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SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

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SAFETY, HEALTH AND WELFARE AT WORK ACT 2005

AN ACT TO MAKE FURTHER PROVISION FOR SECURING THE SAFETY, HEALTH AND WELFARE OF PERSONS AT WORK AND FOR THE ENFORCEMENT OF THE RELEVANT STATUTORY PROVISIONS, TO GIVE FURTHER EFFECT TO COUNCIL DIRECTIVE 89/391/EEC OF 12 JUNE 1989¹ ON THE INTRODUCTION OF MEASURES TO ENCOURAGE IMPROVEMENTS IN THE SAFETY AND HEALTH OF WORKERS AT WORK AND COUNCIL DIRECTIVE 91/383/EEC OF 25 JUNE 1991² ON MEASURES TO IMPROVE THE SAFETY AND HEALTH AT WORK OF WORKERS WITH A FIXED-DURATION OR TEMPORARY EMPLOYMENT RELATIONSHIP, TO PROVIDE FOR THE FURTHER REGULATION OF WORK ACTIVITIES, TO CONTINUE IN BEING AND CONFER ADDITIONAL FUNCTIONS ON THE NATIONAL AUTHORITY FOR OCCUPATIONAL SAFETY AND HEALTH AND RENAME THAT BODY AS THE HEALTH AND SAFETY AUTHORITY, TO REPEAL THE SAFETY, HEALTH AND WELFARE AT WORK ACT 1989, TO PROVIDE FOR THE REPEAL OF CERTAIN OTHER ENACTMENTS AND THE AMENDMENT OF THE NATIONAL STANDARDS AUTHORITY OF IRELAND ACT 1996 AND TO PROVIDE FOR RELATED MATTERS.

[22nd June, 2005]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Safety, Health and Welfare at Work Act 2005. Short title and commencement.

(2) This Act shall come into operation on such day or days as may be appointed therefor by order or orders of the Minister either

¹OJ No. L183, 29.6.1989, p.1

²OJ No. L206, 29.7.1991, p.19

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generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act and an order under this subsection may provide for the commencement of *section 4(2)* upon different days as respects different existing enactments and different provisions of existing enactments.

Interpretation.

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

“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;

“Act of 1989” means the Safety, Health and Welfare at Work Act 1989;

“advisory committee” means an advisory committee established under *section 38*;

“approved” means approved in writing for the time being by the Authority or conforming with a specification in writing by the Authority;

“article” means—

- (a) any plant, machine, machinery, appliance, apparatus, tool or any other work equipment for use or operation (whether exclusively or not) by persons at work,
- (b) any article designed for use as a component in, part of or to control any such plant, machine, machinery, appliance, apparatus, work equipment, tool or any other work equipment, and
- (c) any other product used by persons at work;

“associated statutory provisions” means the provisions of the Acts specified in *Schedule 1* and any statutory instruments made under those Acts for the time being in force;

“Authority” means the Health and Safety Authority;

“cash flow statement” means, in relation to a year, an account showing the derivation of all moneys received by the Authority during that year and the purposes to which they were applied;

“code of practice” means a code of practice prepared and published or, as the case may be, approved of, by the Authority in accordance with *section 60*;

“competent person” shall be read in accordance with *subsection (2)*;

“confidential information” includes—

- (a) information that is expressed by the Authority or an advisory committee, as the case may be, to be confidential either as regards particular information or as regards information of a particular class or description, and
- (b) proposals of a commercial nature or tenders submitted to the Authority by contractors, consultants or any other person;

“construction work” means the carrying out of any building, civil engineering or engineering construction work, as may be prescribed;

“contract of employment” means a contract of employment or service or apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

“dangerous occurrence” means an occurrence arising from work activities in a place of work that causes or results in—

- (a) the collapse, overturning, failure, explosion, bursting, electrical short circuit discharge or overload, or malfunction of any work equipment,
- (b) the collapse or partial collapse of any building or structure under construction or in use as a place of work,
- (c) the uncontrolled or accidental release, the escape or the ignition of any substance,
- (d) a fire involving any substance, or
- (e) any unintentional ignition or explosion of explosives,

as may be prescribed;

“director” includes a person in accordance with whose directions or instructions the directors of the undertaking concerned are accustomed to act but does not include such a person if the directors are accustomed to so act by reason only that they do so on advice given by the person in a professional capacity;

“employee” means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and includes a fixed-term employee and a temporary employee and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

“employer”, in relation to an employee—

- (a) means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment,
- (b) includes a person (other than an employee of that person) under whose control and direction an employee works, and
- (c) includes where appropriate, the successor of the employer or an associated employer of the employer;

“enactment” includes any instrument made under an enactment.

“existing enactments” means—

- (a) the enactments specified in *Part 1 of Schedule 2* and any instruments made under those enactments for the time being in force, and

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- (b) the regulations made under the European Communities Act 1972 for the time being in force specified in *Part 2* of *Schedule 2*;

“fixed-term employee” means an employee whose employment is governed by a contract of employment for a fixed-term or for a specified purpose, being a purpose of a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment;

“health surveillance” means the periodic review, for the purpose of protecting health and preventing occupationally related disease, of the health of employees, so that any adverse variations in their health that may be related to working conditions are identified as early as possible;

“improvement notice” means a notice served under *section 66*;

“improvement plan” means a plan required to be submitted under *section 65*;

“inspector” means a person authorised under *section 62* by the Authority or by a person prescribed under *section 33*;

“intoxicant” includes alcohol and drugs and any combination of drugs or of drugs and alcohol;

“joint safety and health agreement” shall be read in accordance with *section 24*;

“material interest” has the meaning assigned by *section 2(3)* of the *Ethics in Public Office Act 1995*;

“micro-organism” includes any microscopic biological entity which is capable of replication;

“Minister” means the Minister for Enterprise, Trade and Employment;

“penalisation” has the meaning assigned to it by *section 27* and cognate words shall be read accordingly;

“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;

“place of work” includes any, or any part of any, place (whether or not within or forming part of a building or structure), land or other location at, in, upon or near which, work is carried on whether occasionally or otherwise and in particular includes—

- (a) in relation to an extractive industry including exploration activity, the whole area intended to house workstations to which employees have access for the purpose of their work relating to the immediate and ancillary activities and installations of, as appropriate—

- (i) the surface or, as the case may be, underground extractive industry, including overburden dumps and other tips and any accommodation that is provided and, in the case of the underground extractive industry, any working area,
 - (ii) the extractive industry through drilling onshore including any accommodation that is provided, and
 - (iii) the extractive industry through drilling offshore, including any accommodation that is provided,
- (b) a tent, trailer, temporary structure or movable structure, and
- (c) a vehicle, vessel or aircraft;

“prescribed” means prescribed—

- (a) by regulations made by the Minister under this Act (other than in the case of *sections 66(7), 67(7) and 72(3)*), and
- (b) in the case of *sections 66(7), 67(7) and 72(3)* by rules made by the Minister for Justice, Equality and Law Reform in consultation with the Minister,

and cognate words shall be read accordingly;

“prohibition notice” means a notice served under *section 67*;

“reasonably practicable” has the meaning assigned by *subsection (6)*;

“recognised trade unions and staff associations” means trade unions and staff associations recognised by the Authority for the purposes of negotiations concerned with the remuneration, conditions of employment or working conditions of its employees;

“record” includes any memorandum, book, report, statement, register, plan, chart, map, drawing, specification, diagram, pictorial or graphic work or other document, any photograph, film or recording (whether of sound or images or both), any form in which data (within the meaning of the Data Protection Acts 1988 and 2003) are held, any form (including machine-readable form) or thing in which information is held or stored manually, mechanically or electronically, and anything that is a part or copy, in any form, of any of, or any combination of, the foregoing;

“registered medical practitioner” means a person whose name is entered in the General Register of Medical Practitioners;

“relevant statutory provisions” means existing enactments and this Act and any instrument made under this Act for the time being in force;

“risk assessment” shall be read in accordance with *section 19*;

“safety representative” means a person selected and appointed under *section 25* as a safety representative;

“safety statement” shall be read in accordance with *section 20*;

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“self-employed person” means a person who works for profit or gain otherwise than under a contract of employment, whether or not the person employs other persons;

“share fisherman” has the meaning assigned by *subsection (3)(c)*;

“special report” means a report made under *section 70*;

“strategy statement” means the strategy statement of the Authority prepared and adopted under *section 43*;

“substance” includes any natural or artificial substance, preparation or agent in solid or liquid form or in the form of a gas or vapour or as a micro-organism;

“superannuation benefits” means a pension, gratuity or other allowance payable on resignation, retirement or death;

“temporary employee” means an employee who is assigned by a temporary employment business to work for and under the control of another undertaking availing of the employee’s services;

“temporary employment business” means a business, including an employment agency within the meaning of the Employment Agency Act 1971, which provides temporary employees to other undertakings availing of the services of those employees;

“trade union” means a trade union which is the holder of a negotiation licence under Part II of the Trade Union Act 1941;

“undertaking” means a person being an individual, a body corporate or an unincorporated body of persons engaged in the production, supply or distribution of goods or the provision of a service (whether carried on by him or her for profit or not);

“use” includes—

- (a) in the case of an article, the manufacture, supply, operation, setting, repair, cleaning and maintenance of the article, and
- (b) in the case of a substance, the manufacture, process, operation, storage, treatment, mixing, packing, conveyance, supply, handling, filling or emptying, loading and unloading of the substance;

“vessel” means a waterborne craft of any type, whether self-propelled or not, and includes an air cushion craft and any structure in or on water or on water and attached to land;

“work programme” means the work programme of the Authority prepared and adopted under *section 44*.

