any place of work or residential place by virtue of subsection (1), an officer may bring with him —

(a) any other person duly authorized by the Director General; or

(b) any equipment or material required for any purpose for which the power of entry is being exercised.

Entry into
premises with
search warrant
and power of
seizure.

40. In every case where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in a place of work or residential place any article, thing, book, document, plant, substance, installation or part thereof which has been used to commit or is intended to be used to commit an offence under this Act or any regulation made thereunder, he shall issue a warrant under his hand by virtue of which an officer named or referred to in the warrant may enter the place of work or residential place at any reasonable time by day or night, and search for and seize or seal

the article, thing, book, document, plant, substance, installation or part thereof.

Entry into premises without search warrant and power of seizure.

41. Where an officer is satisfied upon information received that he has reasonable grounds for believing that, by reason of delay in obtaining a search warrant, any article, thing, book, document, plant, substance, installation or part thereof in a place of work or residential place used to commit or intended to be used to commit an offence under this Act or any regulation made thereunder is likely to be removed or destroyed, he may enter the place of work or residential place without a warrant and seize or seal the article, thing, book, document, plant, substance, installation or part thereof found therein:

Provided that it shall be an offence for a person without lawful authority to break, tamper with or damage the seal or remove the article, thing, book, document, plant, substance, installation or part thereof or to attempt so to do.

Power of forceful entry and service on occupier of signed copy of list of things seized from premises.

42. (1) An officer may, in the exercise of his powers under section 40 or 41, if it is necessary so to do —

- (a) break open any outer or inner door of a place of work or residential place and enter thereinto;
- (b) forcibly enter the place and every part thereof;
- (c) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect; and
- (d) detain every person found in the place until the place has been searched.

(2) The officer seizing any article, thing, book, document, plant, substance, installation or part thereof under section 40 or 41 shall prepare a list of the things seized and forthwith, or as soon as is practicable, deliver a copy of the list signed by him to the occupier, or his agent or servant present in the premises, and if the premises are unoccupied the officer shall, wherever possible, post a list of the things seized on the premises.

Further provisions
in relation to
inspection.

43. (1) Upon entering any place of work an officer shall take all reasonable steps to notify the employer and the safety and health committee of the entry.

(2) Upon concluding an inspection, an officer shall give to the employer and the safety and health committee information with respect to his observations and any action he proposes to take in relation to the place of work.

(3) Where an officer proposes to take and remove a sample from a place of work for the purposes of analysis, he shall notify the employer and the safety and health committee and after having taken the sample he shall where possible—

(a) divide the sample taken into as many parts as are necessary and mark and seal or mark and fasten up each part in such a manner as its nature will permit;

(b) if required by the employer or the safety and health committee, deliver one part each to the employer or the safety and health committee;

(c) retain one part for future comparison; and

(d) if an analysis of the sample is to be made, submit another part to an analyst for analysis.

Power of
investigation.

44. (1) An officer shall have the power to investigate the commission of any offence under this Act or any regulation made thereunder.

(2) An officer may, in relation to any investigation in respect of an offence committed under this Act or any regulation made thereunder, exercise the special powers in relation to police investigation except that the power to arrest without warrant given by the Criminal Procedure Code in any seizable offence may not be exercised by him.

(3) Upon completion of his investigation, the officer shall immediately give all information relating to the commission of the offence to an officer in charge of a police station and a police officer may, by warrant, arrest any person who may have committed an offence under this Act or any regulation made thereunder.

Power to examine
witnesses.

45. (1) An officer making an investigation under section 39 or 44 may examine orally any person who appears to him to be acquainted with the facts and circumstances of the case.

(2) The person referred to in subsection (1) shall be legally bound to answer all questions relating to the case put to him by the officer:

Provided that the person may refuse to answer any question if the officer fails or refuses on demand to produce to him the certificate of authorization issued by the Director General to the officer under subsection 7(1):

Provided further that the person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth whether or not the statement is made wholly or partly in answer to questions.

(4) An officer obtaining information from a person shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by a person under this section shall, whenever possible, be reduced into writing and signed by him or affixed with his thumb print, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish.

(6) Where an officer uses the assistance of an interpreter, any inquiry or requisition to a person made on behalf of the officer by the interpreter shall, for all purposes, be deemed to have been actually made by the officer, and any answer thereto made to the interpreter shall be deemed to have been actually made to the officer.

Employer, etc., to
assist officer.

46. The owner or occupier of, or employer at, any place of work and the agent or employee of the owner, occupier or employer shall provide such assistance as the officer may require for any entry, inspection, examination or inquiry or for the exercise of his powers under this Act.

