



Guide to the Safety, Health and Welfare at Work Act 2005

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The Authority

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Introduction

The Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005) –(hereafter called the 2005 Act) applies to employers, employees in all employments and to the self-employed. In the interests of securing a preventive approach to occupational health and safety, it also has implications for persons who control places of work and those who supply articles or substances for use at work.

This Guide is aimed at safety and health practitioners, employers, managers, employees, safety representatives and others to give guidance on the 2005 Act. The objective of the Guide is to give general guidance aimed at the prevention of occupational accidents or ill health. It is not intended as a legal interpretation of the legislation.

The 2005 Act contains provisions for securing and improving the safety, health and welfare for all workers. It updates, repeals and replaces its predecessor, the Safety, Health and Welfare at Work Act 1989. Relevant provisions of the Safety, Health and Welfare at Work (General Application) Regulations 1993 (S.I. No. 44 of 1993) which transposed, in part, requirements of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the health and safety of workers in the workplace and of Council Directive 91/383/EEC of the 25 June 1991 on measures to improve the safety and health at work of workers with a fixed-duration or temporary employment relationship are now included in the Safety, Health and Welfare at Work Act 2005 Act as primary legislation.

References in this Guide to "safety and health legislation" are to the "relevant statutory provisions" as defined in the Act, i.e. –

- (a) the 2005 Act and any instrument made under it for the time being in force,
- (b) the enactments specified in Schedule 2, Part 1, to the 2005 Act and any instruments made under those enactments for the time being in force, and
- (c) the Regulations made under the European Communities Act 1972 for the time being in force specified in Schedule 2, Part 2, to the Act."

The 2005 Act furthers the application of modern concepts of hazard identification and risk assessment to occupational safety and health commenced by its predecessor, and is aimed at a preventive approach to reducing accidents and ill health at work. The 2005 Act continues to recognise and develop the role of both sides in employment and Government in framing and in enacting occupational safety and health legislation in Ireland.

The central thrust of the 2005 Act is encapsulated in the 9 General Principles of Prevention, which are set out in Schedule 3 to the Act, as follows –

1. The avoidance of risks.
2. The evaluation of unavoidable risks.
3. The combating of risks at source.
4. The adaptation of work to the individual, especially with regard to the design of places of work, the choice of work equipment and the choice of systems of work, with a view, in particular, to alleviating monotonous work and work at a predetermined work rate and to reducing the effect of this work on health.
5. The adaptation of the place of work to technical progress.

6. The replacement of dangerous articles, substances or systems of work by safe or less dangerous articles, substances or systems of work.
7. The giving of priority to collective protective measures over individual protective measures.
8. The development of an adequate prevention policy in relation to safety, health and welfare at work, which takes account of technology, organisation of work, working conditions, social factors and the influence of factors related to the working environment.
9. The giving of appropriate training and instructions to employees.

The Act is organised into 8 Parts and 7 Schedules as follows -

Part 1: Preliminary and General

This Part contains 7 sections (1 to 7) dealing with administrative and application issues, except for section 2, which explains the meaning of words commonly used in the Act.

Part 2: General Duties

This Part comprises of 3 Chapters, containing 10 sections (8 to 17) and details the general duties of employers, employees, persons in control of places of work, designers, manufacturers, importers and suppliers of articles and substances and persons who carry out construction work.

Part 3: Protective and Preventive Measures

This Part contains 7 sections (18 to 24) focusing on protective and preventive measures and including provisions relating to hazard identification, risk assessment, the safety statement, the observance by an employer of any codes of practice relating to the safety statement for specific work activities or classes of employment where 3 or less persons are employed, co-operation between employers, occupational health surveillance, medical fitness to work and joint health and safety agreements.

Part 4: Safety Representatives and Safety Consultation

This Part contains 7 sections (25 to 31) setting out the arrangements for consultation between the employer and the employee on health and safety issues at the workplace. Employees will be entitled to select a safety representative (or by agreement with the employer, more than one) to represent them in these consultations. Part 4 also contains the provisions in relation to protection against dismissal and penalisation from acting in compliance with the Act or other relevant statutory provisions, etc.

Part 5: The Authority

This Part comprises of 2 Chapters, containing 25 sections (32 to 56) specifying the general functions of the Health and Safety Authority, its obligations to produce, among other things, a detailed work programme and strategy statement and also covers matters relating to staffing of the Authority.

Part 6: Regulations, Codes of Practice and Enforcement

This Part comprises of 3 Chapters, containing 20 sections (57 to 76) and requires the Authority to review safety and health legislation and other legislation, which might impact upon occupational safety and health, and submit proposals to the Minister, as appropriate. It gives power to the Minister to make Regulations, including matters set out in Schedule 7. It also sets out the various enforcement powers available to Inspectors under the Act.

Part 7: Offences and Penalties

This Part contains 9 sections (77 to 85) and sets out the range of offences and penalties that may apply under the legislation, including "on-the-spot" fines which may be prescribed in Regulations under the Act. It also sets out the liability of directors, managers or officers of undertakings. It places the onus of proof on the accused for a number of provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means

to do something. It enables the Authority to publish lists of offenders and where enforcement orders are served or High Court orders are made.

Part 8: Miscellaneous

This Part contains 4 sections (86 to 89) covering the indemnification of inspectors, powers of officers of customs and excise to detain any imported articles or substances, and the power to prescribe in Regulations work activities which may be subject to control by licence. The 2005 Act makes a technical (non-safety and health related) amendment to the National Standards Authority of Ireland Act 1996.

The following are the 7 Schedules to the Act -

Schedule 1 - Associated Statutory Provisions

Schedule 2 - Existing Enactments

Schedule 3 - General Principles of Prevention

Schedule 4 - Safety Committees

Schedule 5 - The Authority

Schedule 6 - The Chief Executive

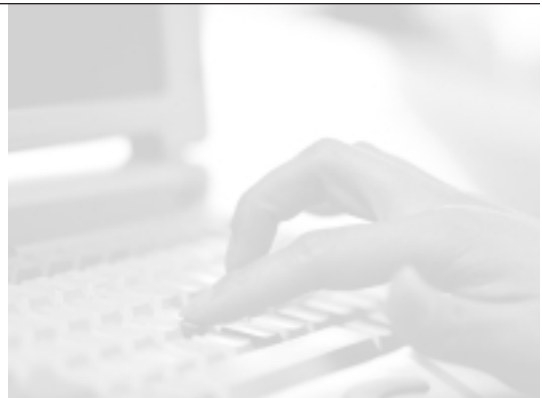
Schedule 7 - Regulations





Part 1

Preliminary and General



Part 1

Preliminary and General

1. Short title and commencement

Section 1 gives the short title "the Safety, Health and Welfare at Work Act 2005" and allows for the Minister to determine commencement dates for the Act or for parts of it and for the repeal of the Safety, Health and Welfare at Work Act 1989 and other existing enactments. Under the Safety, Health and Welfare at Work (Commencement) Order 2005 (S.I. No. 328 of 2005), the 2005 Act has effect from 1 September 2005.

2. Interpretation

Section 2 is an interpretation section and defines terms used in the Act. It includes definitions of "accident", "dangerous occurrence" and "personal injury"; "article" and "substance", "construction work", "contract of employment", "employee" and "employer", "place of work", "record" amongst other terms. It also clarifies the terms "employer" and "employee" in relation to public servants, employees engaged through employment agencies, a share fisherman on a fishing vessel and persons undergoing training or work experience, other than when present at a course of study in a university, school or college.

For the purposes of safety and health legislation, a person who is training for employment or receiving work experience, other than when present at a course of study in a university, school or college, is deemed to be an employee of the person whose undertaking is for the time being the immediate provider to that person of training or work experience.

Attention is drawn to two new additional definitions compared to the Act of 1989 – "competent person" and "reasonably practicable".

In relation to the definition of "competent person" the Act establishes the fundamental cores of competency as "training, experience and knowledge" taking account, as appropriate, of the Qualifications (Education and Training) Act 1999. Section 2(2) of the 2005 Act provides as follows –

"(2)(a) For the purposes of the relevant statutory provisions, a person is deemed to be a competent person where, having regard to the task he or she is required to perform and taking account of the size or hazards (or both of them) of the undertaking or establishment in which he or she undertakes work, the person possesses sufficient training, experience and knowledge appropriate to the nature of the work to be undertaken.

(b) Account shall be taken, as appropriate, for the purposes of subparagraph (a) of the framework of qualifications referred to in the Qualifications (Education and Training) Act 1999."

"Reasonably practicable" is a qualification that applies to general duties in the 2005 Act, Section 2(6) of which provides as follows –

"accident" means an accident arising out of or in the course of employment which, in the case of a person carrying out work, results in personal injury;

"personal injury" includes–

- (a) any injury, disease, disability, occupational illness or any impairment of physical or mental condition, or
- (b) any death,

that is attributable to work;

"(6) For the purposes of the relevant statutory provisions, "reasonably practicable", in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work."

3. Service of notices, etc.

Section 3 provides for procedures as regards the service of notices under the Act and allows for the service of notices through various formats including electronic mail and fax.

4. Repeals and savings

Section 4 provides for repeals and savings. It provides for the repeal of provisions of the Organisation of Working Time Act 1997, which are overtaken by provisions in the Act. It provides a basis for activation of the repeal of the Safety, Health and Welfare at Work Act 1989 Act which was made under the Safety, Health and Welfare at Work (Commencement) Order 2005 and the repeal, over time, of other statutes, which apply to safety and health as they are reviewed and rationalised. It provides for continuance, as appropriate, of references in documents to the Act of 1989 and for the continuance of Orders or Regulations made under other health and safety statutes, unless otherwise provided for in the 2005 Act.

5. Expenses

Section 5 provides for payment of the Minister's expenses administering the Act.

6. Application of relevant statutory provisions to certain public service activities

Section 6 specifies that safety and health legislation applies to prisons and places of detention except where this conflicts with safe custody, good order and security. The section also specifies that safety and health legislation applies to the Defence Forces except where they are on active service.

7. Application of relevant statutory provisions to self-employed persons

Section 7 provides that self-employed persons must comply with safety and health legislation as if they were employers and as if they were their own employees.



Part 2
General Duties



Chapter 1

General Duties of Employer

8. General duties of employer

Section 8 of the Act requires every employer to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all of his or her employees. The general duties of the employer set out in Section 8 broadly reflect in criminal legislation the common law principle of the duty of care. The duties cover:

- the management and conduct of work activities,
- preventing improper conduct or behaviour (for example, violence, bullying or horseplay at work),
- the design, provision and maintenance of (i) safe workplaces (ii) safe means of access to and egress from the workplace and (iii) safe plant and machinery,
- ensuring safety and prevention of risk from the use of any substances or articles, from noise, vibration or ionising or other radiations or any other physical agent at the place of work,
- providing safe systems of work,
- providing adequate welfare facilities³,
- provision of adequate instruction, training and supervision and any necessary information (see also Sections 9 and 10),
- preparing risk assessments and safety statements as required by Sections 19 and 20 that take account of the general principles of prevention in Schedule 3 to the Act when implementing necessary safety, health and welfare measures⁴,
- provision and maintenance of suitable personal protective equipment where risks cannot be eliminated, or where such equipment is prescribed,
- the preparation and, where necessary, the revision of adequate plans and procedures to be followed and measures to be taken in the case of an emergency or the presence of serious or imminent danger⁵ (see also Section 11),
- to report accidents and dangerous occurrences to the Authority as may be required in Regulations under the Act⁶, and
- to obtain, where necessary, the services of a competent person to assist in ensuring the safety, health and welfare of his or her employees (see also Section 18).

³not qualified by "so far as is reasonably practicable"

⁴ not qualified by "so far as is reasonably practicable"

⁵ not qualified by "so far as is reasonably practicable"

⁶ not qualified by "so far as is reasonably practicable"

Account should be taken of the general principles of prevention set out in **Schedule 3** to the 2005 Act when determining and implementing measures to manage safety, health and welfare at work (and in particular the risk assessment required by **Section 19** and the safety statement provided for in **Section 20**).

The duties on the employer also extend to fixed-term contract or temporary contract employees.

Any measures taken by the employer relating to safety, health and welfare must not result in financial cost to his or her employees.

9. Information for employees

Section 9 sets out in greater detail the types of information on safety, health and welfare that are required to be given by employers to employees under **Section 8**. It must be in a form, manner and language (e.g. English, Irish or appropriate other language of the employees, or a suitable combination of those languages) that is reasonably likely to be understood. It must include information on hazards, risks and measures taken as regards safety, health and welfare and the names of emergency staff and safety representatives. Employees of another employer working in the place of work must also be informed.

In addition, where employers use employees from another company, employers are obliged to ensure that the actual employer of those workers is made aware of all safety information. The presence of persons with reading or illiteracy difficulties may impact significantly on how the required information is imparted.

The information provided must explain the hazards and risks within the workplace and the protective and preventive measures taken to control the hazards and risks affecting specific tasks or operations carried out by those persons.

The employer must inform the employees of the names of employees designated under **Section 11** to act in emergencies and any safety representatives that have been selected in accordance with **Section 25**.

Safety representatives selected under **Section 25** and competent persons appointed under **Section 18** must be given information on risk assessments prepared under **Section 19** of the Act, together with information on reportable accidents and dangerous occurrences and any information resulting from experience of applying protective and preventive measures required under the relevant statutory provisions.

Prior to the commencement of employment the employer must also give fixed-term and temporary employees information on any potential and increased specific risks associated with their work, any health surveillance that may be necessary and any special occupational skills or qualifications required for the job.

An employer who hires employee through a temporary employment business must inform the employment agency or labour supplier about the occupational skills or qualifications required for the job and the specific features of the work. The employer must ensure that this information is passed on to the employees concerned.