- (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 *paragraph (a)* of the framework of qualifications referred to in the Qualifications (Education and Training) Act 1999.

(3) In this Act references, in relation to an employer, to an employee shall be read as references to an employee employed by that employer, and for the purposes of this Act—

(a) a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act 1956) is deemed to be an employee employed by the State or Government, as the case may be,

(b) an officer or servant of a harbour authority, the Health Service Executive or a vocational educational committee is deemed to be an employee employed by the harbour authority, the Health Service Executive or vocational education committee, as the case may be, and

(c) a share fisherman is deemed to be an employee of the owner or skipper, as the case may be, of a fishing vessel whom he or she accompanies on board the fishing vessel, as a member of the crew, to engage in fishing where he or she is remunerated by a share in the catch or the profits or the gross earnings of the working of the vessel.

(4) For the purposes of the relevant statutory provisions, where an individual agrees with a person who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971, and is acting in the course of that business to do or perform personally any work or service for another person (whether or not the latter person is a party to the contract and whether or not the latter person pays the wages or salary of the individual in respect of the work or service), then the latter person shall be deemed to be the individual's employer for the purposes of the relevant statutory provisions.

(5) For the purposes of the relevant statutory provisions, 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, shall be deemed to be an employee of the person whose undertaking (whether carried on by him or her for profit or not) is for the time being the immediate provider to that person of training or work experience, and "employee", "employer" and cognate words and expressions shall be read accordingly.

(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.

(7) References in the relevant statutory provisions to a risk assessment or safety statement shall be read as including references to an amended risk assessment or amended safety statement, as the case may be.

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(8) A financial year of the Authority shall be a period of 12 months ending on 31 December in any year and for the purposes of *sections 45 and 48* the period commencing on the coming into operation of *section 45* and ending on the following 31 December is deemed to be a financial year of the Authority.

(9) In this Act—

- (a) a reference to a Part, section or Schedule is a reference to a Part or section of, or Schedule to, this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended,
- (c) a reference to any enactment shall be read as a reference to that enactment as amended by or under any other enactment, including this Act,
- (d) a reference to a statutory instrument or to Regulations shall be read as a reference to that instrument as amended, adapted or to Regulations extended by any other statutory instrument, and
- (e) a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of powers and the carrying out of duties.

(10) A word or expression that is used in this Act and is also used in Council Directive 89/391/EEC of 12 June 1989 or Council Directive 91/383/EEC of 25 June 1991 has, unless the contrary intention appears, the same meaning in this Act that it has in those Directives.

Service of notices,
etc.

3.—(1) A notice or other document required or authorised to be served on, sent or given to any person under the relevant statutory provisions shall, subject to *subsection (2)*, be addressed to the person concerned by name, and may be served on, sent or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the notice or other document is required to be served on, sent or given to him or her in respect of any place of work, by delivering it to a person over the age of 16 years of age resident or employed at the place of work or by

affixing it in a conspicuous position on or near the place of work;

- (e) if the person concerned has agreed to service of notices by means of an electronic communication (within the meaning assigned by section 2 of the Electronic Commerce Act 2000) to that person (being an addressee within the meaning assigned by that section) and provided that there is a facility to confirm receipt of electronic mail and that such receipt has been confirmed, then by that means;
- (f) where there is a facility for receiving a facsimile of the notice by electronic means at the address at which the person ordinarily resides or carries on business, by transmitting a facsimile of the notice by such means to that address, provided that the notice is also served or given in any of the other ways referred to in this subsection, or
- (g) by any other means that may be prescribed.

(2) Where a notice or other document required or authorised under the relevant statutory provisions is to be served on, sent or given to a person who is the owner or occupier of a place of work and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.

(3) For the purposes of this section, a company within the meaning of the Companies Acts 1963 to 2003 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

4.—(1) Sections 38 and 41 of the Organisation of Working Time Act 1997 are repealed. Repeals and savings.

(2) The existing enactments set out in *Part 1 of Schedule 2* are repealed.

(3) Where any document refers to an existing enactment repealed by this Act and provision is made by this Act corresponding to that enactment, then, unless the context otherwise requires, that reference shall be construed as or, as the case may be, as including a reference to the corresponding provision of this Act.

(4) Subject to *subsection (3)*, in so far as any instrument (including any order or regulation) made or issued and any other thing done under an existing enactment set out in *Part 1 of Schedule 2* is in force immediately before the repeal of such enactment by *subsection (2)* could have been made, issued or done under a corresponding provision of this Act, it shall not be invalidated by the repeals effected by *subsection (2)* but, except in so far as this Act otherwise provides, shall continue in force as if made, issued or done under this Act.

5.—The expenses incurred by the Minister in administering this Act, shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas. Expenses.

Application of relevant statutory provisions to certain public service activities.

6.—(1) The relevant statutory provisions apply to prisons and places of detention unless their application is incompatible with safe custody, good order and security.

(2) Subject to *section 11*, the relevant statutory provisions apply to members of the Defence Forces except when they are—

- (a) on active service within the meaning of section 5 of the Defence Act 1954 or deemed to be on active service within the meaning of section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
- (b) engaged in action in the course of operational duties at sea,
- (c) engaged in operations in aid to the civil power, or
- (d) engaged in training directly associated with any of the activities specified in *paragraph (a) to (c)*.

Application of relevant statutory provisions to self-employed persons.

7.—The relevant statutory provisions apply, where appropriate, to a self-employed person as they apply to an employer and as if that self-employed person was an employer and his or her own employee and references in the relevant statutory provisions to an employer shall be read as references to a self-employed person.

PART 2

GENERAL DUTIES

CHAPTER 1

General Duties of Employer

General duties of employer.

8.—(1) Every employer shall ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(2) Without prejudice to the generality of *subsection (1)*, the employer's duty extends, in particular, to the following:

- (a) managing and conducting work activities in such a way as to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- (b) managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health or welfare at work of his or her employees at risk;
- (c) as regards the place of work concerned, ensuring, so far as is reasonably practicable—
 - (i) the design, provision and maintenance of it in a condition that is safe and without risk to health,
 - (ii) the design, provision and maintenance of safe means of access to and egress from it, and

- (iii) the design, provision and maintenance of plant and machinery or any other articles that are safe and without risk to health;
- (d) ensuring, so far as it is reasonably practicable, the safety and the prevention of risk to health at work of his or her employees relating to the use of any article or substance or the exposure to noise, vibration or ionising or other radiations or any other physical agent;
- (e) providing systems of work that are planned, organised, performed, maintained and revised as appropriate so as to be, so far as is reasonably practicable, safe and without risk to health;
- (f) providing and maintaining facilities and arrangements for the welfare of his or her employees at work;
- (g) providing the information, instruction, training and supervision necessary to ensure, so far as is reasonably practicable, the safety, health, and welfare at work of his or her employees;
- (h) determining and implementing the safety, health and welfare measures necessary for the protection of the safety, health and welfare of his or her employees when identifying hazards and carrying out a risk assessment under *section 19* or when preparing a safety statement under *section 20* and ensuring that the measures take account of changing circumstances and the general principles of prevention specified in *Schedule 3*;
- (i) having regard to the general principles of prevention in *Schedule 3*, where risks cannot be eliminated or adequately controlled or in such circumstances as may be prescribed, providing and maintaining such suitable protective clothing and equipment as is necessary to ensure, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees;
- (j) preparing and revising, as appropriate, adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger;
- (k) reporting accidents and dangerous occurrences, as may be prescribed, to the Authority or to a person prescribed under *section 33*, as appropriate, and
- (l) obtaining, where necessary, the services of a competent person (whether under a contract of employment or otherwise) for the purpose of ensuring, so far as is reasonably practicable, the safety, health and welfare at work of his or her employees.

(3) Any duty imposed on an employer under the relevant statutory provisions in respect of any of his or her employees shall also apply in respect of the use by him or her of the services of a fixed-term employee or a temporary employee.

(4) For the duration of the assignment of any fixed-term employee or temporary employee working in his or her undertaking,

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it shall be the duty of every employer to ensure that working conditions are such as will protect the safety, health and welfare at work of such an employee.

(5) Every employer shall ensure that any measures taken by him or her relating to safety, health and welfare at work do not involve financial cost to his or her employees.

Information for
employees.

9.—(1) Without prejudice to the generality of *section 8*, every employer shall, when providing information to his or her employees under that section on matters relating to their safety, health and welfare at work ensure that the information—

- (a) is given in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employees concerned, and
- (b) includes the following information—
 - (i) the hazards to safety, health and welfare at work and the risks identified by the risk assessment,
 - (ii) the protective and preventive measures to be taken concerning safety, health and welfare at work under the relevant statutory provisions in respect of the place of work and each specific task to be performed at the place of work, and
 - (iii) the names of persons designated under *section 11* and of safety representatives selected under *section 25*, if any.