Offences
relation
inspection,
examination
investigation.

in
to
47. A person who—

(a) refuses access to a place of work to an officer or a person assisting him;

- (b) obstructs the officer in the exercise of his powers under this Act or any regulation made thereunder, or induces or attempts to induce any other person to do so;
- (c) fails to produce any document required under this Act by the officer;
- (d) conceals the location or existence of any other person or any plant or substance from the officer;
- (e) prevents or attempts to prevent any other person from assisting the officer;
- (ea) fails to comply with any direction given by an officer as is reasonably necessary for the purpose of any inspection, examination or investigation; or
- (f) in any other way, hinders, impedes or opposes the officer in the exercise of his powers under this Act or any regulation made thereunder,

shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Improvement
notice and
prohibition notice.

48. (1) If an officer is of the opinion that a place of work, plant, substance or process is likely to be a danger, or is likely to cause bodily injury or is a serious risk to the health of any person, or is likely to cause damage to any property, he shall serve an improvement notice on the person under whose control the place of work, plant, substance or process lies, requiring the person to take measures to remove the danger or rectify any defect within such period as he shall therein specify or such extended period as he may allow.

(2) If an officer is of the opinion that the defect in subsection (1) is likely to cause immediate danger to life or property, he shall serve a prohibition notice prohibiting the use or operation of the place of work, plant, substance or process until such time that any danger posed is removed and the defect made good to the satisfaction of the officer.

(3) An improvement notice or a prohibition notice under subsection (1) or (2) shall —

(a) state that the officer is of the opinion that in respect of the plant, substance or process at the place of work, there is occurring or may occur an activity which is or is likely to be a danger or is likely to cause bodily injury or a serious risk to the health of any person or is likely to cause damage or is likely to cause immediate danger to life or property, and state the reasons for the opinion; and

(b) where in the officer's opinion the activity concerned is a contravention or is likely to be a contravention of any provision of this Act or any regulation made thereunder, specify the provision and state the reasons for the opinion.

(4) An officer may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remove any danger, likely danger, risk, matter or activity to which the notice relates and the directions may refer to any approved industry code of practice.

(5) Without prejudice to the provision of subsection (2) an officer may, if he considers it necessary, proceed to render inoperative the

place of work, plant, substance or process by any means he may deem best suited for the purpose.

(6) Where such an action is taken by the officer under subsection (5) he may, if he deems fit, recover the cost of the action from the occupier or person having responsibility or control of the place of work, plant, substance or process.

Penalty for failure
to comply with
notice.

49. (1) A person to whom an improvement or a prohibition notice is issued under section 48 must comply with the same notwithstanding that an appeal against its issuance has been lodged.

(2) A person who without reasonable excuse fails to comply with any improvement or prohibition notice issued under section 48 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both, and to a further fine of two thousand ringgit for each day during which the offence continues.

Aggrieved person
may appeal.

50. (1) A person who is aggrieved by a notice issued by an officer under section 48 may, within thirty days from the date of such notice, appeal to the Director General who may, after considering the appeal, by order in writing confirm, revoke or vary the notice.

(2) A person who is aggrieved with a decision of the Director General made under subsection (1) may, within thirty days from the date of the decision, appeal to an appeal committee appointed by the Minister under section 63.

(3) Where an improvement or a prohibition notice is issued by the Director General or the Deputy Director General in the exercise of the powers conferred under section 48, the appeal shall be made to an appeal committee appointed by the Minister under section 63.

PART XII
LIABILITY FOR OFFENCES

General penalty.

51. A person who by any act or omission contravenes any provision of this Act or any subsidiary legislation made thereunder shall be guilty of an offence, and if no penalty is expressly provided shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both and, in the case of a continuing offence, to a fine not exceeding two thousand ringgit for every day or part of a day during which the offence continues after conviction.

Liability of
director, etc., of
company, etc.

52. Where any person commits an offence under this Act or any subsidiary legislation made under this Act is a company, limited liability partnership, firm, society or other body of persons, a person who at the time of the commission of the offence was a director, compliance officer, partner, manager, secretary or other similar officer of the company, limited liability partnership, firm, society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the company, limited liability partnership, firm, society or other body of persons or was assisting in its management—

(a) may be charged severally or jointly in the same proceedings with the company, limited liability partnership, firm, society or the body of persons; and

(b) if the company, limited liability partnership, firm, society or other body of persons is found guilty of the offence, shall be deemed to be guilty of that offence and shall be liable to the same punishment or penalty as an individual unless, having

regard to the nature of his functions in that capacity and to all circumstances, he proves—

- (i) that the offence was committed without his knowledge;
and
- (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Liability of person
for act, etc., of
employee, etc.