The employment agency or labour supplier is obliged by the Act to give the same information to employees.

10. Instruction, training and supervision of employees

Section 10 sets out the specific requirements as regards the instruction, training and supervision of employees by employers in support of the general duty in **Section 8** and with regard to **Sections 25** and **26** (provisions relating to safety representatives and safety consultation).

Instruction and training must be given in a form, manner and language that would be reasonably likely to be understood by those receiving it. The employer should be satisfied that such training has been fully understood, particularly by those who do not use English as a first language.

Safety and health training must not be at any financial cost to the employee nor impact upon their remuneration. Such training must include information and instructions in the job to be carried out and measures to be taken in an emergency.

In assigning an employee to a specific task, the employer must take account of his or her capabilities in relation to safety, health and welfare. Employees must not be put at risk by being given work that they do not have the competence to undertake. The risk assessment required by **Section 19** will assist in identifying the level of competence and training needs associated with a particular task. The training needs of all employees, including supervisors and managers, should be considered.

In the case of groups of particularly sensitive employees and employees covered by specific safety and health legislation, such as persons with disabilities, pregnant workers or young persons, the employer must ensure they are protected against the specific dangers that affect them.

Training must be adapted to changed circumstances or new risks and should be repeated periodically. Training must be provided to employees on recruitment, in the event of transfer or change of task, and when new work equipment, systems of work or new technology is introduced.

In cases where safety and health legislation requires specific health and safety training, such as the construction safe pass scheme, employees must be released for that training during working hours, without loss of pay, where appropriate.

Employers must ensure that employees of another employer (for example, maintenance contractors at a manufacturing plant or specialised sub-contractors at a construction site) carrying out work at their place of work must receive appropriate instruction in any risks associated with that place of work. Short induction presentations may be a suitable way of giving this information.

Fixed-term and temporary employees must be given appropriate training, taking account of their qualifications and experience and the work they are to undertake.

11. Emergencies and serious and imminent dangers

Section 11 provides for the measures to be taken in emergencies, and in the case of serious and imminent danger, in support of the general duties on employers in **Section 8** to have plans and procedures for emergencies and serious or imminent dangers. The measures must be appropriate to the place of work and cover –

- first aid,
- fire- fighting,
- the evacuation of employees and others present in the workplace,
- contact with the appropriate emergency services with regard to first aid, emergency medical care, fire-fighting and rescue arrangements,
- the designation of employees to implement the emergency plan, emergency procedures or necessary measures, and
- the number of those designated employees, their training and the appropriate equipment available to them, having regard to either, or both, the nature of the specific hazards and the size of the place of work.

When an emergency or serious and imminent danger presents, the employer must as soon as possible inform all employees about the risk and the protective measures to be taken. Other than to implement the emergency

plan or procedures, or to instigate necessary measures to be taken, workers should not be required to continue or resume work while the serious and imminent danger continues. Employees must be made aware of the circumstances in which they are expected to stop work and move to a place of safety. They must be able to take appropriate steps to avoid the consequences of the danger in the absence of appropriate guidance or instruction and where their immediate superiors cannot be contacted. These steps should be based on their own knowledge and on the technical means at their disposal.

Particular consideration needs to be given to ensuring that the necessary arrangements are in place for contacting the appropriate emergency services outside of normal working hours, during shift and nighttime work etc.

If there is serious, imminent and unavoidable danger the employer must take action and instruct employees so that they can, either or both, stop work and immediately leave the place of work and go to a safe place. An employee may not be penalised for taking such action.

Where there is a serious specific danger present in part of the place of work, the employer must ensure that only employees who have been given appropriate instructions have access to that area. In this regard, a danger area may be taken to mean a location at the place of work where an unacceptable level of risk would be present if special precautions are not taken (for example, giving permits to work to competent workers or the wearing of breathing apparatus). Such area might contain a permanent hazard, such as in parts of a chemical processing factory, in a hospital radiation facility or in a high-voltage electrical switch room containing exposed live conductors.

An exemption to the requirements of this section applies when members of the Defence Forces and the Garda Síochána, employees of a fire authority, or persons engaged in civil protection or civil defence are involved in civil emergencies, public order, security or an act of war (see Section 6).

12. General duties of employers to persons other than their employees

Section 12 sets out the duty that employers, including the self-employed (see Section 7), owe "so far as is reasonably practicable" to those who are not their employees but who may be exposed to risks to their health or safety at the place of work while work is being carried on.

The section applies to multi-occupancy workplaces, where the duty holder would have to determine if his or her undertaking exposes the other occupiers and employees to risk (see also Section 21 *duty of employers to co-operate*).

Section 12 has even greater significance when contractors are brought into a place of work. This covers a very wide range of situations, varying from office contract cleaners to specialised maintenance services in manufacturing industry. Under this section the duty holder would have to make an appropriate assessment of the competence of a contractor to undertake a particular task where there is the potential for exposure to risk. For example, in the construction industry, which makes extensive use of sub-contracting, these issues are addressed in the design and management provisions of the Safety, Health and Welfare at Work (Construction) Regulations. To take another example, a facilities manager on an estate would need to be satisfied as to the competence of contract tree surgeons.

Situations where contractors are used are generally characterised by the retention of a high degree of control over the place of work by the duty holder. The contractor would be expected to conform to certain site rules that may apply to the undertaking. Appropriate information, instruction and training on specific aspects of the workplace may need to be given to the contractor by the duty holder. An example would be information on established permit to work and isolation procedures relating to high voltage electrical work in a factory. A lack of clarity on this issue could lead to many serious accidents happening to electrical contractors.

A self-employed person acting as a consultant would also need to consider the implications of this section. If specified underpinning work proved inadequate and led to a structural collapse, the consultant engineer concerned may be held to have failed to comply with Section 12.

Section 12 applies where the public have access to the place of work while work is in progress.

The provision of appropriate measures to prevent access by the public, and in particular children, to comparatively high-risk workplaces such as construction sites, factories, on farms or in hospitals, needs to be considered.

Note that the definition of "place of work" contained in **Section 2(1)** includes "*a location at, in, upon or near which work is carried on.*" The duty would, therefore, extend to members of the public in the immediate vicinity of a place of work, for example excavations in the public pavement or dangers presented by a building site.

Section 12 should not be applied where more specific legislation applies and, in particular, where public safety is already covered in other legislation. For example, public risks arising from unstable workplace buildings are best addressed by the dangerous structures legislation enforced by the appropriate local authority. **Section 12** would, however, cover risks to the public arising from demolition work, as the risks would clearly relate to the work activity.

Section 12 does not apply to public nuisance issues (for example, non-hazardous noise or noxious smells associated with a place of work), or to the following:

(i) issues involving clinical judgement or on the level of clinical care provided (though it would apply to major non-clinical risks, for example, slips, electrical hazards arising from the use of plant or equipment, systems of work).

(ii) road traffic incidents (other than those incidents involving roadworks and associated traffic control measures, excessive mud left on the road adjacent to a construction site by traffic travelling from the site and work vehicles engaged in specific work on the public highway).

(iii) public consumer health and safety issues.

Note that the requirement to undertake a hazard identification and risk assessment (see **Section 19**) and to prepare, or cause to be prepared, a safety statement (see **Section 20**) applies to a person who has duties under this section.



Chapter 2

General Duties of Employee and Persons in Control of Places of Work

13. Duties of employee

Section 13 is intended to protect the employee, fellow employees, and any other persons affected by the employee's actions. The employee has a duty under this section to co-operate with other duty holders so far as is necessary to enable those persons to comply with the appropriate relevant statutory provisions.

Note that the requirement to cooperate with other duty holders extends beyond the employer and could include, for example, employees, other employers sharing the place of work and duty holders with specific responsibilities such as a project supervisor appointed under the Safety, Health and Welfare at Work (Construction) Regulations.

Section 13 provides for a range of duties on employees. An employee must –

- comply with safety and health legislation, both in the 2005 Act and elsewhere,
- take reasonable care to protect his or her own safety, health and welfare and that of any other person who may be affected by his or her acts or omissions at work,
- not be under the influence of alcohol or drugs or a combination of alcohol and drugs to the extent that he or she is likely to endanger his or her own safety, health or welfare at work or that of any other person,
- if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests, by or under the supervision of a registered medical practitioner who is a competent person, as may be required by Regulations made under the 2005 Act,
- co-operate with his or her employer or any other person, as necessary, to assist that person in complying with safety and health legislation as appropriate,
- not engage in improper conduct or other behavior such as violence, bullying or horseplay, which could endanger another person at work or his or her safety, health and welfare,
- where safety and health training related to a particular task is required by the employer or by safety and health legislation, attend and undergo, as appropriate, any reasonable assessment required by his or her employer or as may be prescribed in Regulations,
- taking account of the training and instructions given by the employer, correctly use any article or substance and protective clothing and equipment provided for use at work or for his or her protection.

Clearly, training should be such that the employee is made aware of the correct way to use the article, substance, protective clothing or equipment. It is recommended that both employers and employees keep records of safety and health training which has been provided. An employee, on entering into a contract of employment, may not misrepresent himself or herself as regards the level of training that they have received.

An employee is required to report to the employer, or other appropriate person, as soon as they become aware of any instance –

- where work being carried on, or likely to be carried on, in a manner which may endanger his or her safety, health or welfare or that of another person,
- of any defect in the place of work, the systems of work or in any article or substance likely to endanger him or her or another person, and
- a breach of safety and health legislation likely to endanger him or her or another person which comes to his or her attention.

Supervisors and line managers have an important role in bringing any known deficiencies in health and safety to the attention of senior management.

Under **Section 13**, employees have a duty to refrain from improper conduct liable to harm the safety, health or welfare of persons at work. Violence, horseplay and bullying at work would come within the meaning of improper conduct. Horseplay amongst employees can result in serious consequences, particularly when working with potentially dangerous machines or hazardous substances. Workplace anti-bullying policies rely on the co-operation of employees for their effectiveness. It should be noted that bullying at work does not always involve a supervisor/subordinate relationship and may result from unacceptable peer pressure.

Note that managers have liability under Section 80 of the 2005 Act (liability of directors and officers of undertakings).

14. Interference, misuse, etc.

Section 14 prohibits any person from intentionally or recklessly interfering with, misusing or damaging any thing provided under safety and health legislation, or provided to protect the safety, health and welfare of persons at work, or to place at risk the safety, health or welfare of persons in connection with work activities without reasonable cause.

An example of the application of this section would be a duty to refrain from misusing personal protective equipment supplied to employees (including the employees of a sub-contractor) and the self-employed at a place of work. Note that the section applies to *persons*, and not to *persons at work*. A member of the public who intentionally damages a barrier surrounding an excavation or a fence designed to prevent access by children onto a hazardous construction site could be held to be liable under this provision. In other examples, the section could also apply to students if they behaved recklessly in a school or college laboratory, to persons removing a lifebuoy for fishermen or to persons interfering with, or removing equipment such as fire extinguishers etc. and as a consequence putting people at risk in a college laboratory.

15. General duties of persons in control of places of work, etc.

Section 15 provides that where a person controls, to any extent, a non-domestic place of work, where persons, other than his or her employees are working, the person in control must ensure, so far as reasonably practicable, that the means of access to and egress from that place of work, or any article or substance provided for use at that place of work are safe and without risk to health.

This section also applies where the person has control of the place of work or part of the place of work for the purpose of any trade, undertaking or business, whether for profit or not.

Section 15 applies where an employee is working in premises that are not under the control of his or her employer, such as a visiting window cleaner to an office. The person in control of such a premises would have to ensure that the window cleaner was provided with safe access and egress and that any permanent window cleaning equipment was safe, so far as was reasonably practicable. (Of course, the employer of the window cleaner would also have general duties under **Section 8**). The provision would also place a duty on those in control of shopping centres, offices, hospitals etc. which are clearly places of work, to maintain safe access to

and egress from them. Another example could include the provision of safe electrical cleaning equipment where it is made available for cleaning contractors.

Where any contract, tenancy, license or other interest places an obligation to any extent on a person to maintain or repair a place of work, or the access to and egress from that place of work, or the provision of any substance or article for use at that place of work, to the extent of their obligation, the duty under this section falls upon them. A maintenance contractor who is responsible for servicing plant or a specialist advisor dealing with hazardous substances could carry a duty to persons other than his or her employees under this section.

Note that the requirement to undertake a hazard identification and risk assessment (see **Section 19**) and to prepare, or cause to be prepared, a safety statement (see **Section 20**) applies to a person who has duties under this section.



Chapter 3

General Duties of Other Persons

16. General duties of designers, manufacturers, importers and suppliers of articles and substances

Section 16 places duties on any person who designs, manufactures, imports or supplies any article used at work to ensure, so far as is reasonably practicable, that –

- the article is designed and constructed so that it can be used safely and without risk to health at work,
- it complies with any relevant legislation which implements a Directive of the European Union, and
- the article is properly tested and examined so as to meet such requirements.

The person must also provide information, and any updating of information, about the safe use of the article to any person he or she supplies that article to. The information must relate to the use for which the article has been designed, manufactured or tested and must include information on safe installation, use, maintenance, cleaning, dismantling or disposal without risk to safety or health. Information need not accompany each delivery of items that are frequently or regularly supplied to the same customers, provided that the information remains relevant and up-to-date.

A person who designs or manufactures an article for use at work must carry out, or arrange for the carrying out of, necessary research to discover if the article gives rise to risks to safety or health, with a view to eliminating or minimising those risks, so far as is reasonably practicable.