(2) Where an employee of another undertaking is engaged in work activities in an employer's undertaking, that employer shall take measures to ensure that the employee's employer receives adequate information concerning the matters referred to in *subsection (1)*.

(3) Every employer shall ensure that employees appointed under *section 18* and safety representatives, if any, have access, for the purposes of performing their functions relating to the safety, health and welfare of employees, to—

- (a) the risk assessment carried out under *section 19*,
 - (b) information relating to accidents and dangerous occurrences required to be reported to the Authority or a person prescribed under *section 33* under the relevant statutory provisions, and
 - (c) any information arising from protective and preventive measures taken under the relevant statutory provisions or provided by the Authority, a person prescribed under *section 33*, or a person referred to in *section 34(2)*.
- (4) (a) Where an employer proposes to use the services of a fixed-term employee or a temporary employee, the employer shall, prior to commencement of employment, give information to the employee relating to—
- (i) any potential risks to the safety, health and welfare of the employee at work,

- (ii) health surveillance,
 - (iii) any special occupational qualifications or skills required in the place of work, and
 - (iv) any increased specific risks which the work may involve.
- (b) Where an employer proposes to use the services of a temporary employee, the employer shall—
- (i) specify to the temporary employment business concerned the occupational qualifications necessary for and the specific features of the work for which such an employee is required, and
 - (ii) ensure that the temporary employment business gives the information referred to in *paragraph (a)* to the employee.

(5) The temporary employment business referred to in *subsection (4)(b)* shall give to the employee the information referred to in *subsection (4)(b)(i)*.

10.—(1) Without prejudice to the generality of *section 8* and having regard to *sections 25* and *26*, every employer shall, when providing instruction, training and supervision to his or her employees in relation to their safety, health and welfare at work, ensure that—

Instruction, training and supervision of employees.

- (a) instruction, training and supervision is provided in a form, manner and, as appropriate, language that is reasonably likely to be understood by the employee concerned,
- (b) employees receive, during time off from their work, where appropriate, and without loss of remuneration, adequate safety, health and welfare training, including, in particular, information and instructions relating to the specific task to be performed by the employee and the measures to be taken in an emergency,
- (c) in relation to any specific task assigned to an employee, that his or her capabilities in relation to safety, health and welfare are taken into account,
- (d) in the case of—
 - (i) a class or classes of particularly sensitive employees to whom any of the relevant statutory provisions apply, or
 - (ii) any employee or group of employees exposed to risks expressly provided for under the relevant statutory provisions,

the employees concerned are protected against the dangers that specifically affect them.

(2) Training under this section shall be adapted to take account of new or changed risks to safety, health and welfare at work and shall, as appropriate, be repeated periodically.

(3) Training under this section shall be provided to employees—

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- (a) on recruitment,
- (b) in the event of the transfer of an employee or change of task assigned to an employee,
- (c) on the introduction of new work equipment, systems of work or changes in existing work equipment or systems of work, and
- (d) on the introduction of new technology.

(4) Where, in respect of any particular work, competency requirements are prescribed, the employer shall provide for the release of employees, during working hours, where appropriate, and without loss of remuneration, for the purpose of attending training in matters relating to safety, health and welfare at work as regards the particular work.

(5) Every employer shall ensure that persons at work in the place of work concerned who are employees of another employer receive instructions relating to any risks to their safety, health and welfare in that place of work as necessary or appropriate.

(6) Every employer who uses the services of a fixed-term employee or a temporary employee shall ensure that the employee receives the training appropriate to the work which he or she is required to carry out having regard to his or her qualifications and experience.

Emergencies and serious and imminent dangers.

11.—(1) Without prejudice to the generality of *section 8*, every employer shall, in preparing and revising as necessary adequate plans and procedures to be followed and measures to be taken in the case of an emergency or serious and imminent danger—

- (a) provide the necessary measures to be taken appropriate to the place of work for first aid, fire-fighting and the evacuation of employees and any other individual present in the place of work, taking account of the nature of the work being carried on and the size of the place of work,
- (b) arrange any necessary contacts with the appropriate emergency services, in particular with regard to first aid, emergency medical care, rescue work and fire-fighting,
- (c) for the purposes of implementing the plans, procedures and measures referred to in this section and *section 8*
 - (i) designate employees who are required to implement those plans, procedures and measures, and
 - (ii) ensure that the number of those employees, their training and the equipment available to them are adequate, taking into account either or both the size of and specific hazards relating to the place of work.

(2) In the event of an emergency or serious and imminent danger, an employer shall—

- (a) as soon as possible inform all employees concerned of the risk involved and of the steps taken or to be taken to protect them from it,

- (b) save in exceptional cases for the reasons specified in the plans and procedures referred to in *subsection (1)*, refrain from requiring employees to carry out or resume work where there is still a serious and imminent danger to their safety and health, and
 - (c) ensure that, in the absence of appropriate guidance or instruction and having regard to the knowledge of the employee and the technical means at his or her disposal, and where the employee's immediate superior responsible cannot be contacted, the employee concerned may take appropriate steps to avoid the consequences of the danger.
- (3) In the event of serious, imminent and unavoidable danger, an employer shall—
- (a) take action and give instructions to enable employees to either or both stop work and immediately leave the place of work and to proceed to a safe place, and
 - (b) ensure that an employee who leaves a place of work is not penalised because of such action.
- (4) An employer shall ensure that only employees who have received appropriate instructions have access to the area of the place of work where a serious, specific danger exists.
- (5) This section does not apply to the following persons when they are engaged in activities relating to civil emergencies, public order, security or an act of war where any such activity prevents compliance with this section:
- (a) members of the Defence Forces;
 - (b) members of the Garda Síochána;
 - (c) employees of a fire authority (within the meaning of the Fire Services Act 1981); or
 - (d) persons engaged in the activities of civil protection or civil defence.

12.—Every employer shall manage and conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that in the course of the work being carried on, individuals at the place of work (not being his or her employees) are not exposed to risks to their safety, health or welfare.

General duties of employers to persons other than their employees.

CHAPTER 2

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

13.—(1) An employee shall, while at work—

Duties of employee.

- (a) comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work,

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- (b) ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person,
- (c) if reasonably required by his or her employer, submit to any appropriate, reasonable and proportionate tests for intoxicants by, or under the supervision of, a registered medical practitioner who is a competent person, as may be prescribed,
- (d) co-operate with his or her employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate,
- (e) not engage in improper conduct or other behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person,
- (f) attend such training and, as appropriate, undergo such assessment as may reasonably be required by his or her employer or as may be prescribed relating to safety, health and welfare at work or relating to the work carried out by the employee,
- (g) having regard to his or her training and the instructions given by his or her employer, make correct use of any article or substance provided for use by the employee at work or for the protection of his or her safety, health and welfare at work, including protective clothing or equipment,
- (h) report to his or her employer or to any other appropriate person, as soon as practicable—
 - (i) any work being carried on, or likely to be carried on, in a manner which may endanger the safety, health or welfare at work of the employee or that of any other person,
 - (ii) any defect in the place of work, the systems of work, any article or substance which might endanger the safety, health or welfare at work of the employee or that of any other person, or
 - (iii) any contravention of the relevant statutory provisions which may endanger the safety, health and welfare at work of the employee or that of any other person,
 of which he or she is aware.

(2) An employee shall not, on entering into a contract of employment, misrepresent himself or herself to an employer with regard to the level of training as may be prescribed under *subsection (1)(f)*.

Interference,
misuse, etc.

14.—A person shall not intentionally, recklessly or without reasonable cause—

- (a) interfere with, misuse or damage anything provided under the relevant statutory provisions or otherwise for securing the safety, health and welfare of persons at work, or

- (b) place at risk the safety, health or welfare of persons in connection with work activities.

15.—(1) This section applies to a person who has control to any extent of—

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

- (a) a non-domestic place of work that has been made available as a place of work to persons other than employees of the person to whom this section applies,
- (b) the means of access to or egress from that place of work, or
- (c) any article or substance provided for the use of persons at that place of work, other than employees of the person who has control of the article or substance,

including a person who has control of a place of work or part of a place of work in connection with the carrying on by him or her of a trade, undertaking or business (whether for profit or not).

(2) Where a person has, by virtue of any contract, tenancy, licence or other interest, an obligation to any extent—

- (a) to maintain or repair a place of work or the means of access thereto or egress therefrom, or
- (b) as regards the safety of, or the absence of risk to health arising from, any article or substance provided for use in, that place of work,

the person is deemed, for the purposes of this section, to be a person to whom this section applies to the extent of his or her obligation.

(3) A person to whom this section applies shall ensure, so far as is reasonably practicable, that the place of work, the means of access thereto, or egress therefrom, and any article or substance provided for use in the place of work, are safe and without risk to health.