52A. Where any person would be liable to any punishment or penalty under this Act for any act, omission, neglect or default committed —

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person;
or
- (c) by the employee of that person's agent when acting in the course of his employment by the person's agent or otherwise on behalf of the person's agent acting on behalf of that person,

that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of the person's employee or agent, or of the employee of the person's agent.

Offences
committed
trade union.

by **53.** (1) Where a trade union by any act or omission contravenes any provision of this Act or any regulation made thereunder, every officer, employee and person purporting to act on the instruction of any officer of the trade union shall be deemed to have contravened the provision and may be charged jointly in the same proceedings

with the trade union or severally, and every such officer, employee or person shall be deemed to be guilty of the offence.

(2) A person may be proceeded against and convicted under the provision of subsection (1) whether or not the trade union has been proceeded against or has been convicted under that provision.

Offences
committed by
agent.

54. A person who would be liable under this Act or any regulation made thereunder to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing had been done or omitted by his agent.

55. [deleted]

Body corporate or
trade union liable
to fine.

56. Where a person convicted in respect of an offence under this Act or any regulation made thereunder is a body corporate or a trade union, it shall only be liable to the imposition of a fine provided therefor.

Aiding
abetting. and

57. A person who aids or abets the commission of an offence under this Act shall be punished with the punishment provided for the offence.

Safeguards
against further
personal liability.

58. Subject to the provisions of this Act and any regulation made thereunder, no person shall incur any personal liability for any loss or damage caused by any act or omission by him in carrying out the duties under this Act or any regulation made thereunder, unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

Civil liability not
affected by Parts
IV, V and VI.

59. Nothing in Parts IV, V and VI and the relevant industry code of practice shall be construed as —

- (a) conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of those Parts;
- (b) conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings; or
- (c) affecting the extent, if any, to which a right of action arises or civil proceedings may be taken with respect to breaches of duties imposed by other legislations in regard to safety and health.

Onus of proving
limits of what is
practicable.

60. In any proceedings for an offence under this Act or any regulation made thereunder consisting of a failure to comply with a duty or requirement to do something so far as is practicable, or to use the best practicable means to do something, it shall be for the accused to prove that it was not practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

Evidence.

60A. In any proceedings under this Act or its subsidiary legislation, all reports, records or register and any extracts therefrom kept and certified by an officer shall be *prima facie* evidence of the facts stated therein.

Prosecutions.

61. Prosecutions in respect of offences committed under this Act or any regulation made thereunder may, with the prior written consent of the Public Prosecutor, be instituted and conducted by an occupational safety and health officer or by an officer specially authorized in writing by the Director General subject to the provisions of the Criminal Procedure Code.

Compounding of offences.

62. (1) The Minister may, by order in the *Gazette*, prescribe any offence under this Act or any regulation made thereunder as an offence which may be compounded.

(2) The Director General may at any time before conviction compound any of the offences prescribed under subsection (1) as an offence which may be compounded by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence:

Provided that the Director General shall not exercise his powers under this section unless the person in writing admits that he has committed the offence and requests the Director General to deal with the offence under this section.

PART XIII APPEALS

Appeal committees.

63.(1) The Minister shall appoint appeal committees for the purpose of considering any appeal made under section 50.

(2) An appeal committee shall consist of a Chairman to be appointed by the Minister from among members of the Council and two other persons to be appointed by the Minister who, in his opinion, have wide experience and knowledge in matters relating to the subject matter of the appeal.

(3) Every member of an appeal committee may be paid an allowance at such rate or rates as the Minister may determine.

Powers of appeal
committee.

64. (1) An appeal committee may, after hearing an appeal, confirm, revoke or vary, a decision made by the Director General under subsection 50(1), or an improvement or a prohibition notice issued by the Director General under section 48.

(2) An appeal committee shall decide and communicate expeditiously its decision to the person making the appeal.

Decision of appeal
committee.

65. The decision of an appeal committee shall be final and conclusive and shall not be questioned in any court.

PART XIV REGULATIONS

Regulations.

66. (1) The Minister may make regulations for or with respect to the safety, health and welfare of persons at work in order to achieve the objects of this Act.