Suppliers must provide both present and past customers with revised advice on new and serious risks, as they become known. A risk may be considered to be known, for the purposes of this section, when information on that risk is available in the public domain, and the supplier should have been aware of that information. Suppliers will have to balance the severity of each newly discovered risk against the possibility of tracing and contacting past customers.

Articles or substances for use at work may pass through various suppliers before reaching the end-user and, at these stages, modification or processing may take place. For example, chemicals may be supplied in bulk for further processing, mixing or dividing before final supply to the user. Each supplier is only required to provide information to the next person in the supply chain, but such information must take account of reasonably foreseeable risks to those further along the chain, including the end-user. The intermediate suppliers will make any appropriate modifications to the information to reflect any changes they have made to the article or substance.

If the person who designs, manufactures, imports or supplies the article has retained responsibility under a rental, leasing or other arrangement to do so, then that person must maintain the article in a safe condition and in compliance with safety and health legislation.

A person who erects, assembles or installs an article for use at a place of work must ensure that there is nothing in the way in which it is erected, assembled or installed that makes it unsafe or a risk to health, so far as is reasonably practicable.

Section 16 sets down requirements similar to the first paragraph above, in relation to any substance for use at work except that information supplied about a substance must include its identification, any risk arising from its inherent properties, the results from any tests carried out which are relevant to its safe use and any conditions necessary to ensure its safe use, handling, processing, storing, transportation or disposal.

Where the results of tests carried out on articles or substances can be relied upon, it is not necessary to repeat such tests, examination or research.

The duties under this section apply only to things done in the course of a trade, undertaking or business (whether for profit or not) and to matters within the control of a person on whom the duties fall.

If another person gives a written undertaking to take steps to ensure that an article or substance is safe for use at a place of work this can relieve the person who designs, manufactures, imports or supplies the article or substance from duties as regards its safe use, tests and examination. Primarily, a customer may give such an undertaking to allow a manufacturer to make an article to the customer's specification, or to supply a component to an article that is potentially unsafe on its own. The undertaking relieves the supplier of duties under this section to the extent that is reasonable, taking account of the terms in which the undertaking is written. However, the duties under this section are not transferred to the person who gives the undertaking. This does not relieve an importer from any duty where the design, and the control of the design, was outside the State and where the manufacture of an article or substance was carried out and controlled outside the State.

Where articles or substances are provided under a hire purchase agreement, a leasing agreement or credit sale agreement, the responsibilities in this section do not fall on the financial institution making those arrangements but rather on the person supplying the article or substance to the user of the article or substance at work.

Finally, the **Section 16** provides that if an occurrence could not reasonably have been foreseen as a risk to safety or health it shall be disregarded and, also, in determining if there has been compliance with duties under the section, account can be taken of the information or advice given to any person by the person who designed, manufactured, imported or supplied an article or via a person who manufactured, imported or supplied a substance.

17. Duties related to construction work

Section 17 specifies duties to be complied with by persons who commission or procure construction work. Such persons must appoint in writing a competent person or persons to ensure, so far as is reasonably practicable, that the project is designed and is capable of being constructed to be safe and without risk to health, that it is constructed to be safe and without risk to health, that it can be maintained safely and without risk to health when subsequently used, and that it complies, as appropriate, with relevant safety laws and health legislation. (For the purposes of this Section, "construction work" means the carrying out of any building, civil engineering or engineering construction work, as may be prescribed and "project" means any development which includes or is intended to include construction work.)

Any person appointed to design construction work is required to ensure, so far as is reasonably practicable, that the project is designed and is capable of being constructed to be safe and without risk to health, can be maintained safely and without risk to health during use and complies in all respects, as appropriate, with safety and health legislation.

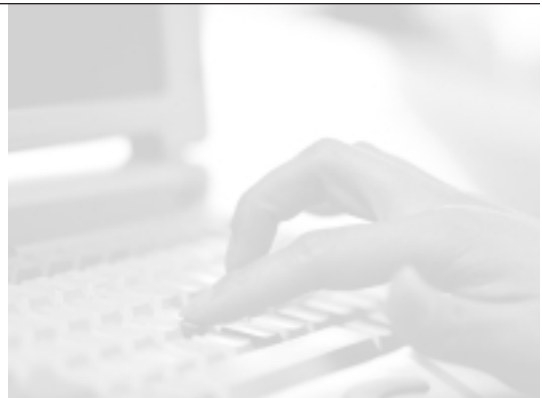
Any person who carries out construction work must ensure, so far as is reasonably practicable, that it is constructed to be safe and without risk to health and that it complies in all respects, as appropriate, with safety and health legislation.

The duties set out in Section 17 as regards safety in construction work are subject to amplification through the provisions of the Safety, Health and Welfare at Work (Construction) Regulations, to be made under the 2005 Act, taking account, amongst other things, of the need to specify in detail the definition of "construction work" as indicated in Section 2(1) of the Act and taking account, as appropriate, of the provisions of Section 58(4)(d) of the Act relating to the specification of necessary exemptions from specified requirements of the relevant statutory provisions.



Part 3

Protective and Preventive Measures



18. Protective and preventive measures

Section 18 sets out in greater detail the requirements on employers in Section 8 to appoint competent persons. The employer may need to appoint one or more competent persons to assist him or her to comply with safety and health legislation. In this context "competent person", depending on the risks involved and the size of the undertaking, could include a person who is able to give informed and appropriate general advice on health and safety to management as well as a person with specialised technical knowledge of matters such as electrical work, lifting operations, etc. (see definition of competent person in Section 2(2)).

The competent person should play a key role in advising on the management of health and safety, and careful consideration needs to be given to any appointment(s). The competent person would have to advise line and senior management on health and safety, evaluate problems as they arise and suggest solutions to those problems and generally promote health and safety at the place of work. Influencing and communication skills would be important for the role.

Note that a definition of competent person for the purposes of the relevant statutory provisions is given in Section 2(2) of the 2005 Act. The assessment of suitability must be seen in the light of the specific functions that the employer intends the appointed person to perform. The competent person should certainly be able to demonstrate knowledge of current "best practice" in the sector concerned, be aware of any gaps in training and be prepared to supplement those shortfalls. Competent persons must be given enough time, without financial cost or other loss of remuneration to perform their functions, and to be able to keep up to date with relevant information.

The numbers of competent persons appointed and the time and facilities available to them must reflect the size of the place of work, the risks involved and the distribution of those risks in the place of work. When appointing competent persons, account should be taken of shift work, and in particular night-shift work, so as to ensure that these periods are appropriately covered.

The employer must also ensure co-operation between any competent person(s) appointed in relation to this section and with any safety representative(s) appointed under Section 25.

The employer is obliged to give consideration first to appointing a competent person as an employee and only where this is impracticable to engaging external competence. A competent person appointed as an employee is better placed to be familiar with the particular aspects of the place of work concerned. However, a relatively small business is generally less likely to have the necessary expertise in-house. Temporary specialist external assistance may also be required to deal with specific matters. A combination of internal and external competence may be appropriate in some circumstances.

The appointment may be of an individual (or individuals) or a company, as in the case of an external specialist consultant group.

An employer (including a self-employed person) may appoint him or herself to the role if competent to discharge the relevant functions.

The employer must provide the competent person with information on factors which affect (or are suspected to affect) the safety, health and welfare of the employees, the risks involved, the protective measures in place, the evacuation measures for employees and other persons in the case of emergencies, as required by Section 11, including the names of employees designated for emergency duties, as well as any necessary information about fixed-term employees or temporary employees so that the competent person can discharge his or her functions.

Note that under Section 77(12), an employer cannot rely on an act or default by a person appointed under Section 18 as a defence in criminal proceedings involving the relevant statutory provisions. The appointment of a competent person does not absolve the employer of his or her responsibilities under the legislation.

19. Hazard identification and risk assessment

Section 19 provides that every employer must identify the hazards at the place of work, assess the risks from those hazards and have a written risk assessment of those risks as they apply to all of the employees and to any single employee and group of employees who may be exposed to any unusual risks including anything specified by safety and health legislation. Particular consideration may need to be given to young or inexperienced workers, new and expectant mothers, nighttime workers and those who work alone.

In this context a hazard is something with the potential to cause harm (for example substances, machinery or methods of work), while the risk is dependent on:

- (i) the likelihood of that harm occurring,
- (ii) the potential severity of that harm (as in the degree of injury or ill-health following an accident), and
- (iii) the number of people who might be exposed to the hazard.

The degree of detail in the risk assessment would need to be proportionate to the risk. For a small business with comparatively insignificant hazards, a simple risk assessment would be sufficient. Larger undertakings that present a wide range of hazards would require a more thorough and sophisticated approach.

Employers are not expected to anticipate risks that are not foreseeable, so the risk assessment should only include those risks that the employer could be reasonably be expected to know. In order to assist in the identification of hazards, the employer may have to consult various sources of advice and information, such as suppliers' and manufactures' manuals, legal guidance and competent, specialised sources. A range of guidance on risk assessment is available, including from the Health and Safety Authority.

The risk assessment should:

- address any significant hazards and risks,
- apply to all aspects of the work, including shift and night work and to employees who work away from the main workplace, and
- cover non-routine as well as routine operations (for example, occasional maintenance tasks).

Having carried out the risk assessment, the employer should be able to make informed decisions on the management of health and safety at the workplace.

The risk assessment must be reviewed and amended if necessary –

- if it is no longer valid or there is reason to believe it is no longer valid,
- if there has been a significant change in the matters to which it relates.

Accidents, dangerous occurrences, incidents of occupational ill health or near-miss incidents may trigger a review of the risk assessment. Such incidents should be investigated with a view to determining if their immediate and underlying causes require remedial action and a consequential review of procedures. Short-term control measures, in particular, need to be reviewed periodically within the overall remedial plan.

The employer must take steps to implement any improvements considered necessary by the most up to date risk assessment.

When identifying hazards and carrying out a risk assessment, account should be taken of the general principles of prevention set out in **Schedule 3** to the Act.

Note that under **Section 26** the employer must consult with employees, or their representatives, on the risk assessment. Under **Section 21**, employers who share a place of work must inform each other of risks arising from the work activity.

Employers and persons in control of places of work must carry out a risk assessment in relation to their duty to persons other than their employees as regards **Section 12** or **Section 15** respectively. In carrying out the risk assessment it is necessary, therefore, to consider all those who might be affected by the undertaking.

20. Safety statement

Section 20 provides that every employer must have a written safety statement based on the hazards identified and the risk assessment under **Section 19** and setting out how the safety, health and welfare of employees will be secured and managed. When preparing a safety statement, account should be taken of the general principles of prevention set out in **Schedule 3** to the **Act**.

Safety statements must be specific to the place of work and must set out –

- the hazards identified and the risks assessed,
- the protective and preventive measures taken and the resources allocated to safety, health and welfare,
- the plans and procedures for dealing with emergencies or serious and imminent danger, in compliance with **Sections 8** and **11**,
- the duties of employees as regards safety, health and welfare at work, and the requirement for them to co-operate on those matters with their employer and any person who has responsibility under the relevant statutory provisions,
- the names and, where applicable, job titles of persons assigned to perform tasks pursuant to the safety statement, and
- the arrangements for the appointment of safety representatives and safety consultation at the place of work in compliance with **Sections 25** and **26** and the names of any safety representatives and/or safety committee members.

The aims of the safety statement are –

- (i) to involve management up to the highest level by assigning clear responsibilities in the control of safety, health and welfare at the place of work,
- (ii) to ensure that appropriate steps are taken to comply with the relevant statutory provisions and that those measures are monitored and reviewed on a regular basis,
- (iii) to identify hazards and prioritise risks,
- (iv) to ensure sufficient resources are allocated to safety management,
- (v) to ensure all at the workplace are informed and involved in the control of safety, health and welfare, and
- (vi) to ensure systematic follow-up of problems as they arise.

The employer must bring the safety statement to the attention of the employees, and in a form, manner and language that is reasonably likely to be understood. This should be done at least annually, or when it is amended. It should be brought to the attention of newly recruited employees upon commencement of

employment. The safety statement must also be brought to the attention of others who may be exposed to specific risk at the place of work to which the statement applies.

Where specific tasks pose a serious risk the employer must give relevant extracts of the safety statement to those affected employees covering the risk identified, the risk assessment and the safety measures taken in accordance with health and safety legal provisions. An example could include working in confined spaces.

The safety statement must be reviewed, and amended if it is no longer valid or if there is reason to believe it is no longer valid, if there has been significant change in the matters to which it relates, or if directed by an inspector under **Section 64** within 30 days of that direction.

Subject to the making of Regulations, where an employer (Employer A) contracts another employer (Employer B) to provide services to him or her at the place of work Employer A must ensure that Employer B, is in possession of an up to date safety statement.

A copy of the safety statement, or a relevant extract, must be available to an Inspector at or near every workplace where work is being carried out.

Notwithstanding the generality of the above, employers with three or less employees can comply with this section if they observe the terms of a code of practice, if any, relating to safety statements that apply to their particular sector and published or approved under **Section 60**.

Employers and persons in control of places of work must prepare a safety statement in relation to their duty to persons other than their employees as regards **Section 12** or **Section 15**.

21. Duty of employers to co-operate

Section 21 requires employers who share a place of work to co-operate in complying with and implementing health and safety provisions and to coordinate their preventive activities and keep each other and their respective employees, and safety representatives (if any), informed about the risks to safety, health and welfare arising from the work, including the exchange of safety statements or relevant extracts of them relating to hazards and risks to employees. This section should also be read with reference to **Sections 12** and **15**.

22. Health surveillance

Section 22 requires employers to ensure that health surveillance relevant to the risks to safety, health and welfare identified by risk assessments prepared under **Section 19**, and any particular health surveillance required by relevant safety and health legislation, is available to employees. The risk assessment should identify those circumstances in which such health surveillance is required.