CHAPTER 3

General Duties of Other Persons

16.—(1) A person who designs, manufactures, imports or supplies any article for use at work shall—

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

- (a) ensure, so far as is reasonably practicable, that the article is designed and constructed so as—
 - (i) to be safe and without risk to health when properly used by a person at a place of work, and
 - (ii) to comply with the relevant statutory provisions and with the provisions of any relevant enactment implementing any relevant directive of the European Communities,
- (b) ensure that the article undergoes appropriate levels of testing and examination to ensure compliance with *paragraph (a)*,

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- (c) provide or arrange for the provision of adequate information about the article to the persons to whom it is supplied to ensure its safe use,
 - (d) ensure that persons to whom the article is supplied are provided with any revisions of the information provided under *paragraph (c)* as are necessary by reason of it becoming known that anything relating to the article gives rise to a serious risk to safety or health,
 - (e) if the person has responsibility under a rental, leasing or other arrangement to do so, maintain the article in a safe condition and in compliance with the relevant statutory provisions,
 - (f) comply with the relevant statutory provisions.
- (2) For the purposes of *subsection (1)(c)*, adequate information includes information relating to—
- (a) the use for which the article has been designed, manufactured or tested, as the case may be, and
 - (b) any conditions necessary to ensure its safe installation, use, maintenance, cleaning, dismantling or disposal without risk to safety or health.
- (3) A person who undertakes the design or manufacture of any article for use at work shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to safety or health to which the design or article may give rise.
- (4) A person who erects, assembles or installs any article for use at a place of work where that article is to be used by persons at work shall ensure, so far as is reasonably practicable, that nothing in the manner in which it is erected, assembled or installed makes the article unsafe or a risk to health when used at the place of work.
- (5) A person who manufactures, imports or supplies a substance for use at work shall—
- (a) ensure, so far as is reasonably practicable, that the substance is safe and without risk to health when properly used by a person at a place of work,
 - (b) ensure that the substance undergoes appropriate levels of testing and examination to ensure compliance with *paragraph (a)*,
 - (c) provide or arrange for the provision of adequate information about the substance to the persons to whom it is supplied to ensure its safe use, and
 - (d) comply with the relevant statutory provisions and with the provisions of any relevant enactment implementing any relevant directive of the European Communities.
- (6) For the purposes of *subsection (5)(c)*, adequate information includes information relating to—
- (a) the identification of the substance,

- (b) any risk to safety or health associated with its inherent properties,
- (c) the results of any relevant tests or examination which have been carried out on or in connection with the substance that are relevant to its safe use, and
- (d) any conditions necessary to ensure its safe use, handling, processing, storing, transportation or disposal without risk to safety or health.

(7) A person who undertakes the manufacture of a substance, or in the case where the manufacture was undertaken outside the State, the importer, shall carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to safety or health to which the substance may give rise when in use.

(8) Nothing in *subsections (1) to (7)* shall be read as requiring a person to repeat any testing, examination or research which has been carried out otherwise than by or on behalf of the person, in so far as it is reasonable for the person to rely on the results of that testing, examination or research, for the purposes of those subsections.

(9) Any duty imposed on a person by *subsections (1) to (7)* extends only to things done in the course of a trade, undertaking or business (whether for profit or not) carried on by the person and to matters within his or her control.

(10) Where a person designs, manufactures, imports or supplies an article or substance for use at work and does so for or to another person on the basis of a written undertaking by that other person to take specified steps that are sufficient to ensure, so far as is reasonably practicable, that the article or substance shall be safe and without risk to health or safety when it is used at a place of work, the undertaking has the effect of relieving the person who designs, manufactures, imports or supplies the article or substance from the duty imposed by *paragraphs (a) and (b) of subsection (1)* and *paragraphs (a) and (b) of subsection (5)* to such extent as is reasonable having regard to the terms of the undertaking.

(11) Nothing in *subsection (9)* or *(10)* relieves any person who imports any article or substance from any duty in respect of anything which—

- (a) in the case of an article designed outside the State, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article, or
- (b) in the case of an article or substance manufactured outside the State, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.

(12) Where a person (in this subsection referred to as “the supplier”) supplies to another person (in this subsection referred to as “the customer”) any article or substance for use at work under a hire-purchase agreement, a leasing agreement or credit-sale agreement, and the supplier—

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- (a) carried on the business of financing the acquisition of goods by others by means of those agreements, and
- (b) in the course of that business acquired his or her interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third party,

then that third party and not the supplier shall be treated for the purposes of this section as supplying the article or substance to the customer and any duty imposed by this section on suppliers shall, accordingly, fall on that third party and not on the supplier.

(13) For the purposes of this section, an absence of safety or a risk to health shall be disregarded in so far as the case is or, in relation to which it would arise is shown to be, one the occurrence of which could not reasonably be foreseen and, in determining whether a duty imposed by *paragraphs (a) and (b) of subsection (1) or paragraphs (a) and (b) of subsection (5)* has been performed, regard shall be had to any relevant information or advice which has been provided to any person by the person who designed, manufactured, imported or supplied the article or by the person who manufactured, imported or supplied the substance.

Duties related to
construction work.

17.—(1) A person who commissions or procures a project for construction work shall appoint in writing a competent person or persons for the purpose of ensuring, so far as is reasonably practicable, that the project—

- (a) is designed and is capable of being constructed to be safe and without risk to health,
- (b) is constructed to be safe and without risk to health,
- (c) can be maintained safely and without risk to health during subsequent use, and
- (d) complies in all respects, as appropriate, with the relevant statutory provisions.

(2) A person who designs a project for construction work shall ensure, so far as is reasonably practicable, that the project—

- (a) is designed and is capable of being constructed to be safe and without risk to health,
- (b) can be maintained safely and without risk to health during use, and
- (c) complies in all respects, as appropriate, with the relevant statutory provisions.

(3) A person who carries out construction work shall 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 the relevant statutory provisions.

(4) For the purposes of this section, ‘project’ means any development which includes or is intended to include construction work.

PART 3

PROTECTIVE AND PREVENTIVE MEASURES

18.—(1) Without prejudice to the generality of *section 8*, an employer shall, for the purpose of complying with the relevant statutory provisions, appoint one or more competent persons to perform such functions as are specified by the employer, relating to the protection from and the prevention of risks to safety, health and welfare at work.

Protective and
Preventive
Measures.

(2) An employee appointed under *subsection (1)* as a competent person shall be allowed adequate time, with no loss of remuneration, to enable him or her to perform such functions as are specified by the employer.

(3) Every employer shall—

(a) ensure that—

(i) the number of persons appointed, and

(ii) the time available to them and the means at their disposal to perform their functions under this section,

are adequate having regard to the size of the place of work, the risks to which employees are exposed and the distribution of those risks in the place of work, and

(b) make arrangements for ensuring adequate co-operation between those persons and safety representatives (if any) appointed under *section 25* whenever necessary.

(4) Where there is a competent person in the employer's employment, that person shall be appointed for the purposes of this section in preference to a competent person who is not in his or her employment except where the knowledge and experience of the person first referred to is not adequate or appropriate to the functions conferred by this section.

(5) An employer shall provide the competent person appointed under this section who is not in his or her employment with the following information:

(a) the factors known by the employer to affect, or suspected by the employer of affecting, the safety, health and welfare of his or her employees;

(b) the risks to safety, health and welfare and the protective and preventive measures and activities in respect of the place of work and the work carried out there;

(c) the measures for the evacuation of employees and other persons to be taken under *section 11*, including the employees designated to implement the plans and measures referred to in *paragraphs (a) and (b)* of *subsection (1)* of that section; and

(d) such reasonable information about any person in the place of work concerned who is a fixed-term employee or a

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temporary employee as is necessary to enable the competent person to perform his or her functions under this section.

Hazard
identification and
risk assessment.

19.—(1) Every employer shall identify the hazards in the place of work under his or her control, assess the risks presented by those hazards and be in possession of a written assessment (to be known and referred to in this Act as a “risk assessment”) of the risks to the safety, health and welfare at work of his or her employees, including the safety, health and welfare of any single employee or group or groups of employees who may be exposed to any unusual or other risks under the relevant statutory provisions.

(2) For the purposes of carrying out a risk assessment under *subsection (1)*, the employer shall, taking account of the work being carried on at the place of work, have regard to the duties imposed by the relevant statutory provisions.

(3) The risk assessment shall be reviewed by the employer where—

- (a) there has been a significant change in the matters to which it relates, or
- (b) there is another reason to believe that it is no longer valid,

and, following the review, the employer shall amend the risk assessment as appropriate.

(4) In relation to the most recent risk assessment carried out by an employer, he or she shall take steps to implement any improvement considered necessary relating to the safety, health and welfare at work of employees and to ensure that any such improvement is implemented in respect of all activities and levels of the place of work.

(5) Every person to whom *sections 12 or 15* applies shall carry out a risk assessment in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Safety statement.

20.—(1) Every employer shall prepare, or cause to be prepared, a written statement (to be known and referred to in this Act as a “safety statement”), based on the identification of the hazards and the risk assessment carried out under *section 19*, specifying the manner in which the safety, health and welfare at work of his or her employees shall be secured and managed.

(2) Without prejudice to the generality of *subsection (1)*, every employer shall ensure that the safety statement specifies—

- (a) the hazards identified and the risks assessed,
- (b) the protective and preventive measures taken and the resources provided for protecting safety, health and welfare at the place of work to which the safety statement relates,
- (c) the plans and procedures to be followed and the measures to be taken in the event of an emergency or serious and imminent danger, in compliance with *sections 8 and 11*,

- (d) the duties of his or her employees regarding safety, health and welfare at work, including co-operation with the employer and any persons who have responsibility under the relevant statutory provisions in matters relating to safety, health and welfare at work,
- (e) the names and, where applicable, the job title or position held of each person responsible for performing tasks assigned to him or her pursuant to the safety statement, and
- (f) the arrangements made regarding the appointment of safety representatives and consultation with, and participation by, employees and safety representatives, in compliance with *sections 25* and *26*, including the names of the safety representative and the members of the safety committee, if appointed.