(2) In particular and without prejudice to the generality of subsection (1), such regulations may —

(a) regulate or prohibit—

(i) the manufacture, supply or use of any plant;

(ii) the manufacture, supply, storage, transport or use of any substance; and

(iii) the carrying on of any process or the carrying out of any operation;

(b) prescribe the requirements with respect to the design, construction, guarding, siting, installation, commissioning,

examination, requalification, repair, maintenance, alteration, adjustment, dismantling, testing, marking or inspection of any plant;

(ba) prescribe the requirements with respect to any plant for the purposes of the special scheme of inspection under section 27F;

(c) prescribe the requirements with respect to the examination, testing, analysis, labelling or marking of any substance;

(d) prescribe the times and the manner in which employers or other specified persons are required to examine, test, analyze, label, mark or supply information on any substance;

(e) prescribe the requirements to abstain from eating, drinking or smoking in any circumstances involving risk of absorption of any substance or risk of injury or poisoning arising out of the use of any substance;

(f) prescribe the requirements with respect to the instruction, training and supervision of persons at work;

(g) prescribe the procedure for employers to notify any accident, dangerous occurrence, occupational poisoning or occupational disease;

(h) prescribe the arrangements to be made with respect to the taking of any action or precaution to avoid, or in the event of, any accident or dangerous occurrence and to minimise the risk and to mitigate the effects thereto;

- (i) prohibit or require the taking of any action in the event of any accident or dangerous occurrence;
- (j) prescribe the requirements with respect to the provision and use in specified circumstances of personal protective equipment and monitoring and testing facilities equipment; and rescue equipment;
- (k) prescribe the standards in relation to the use of, including standards of exposure to, any physical, biological, chemical or psychological hazard;
- (l) regulate and require the monitoring by employers or occupiers of conditions at a place of work including the ergonomic, physiological and psychological needs and health of their employees;
- (m) secure the provision of adequate welfare, safety and health facilities by employers for persons at work;
- (n) require the employers to keep and preserve records and other documents;
- (o) prescribe the composition, powers, functions and procedures of safety and health committees and regulate the election or appointment of members of the committees and other related matters;
- (p) prescribe the manner of holding inquiries under section 33 and of hearing appeals under section 50;

- (q) prescribe the fees payable or chargeable for doing any act or providing any service for the purposes of this Act or any regulation made thereunder;
- (r) prescribe the offences which may be compounded and the method and procedure to be complied with;
- (s) prescribe the requirements for engaging a medical officer and the procedures for the registration of the medical officer;
- (t) prescribe the requirements for appointing a safety and health officer, the training required of a safety and health officer and the procedures for registration;
- (ta) prescribe the requirements and manner for the notification of undertaking, planning and designing management of any activity at a place of work;
- (tb) prescribe the times at which and the manner in which a competent person is required to take charge or control of any plant, place of work, process, substance and activity, and any requirement relating to it;
- (u) prescribe any other matter which may appear to the Minister to be expedient or necessary for the better carrying out of this Act.

(3) Regulations made under this Act may prescribe any act or omission in contravention of the regulations to be an offence and may prescribe penalties of a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both for such offence.

PART XV
MISCELLANEOUS

Confidentiality of
information.

67. (1) Except for the purposes of this Act or for the purposes of any civil or criminal proceedings under this Act or any other written law, no person shall disclose any manufacturing or commercial secret which may at any time come to his knowledge or has been obtained by him in the course of his duties under this Act.

(2) For the purposes of this section, “manufacturing or commercial secret” means highly sensitive information relating to—

(a) any manufacturing process;

(b) any product, raw material or by-product formulation;

(c) any idea of duplication or cloning of product; or

(d) any technical information on operating system,

and that the information has been declared as manufacturing or commercial secret in writing by the occupier or owner.

(3) A person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Power to exempt.

67A. (1) The Minister may, upon the recommendation of the Director General, by an order published in the *Gazette*, exempt any plant, substance, process, person or place of work, or class of persons or class of place of work, from any provision of this Act or its subsidiary legislation.

(2) An exemption under subsection (1) may be subject to such conditions as the Minister thinks fit.

(3) The Minister may, upon recommendation of the Director General, by order published in the *Gazette*, vary or revoke an exemption given under subsection (1).

Power to amend
Schedules.

67B. Except for the First Schedule, the Minister may, by order published in the *Gazette*, amend the Schedules to this Act.

FIRST SCHEDULE

[Subsection 1(3)]

Non-application

1. Domestic employment in relation to a person who employs another, or is employed, as a domestic servant within the meaning of the Employment Act 1955 [*Act 265*].
 2. Armed forces.
 3. Work on board ships governed by the Merchant Shipping Ordinance 1952 [*Ord. No. 70 of 1952*], the Sabah Merchant Shipping Ordinance 1960 [*Ord. No. 11 of 1960*] or the Sarawak Merchant Shipping Ordinance 1960 [*Ord. No. 2 of 1960*].
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SECOND SCHEDULE

[Section 10]

1. The members of the Council shall hold office for a term of three years or for such shorter period as the Minister may specify and shall be eligible for reappointment for a maximum of two terms.
2. (1) A member of the Council may at any time—
 - (a) resign from the Council by a notice in writing to the Minister;
or
 - (b) be removed from the Council by the Minister for permanent incapacity or other sufficient cause,

and upon such resignation or removal the term for which he was appointed shall be deemed to have expired.