The aim of health surveillance is the early detection of adverse health effects so that prompt remedial action can be taken to prevent further harm. Continued surveillance can monitor the effectiveness of control measures, identify the most vulnerable employees (or groups of employees) and consolidate the risk assessment.

It would be appropriate to carry out health surveillance when –

- the nature of the particular work is associated with an identifiable disease or adverse health condition,
- there is a reasonable likelihood that the disease or condition may occur under the particular circumstances,
- there are valid techniques available to detect the disease or condition,
- health surveillance is likely to further the protection of the employees, and
- requirements to do so are set down in Regulations.

Safety representatives and employees should be given information on the adoption of any health surveillance procedures as part of the consultation process. In general, decisions relating to health surveillance procedures, including the frequency and level of the surveillance, should be made by a suitably competent person (and in some circumstances by a qualified medical practitioner).

23. Medical fitness to work

Section 23 subject to the making of specific Regulations which will name the types of employment concerned and under what circumstances, gives the right to the employer to require employees to be assessed by a registered medical practitioner, nominated by the employer, as to fitness to carry out work which presents critical risks to the safety, health and welfare of persons at work. If the registered medical practitioner is of the view that an employee is unfit to perform such work, he or she must tell the employer and indicate the likelihood of early resumption of work for rehabilitative purposes. The registered medical practitioner must also tell the employee and give him or her the reasons for that opinion.

If an employee covered by this section becomes aware that he or she is suffering from any disease or illness likely to expose him or her or any other person to an increased risk of danger in connection with any work activity, he or she must immediately inform their employer or a registered medical practitioner, nominated by the employer.

If the employer is informed as above by either a nominated registered medical practitioner or the employee, immediate action must be taken by the employer to comply with the general duties under **Section 8** as regards the safety, health and welfare at work of his or her employees.

24. Joint safety and health agreements

Section 24 provides that employee trade unions and bodies representing employers may make agreements setting out practical guidance on safety, health and welfare and the requirements of safety and health legislation and may apply to the Authority for approval of an agreement or of its variation. The Authority may approve a joint safety and health agreement if the parties have consented to the approval being sought and the agreement does not conflict with safety and health legislation and is in a form suitable for approval. If the agreement stipulates that it applies to all employees in a particular class of employment and their employers, and the Authority is satisfied with this, the agreement will also apply to employers and employees who are not members of the employee trade unions or the bodies representing employers carrying out work in this class of employment.

Where an application for approval is made to the Authority, the Authority will direct the parties to publish information on the agreement to inform all those likely to be affected. The Authority must withhold approval for 1 month to receive and consider objections and cannot approve a joint safety agreement if it fails to meet the conditions set out in **Section 24**. The Authority may also withdraw approval if all the parties agree or if any party terminates the agreement or where the agreement no longer complies with safety and health legislation.

Where the Authority approves an agreement, it must publish a notice of approval in the *Iris Oifigiuil* and at least 2 daily newspapers identifying the agreement, setting out the safety, health and welfare matters covered and giving the date on which it comes into effect.

The parties to a joint safety and health agreement must make copies of the agreement available for inspection by any person concerned.

In assessing compliance with safety and health legislation, the Authority, or a person prescribed under **Section 33**, must take account of an approved joint safety and health agreement at all workplaces where this particular class of employment is present irrespective whether or not an employer in an employment sector covered by the agreement is a party to it.



Part 4

Safety Representatives and Safety Consultation



25. Safety representatives

Section 25, without prejudice to Section 26, entitles employees to select and appoint a safety representative or, by agreement with their employer, more than one safety representative to represent them in consultations with the employer on matters of safety, health and welfare at the place of work.

A safety representative, having given reasonable notice to the employer, has the right to inspect the place of work at a frequency or on a schedule agreed between him or her and the employer, based on the nature and extent of the hazards in the place of work. It may not be practical to conduct a single inspection of a large workplace, or for one safety representative to carry out the entire inspection. In such circumstances it may be advisable for the employer to agree with the safety representative a plan for undertaking inspections on a manageable departmental or sectional basis, or for different safety representatives to inspect distinct locations within the workplace.

Safety representatives have the right to immediately inspect where an accident, dangerous occurrence or imminent danger or risk to the safety, health and welfare of any person has occurred or is present.

The safety representative may also investigate accidents and dangerous occurrences, provided this does not interfere with another person carrying out statutory duties under safety and health legislation, such as an inspector authorised under Section 62. Investigations may include visual examinations and speaking to people who have relevant information on the matter at hand, but physical evidence must not be disturbed before an inspector has had the opportunity to see it.

After giving reasonable notice to the employer, the safety representative may investigate complaints relating to safety, health and welfare at work that have been made by an employee whom he or she represents.

A safety representative may also –

- accompany an inspector carrying out an inspection under Section 64 other than the investigation of an accident or a dangerous occurrence (although this may be allowed at the discretion of the inspector),
- at the discretion of the inspector, and where the employee concerned so requests, be present when an employee is being interviewed by an inspector about an accident or dangerous occurrence at a place of work,
- make representations to the employer on safety, health and welfare at the place of work,
- receive advice and information from inspectors in relation to safety, health and welfare at the place of work,
- consult and liaise with other safety representatives appointed in the same undertaking, whether or not those safety representatives work in the same place of work, in different places of work under the control of the employer or at different times at the place of work (for example, safety representatives on different shifts).

The employer is obliged to consider any representations made by the safety representative and, so far as is reasonably practicable, take any necessary and appropriate action in response. In the interests of clarity and to improve communication, it would be advantageous if any written representations made were replied to by the employer in writing, stating any actions to be taken (or planned to be taken) to address the representation or the reasons why the representation is not to be acted upon.

The employer must give reasonable time off to the safety representative, without loss of remuneration, both to acquire knowledge and train as a safety representative and to carry out the functions of a safety representative. For example, training may need to be given periodically to reflect legislative changes and the introduction of new procedures, substances or equipment etc. Employers should also provide appropriate

facilities for safety representatives, such as the use of meeting rooms, photocopiers and communication equipment.

The employer must tell the safety representative when an inspector arrives to carry out an inspection under **Section 64** at a place of work.

It should be noted that a safety representative does not have any duties relating to safety, health and welfare under the Act additional to those that apply to employees generally.

Factors to be considered when determining the number of safety representatives selected include –

- the number of employees to be represented,
- the nature of the work and the relative degree of risk,
- the operation of shift systems, and
- the constituency of the employees to be represented, including variations between different occupations and distinct locations within the place of work. These factors would be present in, for example, a large hospital, where a wide variety of different work activity takes place within a single workplace.

Special consideration may need to be given to those situations where the employees spend most of their working time away from the nominal place of work, for example care workers, goods delivery depots and local authority service yards.

Note that there are special provisions covering safety representation in the construction industry (where the employer may not be in control of all of the risks at the site, and a large number of non-employees are likely to be at work) contained in the Safety, Health and Welfare at Work (Construction) Regulations.

26. Consultation and participation of employees, safety committees

Section 26 places a duty on the employer to consult his or her employees so as to make and maintain arrangements to enable the employer and employees to co-operate to promote and develop safety, health and welfare and to monitor the effectiveness of those measures.

As part of those measures, the employer must consult the employees or their safety representatives, or both, on –

- any proposed measure that is likely to substantially affect safety, health and welfare at the place of work including any measures required by safety and health legislation,
- the designation of employees having duties under **Section 11** in relation to emergency, or serious and imminent danger planning and preparation,
- any matters arising from measures related to the protection from and the prevention of risks,
- the hazard identification and risk assessment carried out under **Section 19**,
- the preparation of the safety statement under **Section 20**,
- the information required to be given to employees under **Section 9**,
- information on reportable accidents and dangerous occurrences required under **Section 8(2)(k)**,
- the appointment of competent persons under **Section 18**,

- the planning and organisation of training under **Section 10**,
- the planning and introduction of new technologies and the implications for the safety, health and welfare of employees in relation to the consequences of the choice of equipment and working conditions and the working environment.

Employees have a right to make representations to and consult their employer on matters relating to their safety, health and welfare at work.

Consultation must be made in advance and in good time so as to allow employees time to consider, discuss and give an opinion on the matters before managerial decisions are made. The information given under **Section 9** must be sufficient to allow employees to fully and effectively participate in the consultation process. The difference between the provision of information and consultation should be noted. Consultation with employees involves listening to their views and taking them into account as part of the decision making process.

Consultation arrangements are likely to vary with the size and nature of the undertaking. In a comparatively small company informal staff meetings should be sufficient, whereas in a larger enterprise a more structured approach may be appropriate.

If there is a safety committee in the undertaking, agreed by the employer and employees, that can meet the requirements set out above, the safety committee can be used to meet the consultation requirements under this section. The provisions relating to safety committees are set out in Schedule 4 to the Act.

Typical basic functions of a safety committee may include –

- the review of safety audit reports (including feedback from an inspector),
- seeking solutions to health and safety issues which arise,
- the study of information relating to accidents, dangerous occurrences and instances of occupational ill-health at the place of work,
- the development and implementation of safe systems of work,
- the review of communication and employee training procedures relating to health and safety, and
- the consideration of reports presented by a safety representative.

The employer is obliged to consider any representations made by the employees regarding safety, health and welfare and, so far as is reasonably practicable, to take any appropriate or necessary action. In the interests of clarity and to improve communication, it would be advantageous if any formal representations made to the employer were replied to in writing, stating any actions to be taken (or planned to be taken) to address the representation, or any reasons why the representation was not to be acted upon.

The employer must give employees involved in the consultation arrangements sufficient time off their duties, without loss of remuneration, for acquiring knowledge and for training for the purposes of this section and to discharge their functions.

In an undertaking where there is joint decision making involving the employer and the employees, this should include consultation under this section.

27. Protection against dismissal and penalisation

Section 27 prohibits an employer from penalising or threatening to penalise an employee with respect to any term or condition of his or her employment to his or her detriment, if the employee is –

- acting in accordance with safety and health legislation or performing any duty or exercising any right under safety and health legislation,
- making a complaint or a representation about safety, health or welfare at work to his or her safety representative, to their employer or to the Health and Safety Authority,
- giving evidence at any prosecutions or other legal proceedings taken by the Authority, or on behalf of the Authority,
- a safety representative or an employee having duties in an emergency, or a competent person appointed under **Section 18**, or
- leaving or refusing to return to the place of work when he or she reasonably considers that there is serious or imminent danger which the employee could not reasonably have dealt with or for taking or proposing to take appropriate steps to protect himself or herself or other persons from the danger considering the circumstances and the means and advice available to him or her at the relevant time.

Penalisation by an employer includes any act or omission affecting detrimentally any term or condition of employment of an employee and includes suspension, layoff or dismissal, demotion or loss of opportunities for promotion, transfer or a change of location, reduction in wages or change in working hours, imposition of any discipline, reprimand or other penalty and coercion or intimidation.

The dismissal of an employee will be a dismissal under the Unfair Dismissals Acts 1977 to 2001 if it results from penalisation under this section although such dismissal shall not be deemed to be unfair if the employer shows that the steps taken or proposed to be taken were so negligent that it was reasonable to dismiss the employee.

28. Complaints to rights commissioner

Section 28 entitles an employee to complain in writing, within 6 months, to a Rights Commissioner where the employer has contravened **Section 27** and the Rights Commissioner, having given both parties an opportunity to be heard, must give a decision in writing informing the parties of the decision, which must do one or other of the following –

- (a) indicate that the complaint was or was not well founded,
- (b) require the employer to take specific action, or
- (c) require the employer to pay fair compensation to the employee.

The Rights Commissioner must hear the case in private and must give a copy of his or her decision to the Labour Court.

29. Appeals from and enforcement of decisions of rights commissioner

Section 29 entitles either party affected by a decision of a Rights Commissioner under **Section 28** to appeal in writing within six weeks to the Labour Court. The Labour Court, having given the parties an opportunity to be heard and having heard the case, must make a determination in writing affirming, varying or setting aside the decision and the parties must be informed.

The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this section to the High Court for its determination and the determination of the High Court is final and conclusive.

A party to proceedings before the Labour Court under this section may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court is final and conclusive.

If up to 6 weeks after the appeal period, an employer has not carried out a decision of a Rights Commissioner in relation to a complaint under this section and no appeal has been brought, the employee can bring the complaint before the Labour Court by written notice.

30. Enforcement of determinations of Labour Court

Section 30 permits an employee, his or her trade union or the Minister to apply to the Circuit Court if no appeal has been made and where an employer fails within 6 weeks to implement a determination of the Labour Court and the Circuit Court, ex parte, must order the employer to carry out the determination in accordance with its terms and pay interest in addition to any financial compensation awarded.

31. Evidence of failure to attend before or give evidence or produce documents to Labour Court

Section 31 provides that a document signed by the Chairperson or Vice-Chairperson of the Labour Court specifying that a person did not attend before the Court to give evidence or produce a document, having been given notice, on a day on which the Court has sat, or having attended that person refused to give evidence or produce the document, is regarded as evidence of such failure or refusal without further proof in a prosecution of the person under **Section 39(17)** of the Redundancy Payments Act 1967 as applied to the 2005 Act by Section 29.





Part 5

The Authority



Chapter 1

The Authority

32. Continuance in being of Authority

Section 32, provides for the continuance in being of the National Authority for Occupation Safety and Health (established under the Safety, Health and Welfare at Work Act 1989) and renames it as the "Health and Safety Authority", by which it was commonly known, and provides that anything commenced by the Authority before the commencement of the repeal of the Act of 1989 by Section 4 of the 2005 Act may be carried on and completed by the Authority.