(3) Every employer shall bring the safety statement, in a form, manner and, as appropriate, language that is reasonably likely to be understood, to the attention of—

- (a) his or her employees, at least annually and, at any other time, following its amendment in accordance with this section,
- (b) newly-recruited employees upon commencement of employment, and
- (c) other persons at the place of work who may be exposed to any specific risk to which the safety statement applies.

(4) Where there are specific tasks being performed at the place of work that pose a serious risk to safety, health or welfare, an employer shall bring to the attention of those affected by that risk relevant extracts of the safety statement setting out—

- (a) the risk identified,
- (b) the risk assessment, and
- (c) the protective and preventive measures taken in accordance with the relevant statutory provisions in relation to that risk.

(5) Every employer shall, taking into account the risk assessment carried out under *section 19*, review the safety statement where—

- (a) there has been a significant change in the matters to which it refers,
- (b) there is another reason to believe that the safety statement is no longer valid, or
- (c) an inspector in the course of an inspection, investigation, examination, inquiry under *section 64* or otherwise directs that the safety statement be amended within 30 days of the giving of that direction,

and, following the review, the employer shall amend the safety statement as appropriate.

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(6) Every employer who is conducting activities, as may be prescribed in accordance with this subsection, who contracts with another employer for that employer to provide services to him or her shall require that that employer is in possession of an up-to-date safety statement as required under this section.

(7) A copy of a safety statement, or relevant extract of it, shall be kept available for inspection at or near every place of work to which it relates while work is being carried out there.

(8) It shall be sufficient compliance with this section by an employer employing 3 or less employees to observe the terms of a code of practice, if any, relating to safety statements which applies to the class of employment covering the type of work activity carried on by the employer.

(9) Every person to whom *section 12* or *15* applies shall prepare a safety statement in accordance with this section to the extent that his or her duties under those sections may apply to persons other than his or her employees.

Duty of employers to co-operate.

21.—Where employers share a place of work, they shall—

- (a) in relation to safety, health and welfare at work, co-operate in complying with and implementing the relevant statutory provisions,
- (b) taking into account the nature of the work carried on at the place of work concerned—
 - (i) co-ordinate their actions in matters relating to the protection from and prevention of risks to safety, health and welfare at work, and
 - (ii) inform each other and their respective employees and safety representatives (if any) of any risks to their safety, health and welfare arising from the work activity, including by the exchange of safety statements or relevant extracts therefrom relating to hazards and risks to employees.

Health surveillance.

22.—(1) Every employer shall ensure that health surveillance appropriate to the risks to safety, health and welfare that may be incurred at the place of work identified by the risk assessment under *section 19*, is made available to his or her employees.

(2) *Subsection (1)* is without prejudice to any more specific requirement for health surveillance which may be in force under the relevant statutory provisions.

Medical fitness to work.

23.—(1) An employer may require an employee of a class or classes, as may be prescribed, to undergo an assessment by a registered medical practitioner, nominated by the employer, of his or her fitness to perform work activities referred to in *subsection (2)* and the employee shall co-operate with such a medical assessment.

(2) An employer shall ensure that employees undergo assessment by a registered medical practitioner of their fitness to perform work activities, as may be prescribed, which, when performed, give rise to serious risks to the safety, health and welfare of persons at work.

(3) Where, following an assessment under *subsection (1)*, a registered medical practitioner is of the opinion that an employee is unfit to perform work activities referred to in *subsection (2)*, he or she shall notify the employer, by the quickest practicable means, of that opinion and the likelihood of early resumption of work for rehabilitative purposes and shall inform the employee accordingly, giving the reasons for that opinion.

(4) If an employee referred to in *subsection (1)* becomes aware that he or she is suffering from any disease or physical or mental impairment which, should he or she perform a work activity referred to in *subsection (2)*, would be likely to cause him or her to expose himself or herself or another person to danger or risk of danger, he or she shall immediately notify the employer concerned or a registered medical practitioner nominated by that employer who shall in turn notify the employer.

(5) Where an employer receives a notification under *subsection (3)* or *(4)*, he or she shall immediately take appropriate action to comply with his or her general duties under *section 8*.

24.—(1) A trade union of employees, representing a class or classes of employees, and a trade union of employers may—

Joint safety and health agreements.

- (a) enter into or vary an agreement (in this Act referred to as a “joint safety and health agreement”) providing practical guidance to the employees and employers with respect to safety, health and welfare at work including the requirements of the relevant statutory provisions, and
- (b) apply to the Authority seeking approval for the agreement or its variation.

(2) The Authority may approve of a joint safety and health agreement where it is satisfied that—

- (a) the parties concerned consent to the approval sought,
- (b) the agreement is expressed to apply to all employees of a particular class and their employers and the Authority is satisfied that it is normal and desirable that it should so apply,
- (c) the parties to the agreement are substantially representative of such employees and employers,
- (d) the agreement does not conflict with the requirements of the relevant statutory provisions, and
- (e) the agreement is in a form suitable for approval.

(3) Where an application is made to the Authority for approval of a joint safety and health agreement, the Authority shall direct the parties concerned to publish information on the agreement in such a manner that is best calculated to bring the application to the notice of all persons concerned.

(4) The Authority shall not approve of a joint safety and health agreement until one month after its publication under *subsection (3)* and if any objection is received within that period, the Authority shall consider the objection and shall not approve the agreement if it does not comply with *subsection (2)*.

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(5) Approval of a joint safety and health agreement may be withdrawn by the Authority if it is satisfied that all parties thereto consent to its withdrawal or if the agreement is terminated by any of the parties concerned.

(6) Where the Authority approves of a joint safety and health agreement, it shall publish a notice of approval in *Iris Oifigiúil* and in at least 2 daily newspapers circulating in the State, and that notice shall—

- (a) identify the agreement,
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the agreement is approved and published, and
- (c) specify the date on which the agreement shall come into operation.

(7) The parties to a joint safety and health agreement shall make copies of the agreement, or variations thereof, available for inspection by all persons concerned.

(8) A joint safety and health agreement shall, so long as it continues to be approved by the Authority, be taken into account by the Authority or a person prescribed under *section 33* for the purposes of assessing compliance by an employer with the relevant statutory provisions notwithstanding the fact that that employer and the employees concerned are not party to the joint safety and health agreement.

PART 4

SAFETY REPRESENTATIVES AND SAFETY CONSULTATION

Safety
representatives.

25.—(1) Without prejudice to *section 26*, employees may, from time to time, select and appoint from amongst their number at their place of work a representative (in this Act referred to as a “safety representative”) or, by agreement with their employer, more than one safety representative, to represent them at the place of work in consultation with their employer on matters related to safety, health and welfare at the place of work.

- (2) A safety representative may—
 - (a) inspect the whole or any part of the place of work—
 - (i) subject to *subsection (3)*, after giving reasonable notice to the employer, or
 - (ii) immediately, in the event of an accident, dangerous occurrence or imminent danger or risk to the safety, health and welfare of any person,
 - (b) investigate accidents and dangerous occurrences provided that he or she does not interfere with or obstruct the performance of any statutory obligation required to be performed by any person under any of the relevant statutory provisions,

- (c) after the giving of reasonable notice to the employer, investigate complaints relating to safety, health and welfare at work made by any employee whom he or she represents,
- (d) accompany an inspector who is carrying out an inspection of the place of work under *section 64* other than an inspection for the purpose of investigating an accident or dangerous occurrence,
- (e) at the discretion of the inspector concerned, accompany an inspector who is carrying out an inspection under *section 64* for the purpose of investigating an accident or dangerous occurrence,
- (f) at the discretion of the inspector concerned, where an employee is interviewed by an inspector with respect to an accident or dangerous occurrence at a place of work, attend the interview where the employee so requests,
- (g) make representations to the employer on any matter relating to safety, health and welfare at the place of work,
- (h) make oral or written representations to inspectors on matters relating to safety, health and welfare at the place of work, including the investigation of accidents or dangerous occurrences,
- (i) receive advice and information from inspectors on matters relating to safety, health and welfare at the place of work, or
- (j) consult and liaise on matters relating to safety, health and welfare at work with any other safety representatives who may be appointed in the undertaking concerned, 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.

(3) The employer and the safety representative shall, having regard to the nature and extent of the hazards in the place of work, agree the frequency or schedule of inspections which may be carried out under *subsection (2)(a)(i)*, which agreement shall not be unreasonably withheld by the employer.

(4) Every employer shall consider any representations made to him or her by the safety representative in relation to the matters specified in this section or any other matter relating to the safety, health and welfare at work of his or her employees and, so far as is reasonably practicable, take any action that he or she considers necessary or appropriate with regard to those representations.

(5) An employer shall give to a safety representative such time off from his or her work as is reasonable having regard to all the circumstances, without loss of remuneration, to enable the safety representative—

- (a) to acquire, on an ongoing basis, the knowledge and training necessary to discharge his or her functions as a safety representative, and
- (b) to discharge those functions.