(2) Where any question arises as to whether any incapacity or cause exists or whether any incapacity is temporary or permanent or any cause is sufficient, the decision of the Minister shall be final.

3. (1) The following persons shall be disqualified from being appointed to or being members of the Council:

(a) a person who has been found or is declared to be of unsound mind;

(b) a bankrupt;

(c) a person who has been convicted of any offence involving fraud, dishonesty or moral turpitude, or any offence relating to occupational safety and health under any law made thereunder; or

(d) a person who is otherwise unable or incapable of performing the functions as a member of the Council.

(2) A member of the Council appointed under subsection 9(1) shall cease to be a member—

(a) if he fails to attend three consecutive meetings of the Council without the permission in writing of the Chairman;

(b) if he becomes disqualified under subparagraph (1); or

(c) if his appointment is revoked by the Minister.

4. (1) The Minister shall summon the first meeting of the Council and thereafter the Council shall meet not less than once in three months at such place as the Chairman may appoint.

(2) The Chairman shall call a meeting of the Council on the request of any two members of the Council and such request shall be in writing with the reason therefor.

(3) At any meeting of the Council the Chairman shall preside, and in his absence the members shall elect one of their numbers to preside over the meeting.

(4) The quorum of the Council shall be eleven.

(5) If on any question to be determined by the Council there is an equality of votes, the Chairman or, in the case where the Chairman is absent, the member presiding over the meeting, shall have a casting vote.

(6) Subject to subparagraphs (3), (4) and (5) the Council shall determine its own procedure.

(7) The Council shall cause proper records of its proceedings to be kept.

4A. The Council may invite any person to attend any meeting of the Council for the purpose of advising the Council on any matter under discussion but that person shall not be entitled to vote at the meeting.

5. There shall be paid such allowances to members of the Council for attending meetings of the Council as the Minister may determine.

6. A member of the Council who has a pecuniary interest whether direct or indirect in any matter to be considered by the Council shall declare the nature of that interest at every meeting at which the matter is considered.

7. No member of the Council shall incur any personal liability for any loss or damage caused by any act or omission in administering the affairs of the Council unless the loss or damage was occasioned intentionally or through recklessness or gross negligence.

FOURTH SCHEDULE

[Subsection 3(1)]

Serious bodily injury

1. Emasculation
2. Permanent privation of the sight of either eye
3. Permanent privation of the hearing of either ear
4. Privation of any member or joint
5. Destruction or permanent impairing of the powers of any member or joint
6. Permanent disfiguration of the head or face
7. Fracture or dislocation of a bone
8. Amputation of the arm, hand, finger, thumb, leg, foot or toe
9. Any crush injury to the head or torso causing damage to the brain or internal organs in the chest or abdomen
10. Any burn injury (including scalding/any injury to the scalp) which —

(a) covers more than 10% of the whole body's total surface area; or

(b) causes significant damage to the eyes, respiratory system or other vital organs

11. Any degree of scalding which requires treatment by a registered medical practitioner
 12. Any other injury arising from working in an enclosed space which leads to hypothermia or heat-induced illness
 13. Loss of consciousness caused by head injury or asphyxia (lack of oxygen)
 14. Electrical injury
 15. Loss of consciousness or acute illness from absorption, inhalation or ingestion of any substance which requires treatment by a registered medical practitioner
 16. Any case of acute ill health where there is reason to believe that this resulted from exposure to isolated pathogen or infected material
 17. Any other work related injury or burn injury which results in the person injured being admitted immediately into hospital for more than 24 hours.
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FIFTH SCHEDULE
[Paragraph 31B(1)(a)]
Activities

1. To fabricate, install, erect, dismantle, test, inspect, maintain, repair or service any plant or engineering control equipment.
2. To operate, handle or be in charge of any plant
3. To carry out medical surveillance and health examination.
4. To conduct health risk assessment for any chemical that is hazardous to health.
5. To conduct indoor air quality assessment.
6. To monitor or test work environment, plant or place of work including chemical exposure monitoring, noise monitoring and audio metric testing.
7. To conduct any occupational safety and health training, assessment or examination.