In addition, the new name of the Authority is substituted in any legal proceedings, which are pending.

The Authority is a body corporate with an official seal and has power to sue and be sued and, with the consent of the Minister and Minister for Finance, to acquire, hold and dispose of land or property. Schedule 5 to the Act applies to the Authority.

33. Minister may prescribe persons to perform certain functions

Section 33 enables the Minister, with the consent of the Minister for Finance and in consultation with any other appropriate Minister; to prescribe persons (natural or legal) by Regulations to perform functions under the Act in lieu of the Authority to an extent as may be prescribed. For that purpose, where references are made in other sections to the Authority, reference is also made to persons prescribed under Section 33.

In accordance with any guidelines given by the Authority, a person prescribed under this section must make adequate arrangements for the performance of functions assigned under this section, as well as other functions conferred by safety and health legislation, and must report annually to the Authority and to the appropriate Minister.

34. Functions of Authority

Section 34 specifies the general functions of the Authority. These are –

- to promote, encourage and foster the prevention of accidents, dangerous occurrences, and personal injury at work,
- to promote, encourage, foster and provide education and training in safety, health and welfare at work,
- to encourage and foster measures promoting safety, health and welfare at work,
- to make adequate arrangements for the enforcement of safety and health legislation and monitor, evaluate and make recommendations to the Minister regarding the implementation of and compliance with both safety and health legislation and best practice relating to safety, health and welfare at work and the review and maintenance of relevant records by employers,
- to promote, encourage and foster co-operation with and between employer and employee representative bodies or any other appropriate bodies as regards to the prevention of risks to safety, health and welfare at work in accordance with safety and health legislation,
- to make arrangements to provide information and advice on matters relating to safety, health and welfare at work,

- to engage in or support research, surveys and studies on matters within its responsibilities and where appropriate publish the results,
- to develop and promote contacts with persons or bodies within or outside the State who are involved in safety, health and welfare at work.

The Authority is obliged, under **Section 43**, to prepare, adopt and to monitor a strategy statement and, under **Section 44**, to prepare and adopt a work programme.

The Authority is obliged to comply with any directions given from time to time by the Minister and to give the Minister information on the performance of its functions if so requested. The Authority must also perform any additional functions conferred on it by the Minister under **Section 35**.

The Authority, subject to the agreement of the Minister and the consent of the Minister for Finance, may make agreements with other Ministers or persons for those to perform functions on its behalf (with or without payment) or for the Authority to perform appropriate functions on behalf of such other Ministers in connection with its functions under this Act.

The Authority has all the necessary powers to perform its functions and can delegate the performance of its functions to the Chief Executive or other members of staff duly authorised by the Authority to act in that behalf.

35. Conferral of additional functions on Authority

Section 35 enables the Minister, with the consent of the Minister for Finance and having consulted the Authority and any other relevant Minister, to confer by order additional functions connected to its primary functions on the Authority. The Minister may amend or revoke such an order.

36. Establishment of subsidiaries

Section 36 provides that the Authority may establish, with the consent of the Minister and the Minister for Finance, a subsidiary limited company to perform any function other than the enforcement of safety and health legislation as referred to in **Section 34(1)(d)**. The Memorandum and Articles of Association of a subsidiary may be determined by the Authority, with the consent of the Minister and the Minister for Finance. The Minister may give directions to the Authority concerning any policy, programme or activity of a subsidiary. The consent of the Minister for Finance is required where a direction is given to a subsidiary as regards the disposal of any assets or profits.

37. Membership of Authority

Section 37 provides that the Board of the Authority consists of a Chairperson and 12 ordinary members appointed by the Minister, including 3 persons nominated by trade unions, 3 nominated by employer organisations and 5 persons appointed by the Minister, including 1 from the Department of Enterprise, Trade and Employment. The Minister also designates an ordinary member as deputy Chairperson. Board members appointed under the Act of 1989 in office when the 2005 Act commences can complete their term of office unless they die or resign or otherwise cease to hold office in accordance with Schedule 5 to the Act.

38. Advisory committees

Section 38 enables the Authority to establish advisory committees to advise it in relation to its functions. The Authority may determine the membership, term of office and terms of reference and regulate the procedures of any such advisory committee and the Authority must appoint the Chairperson and Deputy Chairperson. A member of an Advisory Committee established under the Act of 1989 in office when the Act commences may serve out the term of office unless he or she dies or resigns or otherwise ceases to hold office.

39. Chief Executive

Section 39 specifies that there shall be a Chief Executive Officer of the Authority, who, with the consent of the Minister, is appointed and may be removed from office in accordance with the terms and conditions of the appointment. The Authority, with the consent of the Minister, may also appoint one or more Assistant Chief Executives. The Chief Executive has the function of carrying on, managing and controlling generally the administration and business of the Authority and performing any other functions conferred by the Act or determined by the Authority. The Chief Executive must –

- submit a draft strategy statement under Section 43 and a draft work programme under Section 44 to the Authority,
- provide annual and other progress reports to the Authority on the implementation of the strategy,
- provide advice to the Authority in connection with its functions, and
- provide information on his or her performance to the Authority as required.

The Chief Executive has the function of managing all matters relating to appointments, performance, discipline and dismissal of staff below the level of Assistant Chief Executive.

The Chief Executive in office at the commencement of the Act will continue for the remainder of the appointed term of office unless he or she dies or resigns. *Schedule 6* to the Act applies to the Chief Executive Officer.

40. Consultants and advisers

Section 40 permits the Authority to engage consultants and advisers to assist it in the performance of its functions. Any fees payable must have regard to guidelines issued by the Minister or the Minister for Finance and the Authority must comply with any Ministerial directions in regard to consultants or advisers engaged under this section.

41. Disclosure of certain interests by members of Authority

Section 41 provides that any member present at a meeting of the Authority who, other than in a capacity as a member, has a material interest in an arrangement, contract or other agreement with the Authority or to which the Authority is a party –

- must disclose the interest before the matter arises during a meeting of the Authority,
- may neither influence nor seek to influence a decision on the matter,
- must leave the meeting while the matter is being discussed,
- take no part in any deliberation of the Authority on the matter, and
- not vote on a decision on the matter.

The disclosure of interest must be recorded in the minutes of the meeting and a member is excluded from the quorum of the meeting while the matter is being dealt with, unless the Authority determines otherwise. If an issue arises at a meeting because a member is about to fail to comply with the above requirements, the Chairperson can determine the issue and record it in the minutes. If the issue involves the Chairperson, the members must choose another member to chair the meeting to determine the issue. If a member fails to meet the above conditions the Minister can remove the person from office or take other appropriate action. A person removed from office is disqualified from future membership of the Authority.

42. Disclosure of certain interests by members of staff of Authority

Section 42 specifies that where a member of the Authority staff (or consultant, adviser or other person retained by the Authority) has a material interest in any contract, agreement or arrangement with the Authority (other than as a member of staff, consultant, advisor or other person engaged by the Authority), that person –

- must disclose the interest to the Authority before it is considered,
- neither influence nor seek to influence a decision in the matter, and
- take no part in the negotiation of the contract, agreement or arrangement.

Where a person contravenes this section the Authority may decide on action to be taken including altering the terms of, or terminating, the person's employment or contract for services.

43. Strategy statement

Section 43 requires the Authority to prepare and submit a strategy statement to the Minister for his or her approval (with or without amendment), in the first instance 4 months after Section 32 comes into operation and thereafter every 3 years.

The strategy statement must –

- specify the key objectives, outputs, and related strategies of the Authority including the use of the Authority's resources,
- have regard to the need to ensure the most beneficial, effective and efficient use of the Authority's resources,
- include a review of the outcomes and effectiveness of the preceding strategy statement (except for the first statement),
- set out how the Authority proposes to assess its performance in respect of its specified objectives, taking account of relevant financial and non-financial performance indicators, and
- be in the form and manner that the Minister directs.

The strategy statement is deemed to be adopted when it is approved by the Minister who shall cause a copy of it to be laid before each House of the Oireachtas.

The Authority may consult other persons in preparing a strategy statement and must publish it in such form and manner, as it considers appropriate.

44. Work programme of Authority

Section 44 requires the Authority to prepare and submit a work programme at least 2 months before the start of each year to the Minister for approval (with or without amendment) setting out –

- the objectives of the Board (taking account of the strategy statement),
- the priorities for the year, and
- any other matter that the Minister may direct.

The Minister may issue directions or guidelines to the Authority concerning the preparation of the work programme and the Authority must comply with them. The work programme is deemed to be adopted when the Minister approves it.

45. Grants to Authority

Section 45 empowers the Minister, with the consent of the Minister for Finance, to pay a grant each year to the Authority to enable it to perform its functions. The Authority may, subject to the consent of the Minister and the Minister for Finance, invest money in such manner as it thinks fit. Subject to Sections 46 and 47, and with the prior consent of the Minister and the Minister for Finance, the Authority may seek and accept funds from any source and subject to any conditions that the Minister may approve of, from time to time.

46. Power to borrow

Section 46 enables the Authority, with the consent of the Minister and the Minister for Finance, to borrow money for current or capital expenditure.

47. Fees for services, etc.

Section 47 provides, that subject to the approval of the Minister and the Minister for Finance, the Authority may charge appropriate fees for the performance of its functions, for the provision of services (other than providing advice to the Minister or another Minister) and for the carrying on by it of activities.

Provision is made for different fees, waivers, remission or refund of fees, as appropriate.

The Authority may, subject to the Ministers' approval, sell anything it produces, publishes, approves of, or develops, for appropriate prices and can enter into contracts for the further development and commercial exploitation of anything produced, published or developed by it.

The Authority must record receipts from fees, sales or payments as income and must make available on request, free of charge, details of fees. Fees, prices and payments must not, except with the prior approval of the Minister, be less than the cost involved.

The Authority may recover monies owing to it as a simple contract debt in a court of competent jurisdiction. The Public Offices Fees Act 1879 does not apply to fees charged under Section 47 of the Act.

48. Accounts and audits

Section 48 requires the Authority to keep accounts and to submit them to the Controller and Auditor General not later than 3 months after the end of each year and to present them to the Minister within 1 month of receiving the report of the Controller and Auditor General following the audit. The Minister must cause the accounts and audit report to be laid before each House of the Oireachtas.

The accounts must include an income and expenditure account, a cash flow statement and a balance sheet showing all income received and expenditure by the Authority, indicate the sources of the income and subject matter of the expenditure and record the property, assets and liabilities of the Authority.

49. Attendance before Committee of Public Accounts

Section 49 requires the Chief Executive to appear before the Committee of Public Accounts whenever required in writing to do so to give evidence on –

- the regularity and propriety of transactions recorded in the Authority accounts,
- the economy and efficiency of the Authority in the use of its resources,
- the systems, procedures and practices employed by the Authority for evaluating its effectiveness, and
- when any matter affecting the Authority is referred to in a special report of the Controller and Auditor General.

In appearing before the Committee of Public Accounts (or another Committee of the Houses of the Oireachtas referred to in Section 50), the Chief Executive must not question or express an opinion on the merits of any Government policy.

The references to the Authority's power to borrow in Section 46, the charging of fees under Section 47, the keeping of accounts under Section 48 and the attendance before the Committee of Public Accounts under this section, include references also to any subsidiary or subsidiaries of the Authority.

50. Attendance before other committees of Houses of the Oireachtas

Section 50 requires the Chief Executive, when requested in writing to do so, to appear before a Committee of the Houses of the Oireachtas, other than –

- the Committee of Public Accounts,
- the Committee on Members' Interests of Dáil Éireann, or
- the Committee on Members' Interests of Seanad Éireann,
- or subcommittees of such Committees,

to account for the general administration of the Authority.

The Chief Executive will not be required to account to a Committee for any matter related to proceedings before a court or tribunal in the State and, if so requested, must inform the Committee accordingly.

If the Committee does not withdraw such a request, the Chief Executive may, within 21 days of being informed by the Committee, apply to the High Court for a determination in support of his or her opinion or the Chairperson of the Committee may make an application.

Pending the High Court determination, the Chief Executive may not attend before the Committee and, if the High Court determines that the matter is the subject of proceedings before a court or tribunal, the Committee must withdraw the request. If the High Court determines otherwise, the Chief Executive must attend before the Committee to account for the matter.

51. Reports and information to the Minister

Section 51 requires the Authority to submit an annual report to the Minister not later than 3 months after the end of each year and the Minister must cause the report to be laid before each House of the Oireachtas. A report must be in the form that the Minister may direct and include –

- information on the performance of the Authority's functions during the year in question having regard to the strategy statement and the work programme,
- information on the performance of any agreement under Section 34(2),
- information on any annual report provided by a prescribed person under Section 33, and
- any other information the Authority considers appropriate or that the Minister may require.

The Authority must publish its annual report and may, as appropriate, make other reports to the Minister.

Chapter 2

Staff of Authority

52. Staff of Authority

Section 52 enables the Authority, with the consent of the Minister and the Minister for Finance, to appoint staff, who will be appointed on terms and conditions decided by the Authority with the consent of those Ministers. Remuneration and allowances for expenses of staff is payable out of monies at the disposal of the Authority with the consent of the above Ministers.

The grades of staff and the numbers of staff in each grade is determined by the Authority with the consent of the above Ministers.

Staff employed by the Authority prior to the commencement of the Act will continue as members of staff after the commencement and at no less beneficial conditions of service or of remuneration than applied before the commencement.

53. Remuneration of staff of Authority

Section 53 provides that the Authority, in determining remuneration or allowances for expenses of staff or other terms or conditions of employment, must have regard to Government or nationally agreed guidelines applying from time to time and comply with any directives related thereto given by the Minister with the consent of the Minister for Finance.