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(6) Where an inspector attends at a place of work for the purpose of carrying out an inspection under *section 64*, the employer shall inform the safety representative that the inspection is taking place.

Consultation and participation of employees, safety committees.

26.—(1) Every employer shall, for the purpose of promoting and developing measures to ensure the safety, health and welfare at work of his or her employees and ascertaining the effectiveness of those measures—

- (a) consult his or her employees for the purpose of making and maintaining arrangements which will enable the employer and his or her employees to co-operate effectively for those purposes,
- (b) in accordance with the arrangements referred to in *paragraph (a)*, consult with his or her employees, their safety representatives or both, as appropriate, in advance and in good time regarding—
 - (i) any measure proposed to be taken in the place of work which may substantially affect the safety, health and welfare of those employees, including measures to be taken under the relevant statutory provisions,
 - (ii) the designation of employees under *section 11*,
 - (iii) activities arising from or related to the protection from and the prevention of risks to safety, health and welfare at work,
 - (iv) the hazard identification and the risk assessment to be carried out under *section 19*,
 - (v) the preparation of a safety statement under *section 20*,
 - (vi) the information to be provided to employees under *section 9*,
 - (vii) the information required to be kept or notified to the Authority in respect of accidents and dangerous occurrences referred to in *section 8(2)(k)*,
 - (viii) the appointment of persons referred to in *section 18*,
 - (ix) the planning and organisation of the training referred to in *section 10*, or
 - (x) the planning and introduction of new technologies particularly in relation to the consequences of the choice of equipment and working conditions and the working environment for the safety, health and welfare of employees.

(2) Employees shall have the right to make representations to and consult their employer on matters relating to their safety, health and welfare at work, including the matters specified in *subsection (1)*.

(3) Where, in a place of work by agreement of the employer, there is a group of persons (by whatever name known) representative of the employer and the employees that constitutes a safety committee in compliance with *Schedule 4* and that exists for the purpose

of consultation regarding the safety, health and welfare at work of the employees, consultation within that group of persons may, to such extent as may be agreed between the employer and his or her employees, fulfil the requirements of *subsections (1) and (2)*.

(4) Every employer shall consider any representations made to him or her by his or her employees in relation to the matters specified in this section or any other matter relating to their safety, health or welfare at work and, so far as is reasonably practicable, take any action that he or she considers necessary or appropriate with regard to those representations.

(5) An employer shall give to employees involved in arrangements for consultation referred to in *subsections (1) and (3)* such time off from their duties as is reasonable having regard to all the circumstances, without loss of remuneration, to enable those employees—

- (a) to acquire the knowledge and training necessary to discharge their functions under this section, and
- (b) to discharge those functions.

(6) In an undertaking in which arrangements for joint decision-making exist involving the employer and employees, these arrangements shall include consultation in accordance with this section.

27.—(1) In this section “penalisation” includes any act or omission by an employer or a person acting on behalf of an employer that affects, to his or her detriment, an employee with respect to any term or condition of his or her employment.

Protection against dismissal and penalisation.

(2) Without prejudice to the generality of *subsection (1)*, penalisation includes—

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2001), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation.

(3) An employer shall not penalise or threaten penalisation against an employee for—

- (a) acting in compliance with the relevant statutory provisions,
- (b) performing any duty or exercising any right under the relevant statutory provisions,
- (c) making a complaint or representation to his or her safety representative or employer or the Authority, as regards any matter relating to safety, health or welfare at work,

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- (d) giving evidence in proceedings in respect of the enforcement of the relevant statutory provisions,
- (e) being a safety representative or an employee designated under *section 11* or appointed under *section 18* to perform functions under this Act, or
- (f) subject to *subsection (6)*, in circumstances of danger which the employee reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, leaving (or proposing to leave) or, while the danger persisted, refusing to return to his or her place of work or any dangerous part of his or her place of work, or taking (or proposing to take) appropriate steps to protect himself or herself or other persons from the danger.

(4) The dismissal of an employee shall be deemed, for the purposes of the Unfair Dismissals Acts 1977 to 2001, to be an unfair dismissal if it results wholly or mainly from penalisation as referred to in *subsection (2)(a)*.

(5) If penalisation of an employee, in contravention of *subsection (3)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the employee in respect of that penalisation both under this Part and under those Acts.

(6) For the purposes of *subsection (3)(f)*, in determining whether the steps which an employee took (or proposed to take) were appropriate, account shall be taken of all the circumstances and the means and advice available to him or her at the relevant time.

(7) Where the reason (or, if more than one, the principal reason) for the dismissal of an employee is that specified in *subsection (3)(f)*, the employee shall not be regarded as unfairly dismissed if the employer shows that it was (or would have been) so negligent for the employee to take the steps which he or she took (or proposed to take) that a reasonable employer might have dismissed him or her for taking (or proposing to take) them.

Complaints to rights
commissioners.

28.—(1) Without prejudice to *section 27(4)*, an employee may present a complaint to a rights commissioner that his or her employer has contravened *section 27*.

(2) Where a complaint under *subsection (1)* is made, the rights commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a decision in writing in relation to it, and
- (c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subsection (2)* shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded;

- (b) require the employer to take a specific course of action;
- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances.

(4) A rights commissioner shall not entertain a complaint under this section unless it is presented to him or her within the period of 6 months beginning on the date of the contravention to which the complaint relates or such further period not exceeding 6 months as the rights commissioner considers reasonable.

(5) (a) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(b) A copy of a notice under *paragraph (a)* shall be given to the other party concerned by the rights commissioner concerned.

(6) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

(7) A rights commissioner shall furnish the Labour Court with a copy of any decision given by the commissioner under *subsection (2)*.

29.—(1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *section 28* and, if the party does so, the Labour Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

Appeals from and enforcement of decisions of rights commissioner.

(2) An appeal under this section shall be initiated by the party concerned, within 6 weeks of the date on which the decision to which it relates was communicated to the party, by giving written notice to the Labour Court under *subsection (4)* stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subsection (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to those matters, shall be determined by the Labour Court, namely—

- (a) the initiation and the hearing by the Labour Court of appeals under this section,
- (b) the times and places of hearings of such appeals,
- (c) the representation of the parties to such appeals,
- (d) the publication and notification of determinations of the Labour Court,
- (e) the particulars to be contained in a notice under *subsection (2)*, and

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(f) any matters consequential on, or incidental to, the matters referred to in *paragraphs (a) to (e)*.

(5) 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 shall be final and conclusive.

(6) 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 shall be final and conclusive.

(7) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under this Part as it applies to matters referred to the Employment Appeals Tribunal under that section with—

(a) the substitution in that provision of references to the Labour Court for references to the Tribunal, and

(b) the substitution in paragraph (e) of that provision of “€3,000” for “£150”.

(8) Where a decision of a rights commissioner in relation to a complaint under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid) make a determination to the like effect as the decision.

(9) The bringing of a complaint before the Labour Court under *subsection (8)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.

(10) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *paragraphs (a), (b), (c), (e) and (f) of subsection (4)* (not being a determination as respects a particular appeal under this section) and *subsection (9)*.

Enforcement of
determinations of
Labour Court.

30.—(1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *section 28* within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

(a) the employee concerned,

(b) with the consent of the employee, any trade union of which the employee is a member, or

(c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in *subsection (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the end of the time for bringing an appeal against it, no appeal has been brought or, if an appeal has been brought it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where an appeal is abandoned, be read as references to the date of abandonment.

(3) In an order under this section providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.

31.—A document purporting to be signed by the chairperson or a vice-chairperson of the Labour Court stating that—

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

- (a) a person named in the document was, by a notice under section 39(17) of the Redundancy Payments Act 1967 as applied to this Act by *section 29(7)*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document,
- (b) a sitting of the Labour Court was held on that day and at that time and place, and
- (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or failed to produce the document,

shall, in a prosecution of the person under section 39(17) of the Redundancy Payments Act 1967 as applied to this Act by *section 29(7)*, be evidence of the matters so stated without further proof.

PART 5

THE AUTHORITY

CHAPTER 1

The Authority

32.—(1) Notwithstanding the repeal of the Act of 1989 by *section 4*—

Continuance in being of Authority.

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- (a) the National Authority for Occupational Safety and Health shall continue in being and shall from the commencement of this Act be known as the Health and Safety Authority (and in this Act referred to as the “Authority”), and
- (b) anything commenced but not completed before the commencement of that section by the Authority may be carried on and completed by it after such commencement as if that Act had not been repealed.

(2) Where, immediately before the commencement of *section 4*, any legal proceedings are pending to which the National Authority for Occupational Safety and Health is a party, the name of the Authority shall be substituted in the proceedings for that of the National Authority for Occupational Safety and Health and the proceedings shall not abate by reason of such substitution.

(3) The Authority shall be a body corporate with perpetual succession and an official seal and with power—

- (a) to sue and be sued in its corporate name, and
- (b) with the consent of the Minister and the Minister for Finance, to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

(4) *Schedule 5* applies to the Authority.

Minister may prescribe persons to perform certain functions.

33.—(1) Subject to *section 34*, the Minister, with the consent of the Minister for Finance, and after consultation with any other Minister of the Government that the Minister considers appropriate, may prescribe persons to perform such functions in lieu of the Authority in respect of the implementation of any of the relevant statutory provisions, and to the extent as may be prescribed.