54. Transfer of officers, etc., to Authority

Section 54 relates to the arrangements for transfer to staff of the Authority of the officers of the Minister who may be on secondment to the Authority. Officers may be so transferred on the basis of a designation order made by the Minister but the Minister must not make an order without having notified in writing an officer concerned and any recognised trade unions or staff associations concerned and having considered any representations made by them.

Unless negotiated under a collective agreement, an officer designated for transfer must not receive a lesser scale of pay or be subject to less beneficial terms and conditions of service than those which applied prior to transfer. Until such time as the scale of pay and the terms or conditions of service (other than those relating to tenure of office) of transferred officers are varied by the Authority following consultation with recognised trade unions and staff associations, the same scales of pay and terms and conditions of service will continue to apply and any variation made by the Authority cannot worsen those scales of pay or terms or conditions of service, except under a negotiated collective agreement.

Terms and conditions relating to tenure of office granted by the Authority to a transferred officer must not be less favourable than those applying for the time being in the civil service and any alteration in conditions applying to tenure of office must not make those conditions less favourable, unless negotiated under a collective agreement. The Minister for Finance will determine any dispute as to conditions applicable in the civil service after consultation with the Minister.

In the case of officers transferred to the Authority previous service in, or service reckonable for, superannuation benefits payable by the civil service is reckonable, subject to exceptions or exclusions, for the Redundancy Payments Acts 1967-2003, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973-2001, the Unfair Dismissals Acts 1977-2001 and the Terms of Employment (Information) Acts 1994 and 2001.

55. Code of conduct

Section 55 requires the Authority, following consultation with the Minister and the Minister for Finance, to draw up and publish a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of staff.

56. Superannuation of staff of Authority

Section 56 requires the Authority to prepare and submit to the Minister schemes for staff superannuation benefits and schemes amending or revoking schemes already approved.

A scheme shall fix the time and conditions of retirement for staff to whom superannuation benefits are payable.

Superannuation schemes approved by the Minister with the consent of the Minister for Finance must be carried out by the Authority in accordance with its terms.

Any superannuation scheme in place under the Act of 1989 will continue in operation after the commencement of the 2005 Act.

A superannuation scheme applying to an officer of the Minister transferred under Section 54 to the staff of the Authority must not contain terms and conditions less favorable than those which applied prior to transfer.

Where a superannuation scheme is not in place under which benefits would have been paid in respect of service to the Minister of a person transferred under Section 54 to the staff of the Authority, those benefits shall be paid by the Authority based on pensionable service with the Authority plus previous pensionable service.

Apart from that, the Authority can only pay superannuation benefits based on approved superannuation schemes or as approved of by the Ministers.

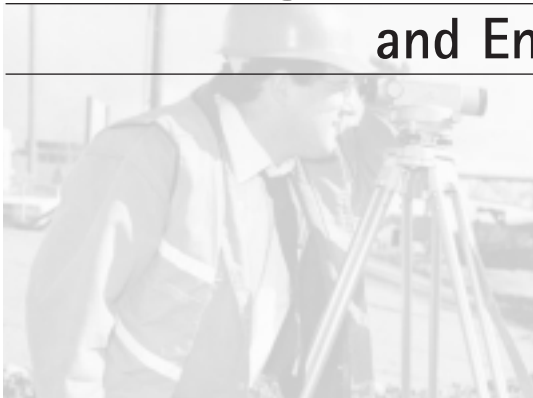
Any disputes on claims or amounts of superannuation benefit must be submitted to the Minister who will refer it to the Minister for Finance.

The Minister is required to lay before each House of the Oireachtas every approved superannuation scheme and amendment and if a resolution annulling the scheme is passed by either House within the next 21 days on which that House has sat, the scheme is annulled but without prejudice to the validity of anything done under the scheme.



Part 6

**Regulations, Codes of Practice
and Enforcement**



Chapter 1

Regulations and Codes of Practice

57. Review of legislation

Section 57 requires the Authority to –

- keep under review safety and health legislation (relevant statutory provisions), and certain other statutes, listed in *Schedule 1* (associated statutory provisions), which could have a bearing on occupational safety and health, and
- submit such proposals to the Minister, as it considers appropriate from time to time.

The Minister may also direct the Authority to undertake reviews of safety and health legislation and, also, to assist in the preparation of draft legislation.

The Authority, before submitting proposals to the Minister, is required to consult appropriate persons or bodies, having regard to the proposals in question.

58. Regulations

Section 58 gives power to the Minister to make Regulations either where matters are prescribed, or generally for the purposes of giving full effect to the Act and in respect of the matters set out in *Schedule 7* to the Act.

Before making Regulations, other than on foot of a proposal by the Authority under Section 57, the Minister must consult the Authority and may give public notice giving persons 21 days to make comments.

The Minister must also consult the Authority if making Regulations with modifications, which implement a proposal, made by the Authority.

Regulations made under the Act may –

- contain incidental, supplementary and consequential provisions as necessary,
- apply generally or to a specified class or classes of persons, places of work, work activities, article or substance or other matter, and
- include different provisions in relation to different classes of persons, place of work, work activity, article or substance.

Regulations may, subject to conditions, exempt from all or any of the provisions of safety and health legislation, any specified class of work activity, employment, article or substance or any specified class of person or place of work where the Minister is satisfied that the application of those provisions is unnecessary or impracticable and that adequate protective measures are in place.

Regulations made under the Act may apply to all work activities or particular work activities and may relate to –

- chemical, physical or biological agents,
- the classification, packaging, labelling, marketing or use of any article or substance,
- the control of major accident hazards,

- the storage or transport of dangerous substances,
- or to factories, the extractive industries, office premises or to boilers.

Regulations may apply to –

- employers or other persons who control places of work or specified places of work,
- employees or a particular class of employees,
- all work activities or particular work activities,
- designers, manufacturers, sellers or suppliers of articles, substances or personal protective clothing or equipment,
- any article or substance or class thereof.

Regulations may incorporate, adopt, apply or make prescriptions by reference to, with or without any modifications, any code of practice issued by the Authority under **Section 60**.

The Minister is required to lay every Regulation or Order (other than an Order made under **Section 1(2)**, before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the Regulation or Order is passed by either House within the next 21 days on which that House has sat, the Regulation or Order is annulled though any actions taken in accordance with those Regulations in the interim period between the Regulations or Order being made and being annulled will be unaffected by the annulment.

The power to make Regulations under the Act includes power to give effect to either any provision of the treaties of the European Communities or any act adopted by any institution of the European Communities, which regulates any matter set out in *Schedule 7* to the Act.

59. Miscellaneous adaptations

Section 59 provides that references to the Minister (other than as regards making rules, regulations, bye-laws, orders, exemptions, or exceptions) contained immediately before the commencement of the Act in any existing enactment shall, insofar as they relate to functions exercisable by the Authority, be regarded as references to the Authority.

60. Codes of practice

Section 60 provides that the Authority may, and must if requested by the Minister, draw up and publish codes of practice to give practical guidance to employers, employees and other persons with respect to safety, health and welfare at work or the requirements or prohibitions of safety and health legislation.

The Authority may also approve of codes of practice or part of a code of practice made or published by another body.

Before such publication or approval, the Authority –

- must obtain the consent of the Minister,
- may publish a draft of a code of practice giving persons one month to comment or up to a further 28 days at the Authority's discretion, and
- having considered representations made, submit a draft code of practice to the Minister for consent to its publication or approval, with or without modification.

Where the Authority publishes or approves of a code of practice, or part of one, it must publish a notice in the *Iris Oifigiúil* identifying the code, specifying the matters relating to safety, health and welfare at work or the safety and health legislation to which it relates and giving the date the code comes into operation.

The Authority, with the consent of the Minister and having consulted other appropriate persons or bodies (or as the Minister directs), may amend or revoke or withdraw its approval of any code of practice or part thereof. Where it does so, it must publish a notice in the *Iris Oifigiúil*.

The Authority must make available for public inspection without charge at its principal office during normal working hours a copy of each code of practice published or approved by it or amended by it.

Codes of practice published or approved under the Act of 1989 in operation immediately before the activation of the repeal of that Act under Section 4 of the 2005 Act continue to be codes of practice as if prepared and published under Section 60 of the 2005 Act.

61. Use of codes of practice in criminal proceedings

Section 61 provides that where a code of practice appears to the court to give practical guidance as to the observance of the safety, health and welfare legislative requirements or legal prohibition of a work activity, substance or article that is alleged to have been contravened, the code of practice is admissible in evidence.

Where it is proved that any act or omission of the defendant that is alleged to have constituted the contravention is either a failure to observe a code of practice or is compliance with that code of practice, such failure or compliance is admissible in evidence.

It should be noted that codes of practice are not part of the law itself, i.e. the relevant statutory provisions. Their purpose is to provide practical guidance on the observance of those provisions. If a person adheres to the guidance provided in a relevant code of practice, this can be used during a safety and health prosecution by him or her in support of his or her claim of compliance with relevant safety and health legislation. A person may also be able to comply with the law by adopting alternative measures to those set out in a code of practice, provided that those alternative measures achieve the objective of the statute or Regulation to which the code of practice relates. However, in a safety and health prosecution the onus of proof would be on that person to show that the measures taken were appropriate.

A document carrying the seal of the Authority and said to be a code of practice or part of a code of practice published or approved by the Authority is admissible in evidence in proceedings under the Act.

Chapter 2

Enforcement

62. Authorisation of inspectors

Section 62 provides that the Authority may authorise persons as inspectors to enforce the relevant statutory provisions in accordance with Section 34.

Any person prescribed under Section 33 may also authorise inspectors.

An inspector must be given a certificate of authorisation and, when exercising his or her powers under the Act and if requested by an affected person, must produce the certificate or a copy of it and a form of personal identification.

An authorisation as an inspector ceases to operate when the Authority or a person prescribed under Section 33, revokes it.

Inspectors authorised under Section 33 of the Act of 1989 in place immediately before the activation of the repeal of that Act under Section 4 of this Act continue to be inspectors as if authorised under Section 62 of the 2005 Act.

63. Medical examinations

Section 63 empowers the Authority, or a person prescribed under Section 33, to designate in writing inspectors or other persons, who are registered medical practitioners, to receive any notice, report or certificate required under safety and health legislation to be sent by a registered medical practitioner to the Authority, or a person prescribed under Section 33.

Such a designated person may invite persons who have been or may be exposed to risk of personal injury or other danger to health to provide biological samples or to be examined medically at a designated place, either by him or her, or on his or her behalf, or by or on behalf of such other registered medical practitioner as he or she may specify.

Persons may also be asked to provide biological samples or to be medically examined for the purposes of comparing the state of health of persons in different places of work or specified places of work or in different places in the same place of work, with the health of other persons.

Provision is made so that references in safety and health legislation to "occupational medical advisors" are read as references to persons designated under Section 63 of the 2005 Act.

64. Powers of inspectors

Section 64 provides power for an inspector to enter any place he or she believes to be a place of work or believes may be used to store articles or substances or records (hereafter referred to as *the place*) and to enquire into, search, examine and inspect to ascertain if safety and health legislation is being complied with and to take along any necessary equipment or materials.

An inspector may –

- direct that the place be left undisturbed for an inspection or investigation, so long as it is reasonably necessary,
- direct that a safety statement be amended in accordance with Section 20(5)(b),

- require an employer, an employee, the owner or the person in charge of *the place* to produce records that the inspector may reasonably require, and an inspector may inspect and take copies or extracts of such records or require access to computer records, and remove and retain such records, and require that records be maintained for set periods. An inspector may also require such records to be produced in a legible form.
- require the person by whom or on whose behalf a computer is or has been used to produce or store such records or a person responsible for the operation of that computer to afford reasonable assistance to the inspector.

An inspector may –

- direct an employer, an employee or owner or person in charge of *the place* to provide information, assistance and any facilities within his or her control or responsibility as are reasonably necessary for the purposes of any search, examination, investigation, inspection or inquiry under safety and health legislation,
- summon persons by written notice to attend a stated place on a stated time and date in order to give information or to produce records (or both) which the inspector may reasonably require in relation to the place, any article or substance, work activity, installation or procedure at *the place* and to produce any records that are in his or her power or control,
- examine any person he or she reasonably believes able to provide relevant information to any search, examination, investigation, inspection or inquiry necessary by safety and health legislation and to require that person to answer relevant questions the inspector may put to them and require that person to sign a declaration of truth of the answers, provided that no person is required to give any answer or information likely to incriminate himself or herself,
- for the purpose of any search, examination, investigation, inspection or inquiry necessary by safety and health legislation, require that any relevant article be operated or set in motion or that any relevant procedure be carried out.
- take any measurements or photographs or make any tape, electrical or other recordings considered necessary, and where appropriate install, use, and maintain monitoring instruments, systems and seals for the purposes of safety and health legislation.

An inspector is also empowered, where he or she considers it necessary, to carry out or have carried out tests, examination or analysis of any article or substance found at the place of work and to require that any article or substance there be supplied to the inspector for testing, examination or analysis. In such cases, the inspector may take advice on any dangers involved.

An inspector may also cause any article or substance which appears to him or her to pose a risk to safety or health to be dismantled or subjected to any process or test in the presence of the employer or owner or person in charge, but not to damage or destroy it unless this is necessary for the purposes of ensuring compliance with safety and health legislation. Where the inspector considers it necessary to exercise this power, he or she should ensure that such action is carried out in the presence of the employer, owner or person in charge of *the place* if that person requests to be present. In such cases, the inspector may take advice on any dangers involved.

An inspector may also sample the atmosphere in *the place*.

An inspector may remove and retain any article or substance for as long as necessary for all or any of the purposes –

- for examination,

- to ensure that it is not tampered with before its examination is completed, and
- to ensure that it is kept available for use as evidence.

Where the inspector removes and retains any article or substance the inspector must, where it is practicable, take a sample and give a marked and identifiable portion of the sample to a responsible person at the place.

An inspector may exercise such other powers as may be necessary for carrying out his or her functions.

When requested by an inspector for the purposes of an investigation or an inspection, an employer must divulge the name and address of the supplier of an article or substance.

An inspector may not enter a dwelling except with the consent of the occupier or on foot of a District Court warrant.

If an inspector is prevented from entering *any place* an application may be made to the District Court for a warrant authorising entry.

If an inspector is obstructed or considers there may be obstruction in the course of carrying out his or her duty he or she may be accompanied by a member of the Garda Síochána or any other person authorised by the Authority when performing functions.

No person is required to give any answer or information, on examination or inquiry under **Section 64**, tending to incriminate himself or herself.

When an inspector has reasonable grounds for believing that a person has committed an offence under safety and health legislation he or she may require that person to provide his or her name and the address at which he or she ordinarily resides.

65. Directions for improvement plan

Section 65 provides that an inspector may give a written direction to an employer requiring the submission of an improvement plan in the case of an activity involving or likely to involve a risk to the safety, health or welfare of persons. The direction must –

- identify the activity concerned,
- require the submission of the improvement plan within one month specifying the remedial measures proposed to be taken,
- require the employer to implement the plan, and
- include any other necessary requirements that the inspector considers necessary.

The inspector must give a copy of the direction to the safety representative, if there is one.

Where an improvement plan is submitted to an inspector, the inspector must, within one month, confirm whether or not he or she is satisfied with the plan and may direct that the plan be revised and resubmitted to him or her.

66. Improvement notice

Section 66 provides that where an inspector is of the opinion that a person is contravening safety and health legislation or has failed to submit an improvement plan or a revised improvement plan or to implement an improvement plan under **Section 65**, he or she can serve an improvement notice on the person in control of the work activity concerned.

An improvement notice must –

- state that the inspector is of the opinion referred to above,
- give the reasons for that opinion,
- identify the particular legal requirements to which that opinion relates,
- specify the reasons why he or she is of that opinion,
- direct the person to remedy the contravention or matter within a specified period (which may not be earlier than the end of the 14 day period allowed for an appeal),
- include information on the appeal procedures, and any other requirement that the inspector considers appropriate, and
- be signed and dated by the inspector.

An improvement notice may include directions on necessary measures to be taken to remedy the contravention or to comply with the notice.

The inspector must give a copy of the improvement notice to the safety representative, if there is one, and advise the safety representative if the improvement notice is subsequently withdrawn.

Where the person on whom an improvement notice is served is of the opinion that the notice has been complied with, he or she must confirm this in writing to the inspector and send a copy to the safety representative.

Where a person on whom an improvement notice has been served confirms in writing to the inspector that the matters referred to in the notice have been remedied, the inspector, on being satisfied that the matters have been so remedied, must within one month of receipt of such confirmation, give written notice to the person concerned of compliance with the improvement notice.

A person on whom a notice is served may appeal to the District Court (in the District Court district in which the notice was served) within 14 days and the judge may confirm, vary, or cancel the notice. When making an appeal, the person must also notify the Authority, which is entitled to appear and give evidence in court.

Where an appeal has been taken and the notice is not cancelled, it takes effect on the later of the day following its confirmation or the day the appeal is withdrawn or the date specified in the notice. Where there is no appeal, the notice takes effect on the later of the end of the period for making an appeal or the date specified in the notice.

An inspector may withdraw an improvement notice at any time or, where no appeal is made or is pending, extend the period specified in the notice for remedying matters.

67. Prohibition notice

Section 67 enables an inspector who is of the opinion that an activity at a place of work involves or could involve a risk of serious personal injury to any person, including from an article or substance or otherwise, to serve a prohibition notice on the person in control of the activity. A prohibition notice legally requires either the immediate cessation of that work activity or cessation from the effective date and time specified on the prohibition notice. A prohibition notice does not require a specific contravention of statutory duty.

A prohibition notice must –

- state that the inspector is of the opinion referred to above,

- give the reasons for that opinion,
- specify the activity concerned,
- where in the inspector's opinion the activity involves a contravention or likely contravention of safety and health legislation, specify the provision(s) concerned,
- prohibit the carrying on of the activity concerned until the matters giving rise to the risk are remedied,
- be signed and dated by the inspector.

The notice may include directions on safety measures to be taken to remedy any contraventions or matter to which the notice relates.

A copy of the prohibition notice must be given to the safety representative, if there is one, by the inspector and the inspector must inform the safety representative in writing where he or she withdraws a prohibition notice.

A prohibition notice takes effect either immediately or, when an appeal is taken, on the later of the day next following the day on which it is confirmed on appeal or the appeal is withdrawn or the date of the notice. The launch of an appeal does not suspend the operation of a notice but the appellant can apply to the court to have its operation suspended until the appeal is disposed of and the court, if it thinks fit, can suspend the prohibition notice until the appeal is dealt with.

A person may, within 7 days of the service of a prohibition notice, appeal to the District Court (in the District Court district in which the notice was served) and the judge may confirm, vary, or cancel the notice. Where a notice is confirmed the judge may, on the application of the appellant, suspend the operation of the notice for a specified period. A person who appeals a prohibition notice, or applies for suspension of the notice, must notify the Authority at the same time, giving the grounds of appeal, and the Authority is entitled to appear and give evidence on the appeal.

Where a person on whom a prohibition notice has been served is of the opinion that the matters referred to in the notice have been remedied by the due date he or she must so confirm in writing to the inspector and give a copy to the safety representative, if there is one.

Where a person on whom a prohibition notice has been served confirms in writing to the inspector that the matters referred to in the notice have been remedied, the inspector, on being satisfied that the matters have been so remedied, must within one month of receipt of such confirmation, give written notice to the person concerned of compliance with the prohibition notice.

An inspector may withdraw a prohibition notice at any time if satisfied that the activity no longer involves a risk of serious personal injury to any person or is satisfied that the notice was issued in error or is incorrect. A withdrawal of a notice takes effect when the notice of withdrawal is given to the person on whom the notice was served. The withdrawal of a prohibition notice does not prevent the service of any other prohibition notice.

68. Contravention of prohibition notice – application to High Court

Section 68 provides that where activities are carried on in contravention of a prohibition notice served under Section 67, the High Court may, on an application by an inspector, by order prohibit the continuance of the activities. The application to the High Court may be *ex parte* (without consulting and informing the person the prohibition notice has been served upon) and the court may make an interim or interlocutory order and set down terms and conditions regarding the payment of costs.

69. Notices to be displayed

Section 69 provides that a person on whom an improvement notice or a prohibition notice is served must bring it to the attention of any person whose work is affected by the notice and display the notice or a copy of it in a prominent place at or near the place of work or article or substance affected by the notice.

70. Investigations and special reports

Section 70 provides that the Authority may direct one or more of its staff, or any other competent person, to investigate the causes and circumstances surrounding any accident, incident, personal injury, occurrence or situation, or any other matter related to the general purposes of the Act and to make a special report of the investigation to the Authority.

A person who is not an inspector carrying out such an investigation has all the powers of an inspector and the Authority may pay the person such fees and expenses as determined by the Minister with the approval of the Minister for Finance. The Authority may meet other costs incurred in preparing the report.

Any special report must be presented to the Minister as soon as practicable and the Authority may publish the report in such manner, as it considers appropriate.

The Authority must seek the consent of the Minister, given with the agreement of any other appropriate Minister, before commissioning a special report into an accident covered by the Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997 (S.I. No. 205 of 1997), a rail accident or a marine casualty within the meaning of the Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14 of 2000).

71. Order of High Court as to use of place of work

Section 71 applies where the Authority (or a person prescribed under Section 33), considers that the risk to the safety, health or welfare of persons is so serious that the use of a place of work or part of it should be restricted or immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level. The section enables the Authority (or such person) to apply, *ex parte (without consulting and informing the person against whom the order is sought)* to the High Court for an order restricting or prohibiting the use of the place of work or part thereof. The court may make any interim or interlocutory order it considers appropriate. Such an order has effect despite permission under any other statute for the use of the place of work. In the case of an application for the revocation or variation of an order under Section 71 the Authority (or a person prescribed under Section 33 as appropriate) is entitled to be heard.

Chapter 3

Obtaining and Disclosure of Information

72. Power to require information

Section 72 provides that the Authority (or a person prescribed under Section 33) may serve a written notice on a person, to provide information that the Authority may reasonably require to the Authority by a specified date (such a notice is referred to in the Act as an "information notice"). The information should be in such a form that may be specified by the Authority. The specified date may be extended by the Authority on written application by the person served with the information notice.

The person served with an information notice may appeal within 7 days to the District Court (in the District Court district in which the notice was served) and the judge may confirm, vary or cancel the notice and if confirmed, may suspend the operation of the notice for a such time as the judge considers appropriate.

A person on whom an information notice is served must, where no appeal is made, comply with it before the later of the appeal period or the end of the period, or its extension, set out in the notice for giving the information. Where an appeal is made and the information notice is confirmed or varied or the appeal is withdrawn, the person must comply with the notice by the day following its confirmation or variation or withdrawal, or by the end of the period set out in the notice or, where the operation of the notice has been suspended by a District Court judge, on the expiration of that period.

73. Prohibition on unauthorised disclosure of confidential information

Section 73 specifies that save as otherwise provided by law, a member of the Authority, a member of its staff, a member of an advisory committee, or consultant or advisor to the Authority or that person's employee may not, unless authorised by the Authority, disclose confidential information obtained while performing Authority functions. This does not apply to the disclosure of information in a report to the Authority or to the Minister or information provided to a coroner holding an inquest into a work related death.

Section 73 also makes technical amendments to the Third Schedule to the Freedom of Information Act 1997 relating to the application of that Act to the Health and Safety Authority.

74. Amendment of Freedom of Information Act 1997

Section 74 amends section 46(1) of the Freedom of Information Act 1997 (as amended by section 29 of the Freedom of Information (Amendment) Act 2003) by inserting references to records arising from the enforcement functions of the Authority in new subsection (dc) as follows-

"(dc) a record held or created under the relevant statutory provisions by the Health and Safety Authority or an employee of the Authority, relating to or arising from its enforcement functions (other than a record concerning any other functions of the Authority or the general administration of the Authority),"

75. Disclosure of information

Section 75 provides for the Revenue Commissioners, members of the Garda Síochána, the Minister for Health and Children and the Minister for Social and Family Affairs or other persons named in regulation to give certain information to the Authority.

The Revenue Commissioners may give information in relation to articles or substances imported into the State to the Authority (or a person prescribed under Section 33) or to an inspector where it facilitates the exercise of their functions under safety and health legislation.

The Minister for Health and Children and the Minister for Social and Family Affairs may give information to the Authority (or a person prescribed under **Section 33**) in relation to personal injuries to persons at work for the purposes of promoting the safety, health and welfare of persons at work.

A member of the Garda Síochána may give information to the Authority (or a person prescribed under **Section 33**) relating to personal injury to a person at work for the purposes of enforcement of safety and health legislation.

The Minister, having consulted any other appropriate Minister, may make Regulations naming other persons requiring them to give information to the Authority (or a person prescribed under **Section 33**) in relation to personal injury to persons at work to facilitate promotion of safety, health and welfare at work.

76. Disclosure of information by inspector in certain circumstances

Section 76 enables an inspector to give to employees and their safety representatives (if any) factual information relating to a place of work or to any article or substance or activity being used or being carried on, and also information on any action being taken by the inspector.

Where an inspector discloses such information, the same information must be given to the employer.

An inspector is prohibited from disclosing any information relating to any manufacturing, trade or commercial secrets or work processes obtained in the performance of functions under the Act, except that this does not prevent the disclosure of information for the purpose of discharge of functions under the Act which is disclosed with the relevant consent, for the purposes of any legal proceedings or special report under **Section 70**.





Part 7

Offences and Penalties



77. Offences

Section 77 provides for two broad ranges of offences under the Act and under safety and health legislation. The first category applies to offences that may only be tried by the Authority summarily in the District Court and the second category covers offences that may be tried either summarily or on indictment, in the case of summary disposal by the Authority and on indictment by the Director of Public Prosecutions.

The section provides for several other offences covering contraventions of particular sections or other specific matters. This section also provides that, in addition to the imposition of a fine in respect of an offence, a convicted person may also be ordered to take steps to remedy health and safety matters within a specific time.

The section provides that a person having duties under the Act who breaches safety and health legislation is guilty of an offence if another person suffers any personal injury as a consequence of such breach unless the case has been heard and dismissed before the personal injury occurred or where the injury, excluding death, was not caused directly by the alleged breach.

A person charged with a summary offence under safety and health legislation may have another person whom he or she charges as the actual offender brought before a court when the case is being heard. If the offence is proved and the first person satisfies the court that he or she used all due diligence to enforce safety and health legislation and that the second person committed the offence without his or her consent, connivance or willful default, that person may be convicted and be liable to pay incidental costs and the first person is not guilty but may be cross examined by the prosecution.

Where an offence is committed through failure to meet the time deadline to do something, the offence is deemed to continue until that thing is done. An employer does not have a defence in a case taken for breach of safety and health legislation by reason of any act or default by an employee or by a competent person appointed under section 18.