(2) A person prescribed under this section shall, in accordance with any guidelines given to the person by the Authority—

- (a) make adequate arrangements for the performance of functions to the extent prescribed under *subsection (1)*,
- (b) perform any other functions conferred on the person by any of the relevant statutory provisions, and
- (c) furnish to the Authority an annual report in accordance with *subsection (3)* and such other reports and information relating to his or her functions and activities under this Act, or as prescribed, as the Authority may from time to time require.

(3) As soon as practicable but in any case not later than 2 months after the end of each year, a person prescribed under this section shall prepare and submit a report (in this section referred to as the “annual report”) to the appropriate Minister referred to in *subsection (1)* and to the Authority.

(4) The annual report shall be in the form that the Authority may direct and shall include—

- (a) information on the performance of the person concerned of his or her functions and activities under this Act or as prescribed, and
- (b) any other information that the person considers appropriate or as the Minister may require.

34.—(1) The general functions of the Authority are—

Functions of
Authority.

- (a) to promote, encourage and foster the prevention of accidents, dangerous occurrences and personal injury at work in accordance with the relevant statutory provisions,
- (b) to promote, encourage, foster and provide education and training in the safety, health and welfare of persons at work,
- (c) to encourage and foster measures promoting the safety, health and welfare of persons at work,
- (d) subject to *subsection (2)* and *section 33*, to make adequate arrangements for the enforcement of the relevant statutory provisions,
- (e) to monitor, evaluate and make recommendations to the Minister regarding implementation of and compliance with—
 - (i) the relevant statutory provisions, and
 - (ii) best practice relating to safety, health and welfare at work, and the review and maintenance of relevant records by employers,
- (f) to promote, encourage and foster co-operation with and between persons or bodies of persons that represent employees and employers and any other persons or bodies of persons, as appropriate, as regards the prevention of risks to safety, health and welfare at work in accordance with the relevant statutory provisions,
- (g) to make any arrangements that it considers appropriate for providing information and advice on matters relating to safety, health and welfare at work,
- (h) to make any arrangements that it considers appropriate to conduct, commission, promote, support and evaluate research, surveys and studies on matters relating to the functions of the Authority and for this purpose—
 - (i) to foster and promote contacts and the exchange of information with other persons or bodies of persons involved in safety, health and welfare at work in and outside the State, and
 - (ii) as it considers appropriate, to publish in the form and manner that the Authority thinks fit, results arising out of such research, studies and surveys,
- (i) in accordance with *section 43*, to prepare and adopt a strategy statement and to monitor its implementation,

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- (j) in accordance with *section 44*, to prepare and adopt a work programme,
- (k) to comply with any directions in writing, whether general or particular, relating to its functions, that the Minister may from time to time give to the Authority,
- (l) to give to the Minister any information relating to the performance of its functions that the Minister may from time to time require, and
- (m) to perform any additional functions conferred on the Authority by order under *section 35*.

(2) The Authority, subject to the approval of the Minister given with the consent of the Minister for Finance, may make agreements with—

- (a) any Minister of the Government, or other person, for that Minister or person to perform on behalf of the Authority (with or without payment) any of its functions, or
- (b) make agreements with any Minister of the Government for the Authority to perform on behalf of that Minister (with or without payment) any functions that may appropriately be performed by the Authority in connection with its functions under this Act.

(3) The Authority shall have all such powers as are necessary or expedient for the performance of its functions.

(4) The Authority may perform any of its functions through or by the Chief Executive or any other member of staff of the Authority duly authorised by the Authority to act in that behalf.

Conferral of additional functions on Authority.

35.—(1) The Minister may, with the consent of the Minister for Finance and after consultation with the Authority and any other Minister of the Government that he or she considers appropriate, by order—

- (a) confer on the Authority any additional functions connected with the functions for the time being of the Authority that the Minister considers appropriate, subject to the conditions (if any) that may be specified in the order, and
- (b) make such provision as he or she considers necessary or expedient in relation to matters ancillary to or arising out of the conferral of those additional functions.

(2) (a) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

- (b) An order under this subsection shall be made in the like manner, and subject to the same consent and consultations (if any) as the order that it is amending or revoking.

Establishment of subsidiaries.

36.—(1) The Authority may, without prejudice to its general responsibilities under this Act, perform any of its functions (other than those set out in *section 34(1)(d)*), provide any of its services or

carry on any of its activities through a subsidiary (within the meaning of the Companies Acts 1963 to 2003) which is wholly owned by the Authority and, accordingly, the Authority may, with the consent of the Minister and the Minister for Finance, for the purpose of such performance, provision or carrying on, form and register such a subsidiary.

(2) The memorandum and articles of association of a subsidiary referred to in this section shall be in the form that may be determined by the Authority with the consent of the Minister and the Minister for Finance.

(3) (a) The Minister may give to the Authority such directions in writing as he or she considers appropriate in relation to any policy, programme or activity of a subsidiary and the body concerned shall comply or, as may be appropriate, secure compliance with that direction.

(b) A direction under *paragraph (a)* shall not apply to any particular undertaking or person (other than a subsidiary).

(4) A direction under *subsection (3)* in relation to the disposal of any assets or profits of a subsidiary shall not be given without the consent of the Minister for Finance.

37.—(1) The Authority shall consist of a chairperson and 11 ordinary members who shall be appointed by the Minister, who shall comprise the Board of the Authority. Membership of Authority.

(2) The ordinary members of the Authority shall be—

(a) 3 persons nominated by such organisations representative of employees as the Minister considers appropriate,

(b) 3 persons nominated by such organisations representative of employers as the Minister considers appropriate,

(c) 5 persons as the Minister considers appropriate which shall include one person from the Department under whose auspices the Authority operates.

(3) The Minister shall, for the purposes of *paragraph 13(b)* of *Schedule 5*, designate one of the ordinary members of the Authority to be deputy chairperson of the Authority.

(4) Notwithstanding the repeal of the Act of 1989 by *section 4*, a person who is a member of the Authority immediately before the commencement of that section shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she dies or resigns from office or otherwise ceases to hold office in accordance with *Schedule 5*.

38.—(1) The Authority may from time to time establish advisory committees to advise it in relation to any of its functions and may determine the membership, term of office and terms of reference and regulate the procedure of any such committee. Advisory committees.

(2) Where the Authority has appointed an advisory committee, it shall appoint one of the members of the committee as chairperson

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of that committee and another as deputy chairperson who shall act in the absence of the chairperson.

(3) The members of an advisory committee established under this section shall be paid by the Authority such allowances for expenses incurred by them as the Minister, with the consent of the Minister for Finance, may determine.

(4) Notwithstanding the repeal of the Act of 1989 by *section 4*, a person who is a member of an advisory committee immediately before the commencement of that section shall continue in office as such a member for the remainder of the term of office for which he or she was appointed, unless he or she dies or resigns from office or otherwise ceases to hold office.

Chief Executive.

39.—(1) There shall be a chief executive officer of the Authority who shall be known and is referred to in this Act as the “Chief Executive”.

(2) The Chief Executive shall be appointed and may be removed from office in accordance with the terms and conditions of his or her appointment by the Authority with the consent of the Minister.

(3) The Authority, with the consent of the Minister and the Minister for Finance, may appoint one or more assistants to the Chief Executive who shall be known and is referred to in this Act as the “Assistant Chief Executive”.

(4) The Chief Executive shall carry on, manage and control generally the administration and business of the Authority and perform any other functions that may be conferred on him or her by this Act or as may be determined by the Authority.

(5) The Chief Executive shall—

- (a) prepare and submit to the Authority a draft strategy statement in accordance with *section 43* and a draft work programme in accordance with *section 44*,
- (b) provide annual and other progress reports to the Authority on the implementation of the strategy statement at such intervals as the Authority may from time to time direct,
- (c) provide advice to the Authority with respect to any matter within, affecting or connected with the functions of the Authority,
- (d) provide to the Authority any information, including financial information, relating to the performance of his or her functions as the Authority may from time to time require, and
- (e) manage all matters relating to appointments, performance, discipline and dismissals of staff below the position of Assistant Chief Executive.

(6) Notwithstanding the repeal of the Act of 1989 by *section 4*, the Chief Executive of the Authority holding office immediately before the commencement of this Act shall continue in office as Chief Executive for the remainder of the term of office for which he

or she was appointed, unless he or she dies or resigns from office or otherwise ceases to hold office.

(7) *Schedule 6* applies to the Chief Executive.

40.—(1) The Authority may, from time to time, engage consultants or advisers that it considers necessary or expedient for the performance by it of its functions. Consultants and advisers.

(2) Any fees payable by the Authority to a consultant or adviser engaged under this section shall be paid by it out of moneys at its disposal and it shall have regard to guidelines issued from time to time by the Minister or the Minister for Finance.

(3) The Authority shall comply with any directions with regard to consultants or advisers engaged under this section that the Minister may give to it with the consent of the Minister for Finance.

41.—(1) Where at a meeting of the Authority any of the following matters arise, namely— Disclosure of certain interests by members of Authority.