The full list of offences set out in Section 77 is as follows –

"77.–(1) A person commits an offence where he or she—

(a) fails to discharge a duty to which he or she is subject under sections 25(4), (5) and (6), 26(1), (4), (5) and (6) and section 69,

(b) prevents or attempts to prevent any person from answering any question to which an inspector may require an answer under section 64,

(c) fails to submit an improvement plan to an inspector within the time specified in a direction under section 65,

(d) fails to implement an improvement plan the adequacy of which has been confirmed in accordance with section 65,

(e) contravenes any requirement imposed by a notice requiring information under section 72, or

(f) prevents, obstructs, impedes or delays an officer of customs and excise in the exercise of any of the powers conferred on him or her by section 87.

(2) A person commits an offence where he or she—

(a) fails to discharge a duty to which he or she is subject by virtue of sections 8, 9, 10, 11(1) to (4), 12, 13, and 15 to 23,

(b) contravenes section 14,

(c) except for the provisions of this section as they apply to this Act, contravenes the relevant statutory provisions,

(d) prevents, obstructs, impedes or delays an inspector from exercising any functions conferred on him or her by this Act,

(e) fails to comply with a bona fide request, instruction or directions from an inspector in the exercise of his or her statutory functions,

(f) where any person makes a statement to an inspector which he or she knows to be false or recklessly makes a statement, which is false where the statement is made—

(i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions, or

(ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or herself or another person,

(g) makes a false entry intentionally in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, makes use of any such entry which he or she knows to be false,

(h) produces or causes to be produced or allows to be produced to an inspector any record which is false or misleading in any respect knowing it to be so false or misleading,

(i) forges or uses a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose under the relevant statutory provisions with the intent to deceive, or makes or has in his or her possession a document so closely resembling any such document as to be calculated to deceive,

(j) falsely represents himself or herself to be an inspector,

(k) contravenes any requirement of an improvement notice served under section 66, or

(l) carries on any activity in contravention of a prohibition notice served under section 67.

(3) A person who, at any time during the period of 3 months after a notice or document is affixed under section 3(1)(d) removes, alters, damages or defaces the notice or document without lawful authority, commits an offence.

(4) A person commits an offence if he or she—

(a) obstructs or impedes a member of the Garda Síochána in the exercise of a power conferred on him or her or by a warrant under section 64(7),

(b) refuses to produce any record that an inspector lawfully requires him or her to produce, or

(c) gives to an inspector information that the person knows is false or misleading.

(5) It is an offence to contravene any order or orders made under section 71.

(6) A person who, without reasonable cause, fails or refuses to comply with a requirement specified in an information notice or who in purported compliance with such a requirement furnishes information to the Authority that the person knows to be false or misleading in a material respect commits an offence.

(7) A person who contravenes section 73 commits an offence.

(8) (a) A person convicted of an offence under any of the relevant statutory provisions may, in addition to any fine that may be imposed, be ordered to take steps within a specified time to remedy the matters in respect of which the contravention occurred (and may on application extend the time so specified) and any person who fails to comply with any such order within the specified time (as extended) commits an offence.

(b) The time specified under paragraph (a) may be extended at the discretion of the court on application made by the person to whom the order is addressed.

(9) (a) Subject to paragraph (b), if a person suffers any personal injury as a consequence of the contravention of any of the relevant statutory provisions by a person on whom a duty is imposed by sections 8 to 12 inclusive and 14 to 17 inclusive, the person on whom the duty is imposed commits an offence.

(b) A person does not commit an offence under paragraph (a)–

(i) if a prosecution against the person in respect of the act or default by which the personal injury was caused has been heard and dismissed before the personal injury occurred, or

(ii) in the case of personal injury excluding death, where that injury was not caused directly by the alleged contravention.

(10) (a) Without prejudice to subsection (12), where a person is charged with a summary offence under any of the relevant statutory provisions, the person is entitled, upon information duly laid by him or her and on giving to the prosecution not less than 3 days notice in writing of his or her intention, to have any other person whom he or she charges as the actual offender brought before the court at the time appointed for hearing the matter (whether or not the other person is his or her employee or agent).

(b) If the commission of the offence is proved and the first person charged proves to the satisfaction of the court that he or she used all diligence to enforce the relevant statutory provisions and that the other person whom he or she charges as the actual offender committed the offence without his or her consent, connivance or wilful default, that other person shall be summarily convicted of the offence and the first person is not guilty of the offence, and the person convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(c) The prosecution shall in any case to which this subsection applies have the right to cross-examine the first person charged if he or she gives evidence and any witnesses called by him or her in support of his or her charge, and to adduce rebutting evidence.

(11) Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence shall be deemed to continue until that thing is done.

(12) Nothing in the relevant statutory provisions shall operate so as to afford an employer a defence in any criminal proceedings for a contravention of those provisions by reason of any act or default of–

(a) his or her employee, or

(b) a competent person appointed by the employer under section 18."

78. Penalties

Section 78 provides for a fine under summary jurisdiction not exceeding €3,000 for a person guilty of an offence under the first category of offences set out in Section 77(1). A person guilty of any other offence set out in Section 77 is liable, on summary conviction, to a fine not exceeding €3,000 or imprisonment up to 6

months or both or, on conviction on indictment, to a fine not exceeding €3 million or imprisonment for up to 2 years or both.

Nothing in this Section can be regarded as creating an indictable offence in respect of Regulations made under the European Communities Act 1972.

In the case of a conviction, the Court, unless it is satisfied that there are special and substantial reasons for not doing so, must order the person convicted to pay the Authority's costs and expenses.

The full text of **Section 78** relating to penalties is as follows –

"78.—(1) A person guilty of an offence under section 39(17)(e) of the Redundancy Payments Act 1967 as applied to this Act by section 29(7), or 77(1) is liable on summary conviction to a fine not exceeding €3,000.

(2) A person guilty of an offence—

(a) under section 77(2) to (8) and (9)(a),

(b) which consists of contravening any of the relevant statutory provisions by doing otherwise than under the authority of a licence issued by the Authority or, a person prescribed under section 33, something for the doing of which such a licence is necessary under the relevant statutory provisions, or

(c) which consists of contravening a term of or a condition or restriction attached to any such licence as is mentioned in paragraph (b) is liable—

(i) on summary conviction to a fine not exceeding €3,000 or imprisonment for a term not exceeding 6 months or to both, or

(ii) on conviction on indictment to a fine not exceeding €3,000,000 or imprisonment for a term not exceeding 2 years or to both.

(3) Nothing in this section shall be construed as creating an indictable offence in respect of regulations made under the European Communities Act 1972.

(4) Where a person is convicted of an offence under the relevant statutory provisions in proceedings brought by the Authority or a prescribed person under section 33, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Authority or the prescribed person under section 33 the costs and expenses measured by the court, incurred by the Authority or the prescribed person under section 33 in relation to the investigation, detection and prosecution of the offence including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees of or consultants and advisors engaged by the Authority or the prescribed person under section 33, as the case may be."

79. Provisions regarding certain offences

Section 79, subject to the making of Regulations under the 2005 Act, provides that where an inspector has reasonable grounds for believing that an offence has been committed, he or she may serve the person with a notice of an "on-the-spot" fine stating that the person is alleged to have committed the offence and that a prosecution will not be instituted during the period of notice if a payment specified in the notice is made.

A person on whom the notice is served has 21 days in which to make the payment, which may not exceed €1,000 per alleged offence and which can be set out in the Regulations.

The Authority (or a person prescribed under **Section 33**) may receive payments, issue receipts and retain monies so paid which are not recoverable in any circumstances by the person who made them.

The Authority (or a person prescribed under **Section 33**) may not initiate a prosecution in respect of the alleged offence during the period of the notice and, if the payment is made during that period, no prosecution can be launched in respect of the particular alleged offence.

In any prosecution for non-payment of the "on-the-spot" fines, the onus is on the accused to prove that payment has been made.

80. Liability of directors and officers of undertakings

Section 80 provides that when an offence under safety and health legislation is committed by an undertaking and the acts involved were authorised or consented to, or were attributable to connivance or neglect on the part of either a director, manager or other similar officer in the undertaking or a person purporting to act in any such capacity, that person as well as the undertaking will be guilty of an offence and liable to be proceeded against and punished as if the person was guilty of the offence committed by the undertaking.

If it is proven in such a case that the person was a director of the undertaking concerned, or a person employed by it whose duties included making decisions that, to a significant extent, could have affected the management of the undertaking, or a person who purported to act in any such capacity, it is presumed, until the contrary is proved, that the acts which resulted in the offence were authorised, consented to or attributable to connivance or neglect on the part of that person.

Where the affairs of a body corporate are managed by its members the above provisions apply to acts or defaults of the individual member in connection with his or her functions of management as if he or she were a director of the body corporate.

81. Onus of proof

Section 81 provides that in proceedings where a breach of safety and health legislation includes a failure to comply with a duty or requirement to do something as far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, it is for the accused to prove that it was not practicable, or reasonably practicable, to do more than was in fact done or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

82. Prosecution of offences

Section 82 empowers the Authority, or other person prescribed under **Section 33**, to initiate summary proceedings for offences, and within 12 months from the date an offence was committed notwithstanding **Section 10(4)** of the Petty Sessions (Ireland) Act 1851.

Where, arising from a special report made under **Section 70**, it appears that there was a breach of safety and health legislation, proceedings may be commenced within 6 months of the making of the special report or the conclusion of the inquest or 12 months after the date of the contravention, whichever is the later.

83. Appeals from orders

Section 83 specifies that any person (including the Authority or a person prescribed under **Section 33**) aggrieved by a District Court order determining a complaint under the Act may appeal to a judge of the Circuit Court, within whose circuit the District Court is situated, and the decision of the judge of the Circuit Court will be final and conclusive.

84. Evidence

Section 84 provides that if a person is found to be carrying on work in any place of work at any time that work is being carried on there, he or she is, unless the contrary is proved, deemed for the purposes of the Act to be employed in that place of work by the person reasonably regarded as being in control, or by another employer carrying on work there.

Where an entry is required to be made in any record under safety and health legislation, the entry made by an employer, or on the behalf of an employer, is admissible in evidence against the employer, as also is any failure to make an entry required when complying with such laws. In any proceedings, a copy record may be given in evidence and stands as *prima facie* evidence if the court is satisfied that the system used to make the copy record and the original entry on which it was based is reliable.

85. Publication of names of certain persons

Section 85 provides that the Authority may, from time to time, compile and publish lists of names and addresses and the description of business or other activity of persons on whom fines or other penalties were imposed by a court under safety and health legislation, or prohibition notices were served under **Section 67**, or in respect of whom interim or interlocutory orders were made under **Section 71**. The list must include details, as the Authority thinks fit, of the matter involved and the fine, penalty, notice or order concerned.





Part 8

Miscellaneous



86. Indemnification of inspectors, etc.

Section 86 requires the Authority (or a person prescribed under Section 33) to indemnify inspectors against actions or claims arising out of the enforcement of safety and health legislation carried out in an authentic and genuine (*bona fide*) manner. The section also provides that no action or proceedings shall lie or be maintainable against the Authority, or a person prescribed under Section 33, or a person referred in Section 34(2), for the recovery of damages in respect of injury to persons, damage to property or other loss alleged to have been caused or contributed to by a failure to perform or to comply with any functions under the Act.

87. Powers of officer of customs and excise to detain articles, etc.

Section 87 gives power to officers of customs and excise when authorised by the Revenue Commissioners, following a written request by the Authority (or a person prescribed under Section 33) to detain any article or substance being imported, not longer than 48 hours, for examination by an inspector under safety and health legislation.

88. Licences

Section 88 enables the Minister, by Regulations, to list work activities, which may not be carried on except under licence issued by Authority (or a person prescribed under Section 33). Conditions may be attached to a licence, including those in relation to its expiry or revocation.

The Authority (or a person prescribed under Section 33) has power to grant or refuse licences and may publish particulars of an application for a licence and invite comments concerning it from interested persons.

The Authority (or a person prescribed under Section 33) must keep a register of all licences granted and open it to inspection on payment of a fee.

Where the Authority (or a person prescribed under Section 33) refuses to grant a licence, they must give a certificate stating the grounds for refusal and the applicant may, within 10 days or such further period as the High Court may allow, appeal to the High Court, which may either confirm the decision or direct the Authority (or a person prescribed under Section 33) to grant the licence, or to attach specified conditions to the licence, or to amend or delete a condition attached to the licence.

A decision of the High Court on an appeal under this section is final except that an appeal may be made to the Supreme Court on a specified question of law.

89. Amendment of National Standards Authority of Ireland Act 1996.

Section 89 of the Act provides for a non-safety and health technical amendment of the National Standards Authority of Ireland Act 1996.

List of Schedules to the Act

Schedule 1 lists the associated statutory provisions, defined in Section 2 of the Act.

Schedule 2, Part 1, lists enactments, which are existing enactments, defined in Section 2 of the Act.

Schedule 2, Part 2, lists Regulations made under the European Communities Act 1972, which are existing enactments, defined in Section 2 of the Act.

Schedule 3 sets out the general principles of prevention, as referred to in Section 8 of the Act.

Schedule 4 sets down the conditions attaching to safety committees, as referred to in Section 26 of the Act.

Schedule 5 provides for matters relating to appointments and procedures for the Board of the Health and Safety Authority, as referred to in Sections 32 and 37 of the Act.

Schedule 6 specifies matters relating to the appointment and functions of the Chief Executive of the Health and Safety Authority, as referred to in Section 39 of the Act.

Schedule 7 specifies the list of matters in respect of which Regulations may be made by the Minister under Section 58 of the Act.



Notes

Notes

Notes

Guide to the Safety, Health and Welfare at Work Act 2005

*Achieving a
Healthy
and Safe
Working Life
-Together*

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