- (a) an arrangement to which the Authority is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the Authority or a proposed such contract or other agreement,

then, any member of the Authority present at the meeting who has a material interest in the matter, otherwise than in his or her capacity as such a member, shall—

- (i) at the meeting, in advance of any consideration of the matter, disclose to the Authority the fact of the interest and the nature of the interest,
- (ii) neither influence nor seek to influence a decision relating to the matter,
- (iii) absent himself or herself from any meeting or that part of the meeting during which the matter is discussed,
- (iv) take no part in any deliberation of the Authority relating to the matter, and
- (v) not vote on a decision relating to the matter.

(2) Where a member discloses a material interest in a matter under this section—

- (a) the disclosure shall be recorded in the minutes of the meeting, and
- (b) for so long as the matter is being dealt with by the meeting, the member shall not be counted in the quorum for the meeting unless the Authority otherwise determines.

(3) Where, at a meeting of the Authority, a question arises as to whether or not a course of conduct, if pursued by a member of the Authority, would be a failure by the member to comply with the requirements of *subsection (1)*—

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- (a) the question may, subject to *subsection (4)*, be determined by the chairperson of the meeting, whose decision shall be final, and
- (b) where the question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where at a meeting of the Authority, the chairperson of the meeting is the member in respect of which a question to which *subsection (3)* applies is to be determined, then the other members of the Authority attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

(5) If satisfied that a member of the Authority has contravened *subsection (1)*, the Minister may, if he or she thinks fit, remove that member from office or take any other action that the Minister considers appropriate.

(6) A person who is removed from office under *subsection (5)* is disqualified from membership of the Authority.

Disclosure of certain interests by members of staff of Authority.

42.—(1) Where a member of the staff (including the Chief Executive) of the Authority or a consultant, adviser or other person engaged by the Authority has a material interest, otherwise than in his or her capacity as such a member or as such a consultant, adviser or other person engaged by the Authority, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the Authority is a party, that person shall—

- (a) disclose to the Authority his or her interest and the nature of the interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision relating to the matter nor make any recommendation in relation to the contract, agreement or arrangement, and
- (c) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the Authority or staff of the Authority relating to the matter.

(2) *Subsection (1)* does not apply to a person as regards a contract or proposed contract of employment of that person as a member of the staff of the Authority.

(3) Where a person contravenes this section the Authority may decide on the appropriate action to be taken including alterations to the person's terms and conditions of employment or contract for services or termination of the person's contract of employment or for services.

Strategy statement.

43.—(1) At the times set out in *subsection (2)(f)*, the Authority shall prepare and submit to the Minister for his or her approval, with or without amendment, a strategy statement for the following 3 year period.

- (2) A strategy statement shall—

- (a) specify the key objectives, outputs and related strategies (including the use of resources) of the Authority,
 - (b) have regard to the need to ensure the most beneficial, effective and efficient use of the Authority's resources,
 - (c) except for the first strategy statement, include a review of the outcomes and effectiveness of the preceding strategy statement,
 - (d) specify the manner in which the Authority proposes to assess its performance in respect of the objectives referred to in *paragraph (a)*, taking account of relevant performance indicators (financial and non-financial),
 - (e) be prepared in the form and manner that the Minister may from time to time direct,
 - (f) be prepared and submitted to the Minister not later than—
 - (i) in the case of the first strategy statement, 4 months after the coming into operation of *section 32*, and
 - (ii) in the case of each subsequent strategy statement, the third anniversary of the date of submission of the preceding strategy statement,
- and
- (g) include any other matters that the Minister may from time to time direct.

(3) When preparing the strategy statement, the Authority may consult such persons or bodies of persons that it considers appropriate.

(4) A strategy statement is deemed to be adopted when it is approved by the Minister.

(5) As soon as practicable after a strategy statement has been approved, the Minister shall cause a copy of the strategy statement to be laid before each House of the Oireachtas and the strategy statement shall be published in the form and manner that the Authority considers appropriate.

44.—(1) The Authority shall prepare and submit to the Minister for his or her approval with or without amendment, at least 2 months before the commencement of each year, a work programme relating to the discharge of its functions, including—

Work programme of Authority.

- (a) having regard to the strategy statement, the objectives of the Authority for that year and its strategy for achieving those objectives,
- (b) the priorities of the Authority for that year, having regard to those objectives and its available resources, and
- (c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under *subsection (2)*.

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(2) The Minister may, from time to time, issue directions or guidelines to the Authority concerning the preparation of the work programme and the Authority shall comply with those directions and prepare the work programme in accordance with those guidelines.

(3) A work programme is deemed to be adopted when it is approved by the Minister.

Grants to
Authority.

45.—(1) In each year there may be paid to the Authority out of moneys provided by the Oireachtas a grant or grants of such amount or amounts as the Minister, with the consent of the Minister for Finance, determines for the purposes of expenditure by the Authority in performing its functions.

(2) The Authority may with the consent of the Minister and the Minister for Finance invest money in such manner as it thinks fit.

(3) The Authority may, subject to *sections 46* and *47*, with the prior consent of the Minister and the Minister for Finance, seek and accept moneys from any source and subject to any conditions that the Minister may approve of, from time to time.

Power to borrow.

46.—The Authority may, for the purpose of providing for current or capital expenditure, from time to time, borrow money (whether on the security of the assets of the Authority or otherwise), including money in a currency other than the currency of the State, subject to the consent of the Minister and the Minister for Finance and to the conditions they may determine.

Fees for services,
etc.

47.—(1) Subject to the approval of the Minister and the Minister for Finance, the Authority may—

(a) determine the amount of such fees as it considers appropriate in consideration of—

(i) the performance by the Authority of its functions,

(ii) the provision by it of services (other than a service consisting of the provision of advice to the Minister or another Minister of the Government), and

(iii) the carrying on by it of activities,

(b) provide for the payment of different fees or for the exemption from the payment of fees or for the waiver, remission or refund (in whole or in part) of fees in different circumstances or classes of circumstances or for different cases or classes of cases,

(c) sell, for such prices as it considers appropriate, anything produced, published, approved or developed by, or in cooperation with, the Authority, and

(d) enter into contracts upon such terms and conditions as it considers appropriate (including terms and conditions relating to payments to the Authority) for the further development and commercial exploitation of anything produced, published or developed by the Authority,

and shall record receipts from such fees, sales or payments as income.

(2) The Authority shall make available on request, free of charge, details of fees determined under this section.

(3) Fees, prices and payments referred to in *subsection (1)* in respect of functions performed, services provided, activities carried on or things sold, shall not, save with the prior approval of the Minister, be less than the cost of the performance of the function, the provision of the service, the carrying on of the activity or the production, publication or development of the thing, as the case may be.

(4) The Authority may recover any amount due and owing to it under *subsection (1)* from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.

(5) The Public Offices Fees Act 1879 does not apply to fees charged in accordance with this section.

48.—(1) The Authority shall keep in such form as may be approved of by the Minister, with the consent of the Minister for Finance, and in respect of each year all proper and usual accounts or other records, including an income and expenditure account, a cash flow statement and a balance sheet, of—

Accounts and audits.

- (a) all income received and expenditure by the Authority in performing its functions under this Act,
- (b) the sources of the income and the subject matter of the expenditure, and
- (c) the property, assets and liabilities of the Authority.

(2) Accounts kept in pursuance of this section shall be submitted not later than 3 months after the end of the year to which they relate by the Authority to the Comptroller and Auditor General for audit and, after the audit—

- (a) a copy of the accounts, statement and balance sheet and of any other accounts kept under this section as the Minister, after consultation with the Minister for Finance, may direct, and
- (b) a copy of the report of the Comptroller and Auditor General on the accounts,

shall, within one month of receipt by the Authority of the report referred to in *paragraph (b)*, be presented to the Minister.

(3) The Minister shall cause a copy of the accounts and the auditor's report referred to in *subsection (2)* to be laid before each House of the Oireachtas.

49.—(1) The Chief Executive shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

Attendance before Committee of Public Accounts.

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor

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General that the Authority is required to prepare under this Act,

- (b) the economy and efficiency of the Authority in the use of its resources,
- (c) the systems, procedures and practices employed by the Authority for the purpose of evaluating the effectiveness of its operations, and
- (d) any matter affecting the Authority referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of his or her duties under this section and *section 50*, the Chief Executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

(3) For the purposes of *sections 46, 47, 48* and this section, “Authority” shall include any subsidiary or subsidiaries of the Authority.

Attendance before other committees of Houses of the Oireachtas.

50.—(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—

- (a) the Committee referred to in *section 49*,
- (b) the Committee on Members’ Interests of Dáil Éireann, or
- (c) the Committee on Members’ Interests of Seanad Éireann,

or a subcommittee of such a Committee.

(2) Subject to *subsection (3)*, the Chief Executive shall, at the request in writing of a Committee, attend before it to account for the general administration of the Authority as may be required by the Committee.

(3) The Chief Executive shall not be required to account to a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the Chief Executive is of the opinion that a matter in respect of which the Chief Executive is requested to account to a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the Chief Executive is before it, the information shall be so conveyed in writing.

(5) Where the Chief Executive has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

- (a) the Chief Executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or
- (b) the chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the Chief Executive shall not attend before the Committee to account for the matter the subject of the application.

(7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the Chief Executive shall attend before the Committee to account for the matter.

51.—(1) As soon as practicable, but in any case not later than 3 months after the end of each year, the Authority shall prepare and submit a report (in this section referred to as the “annual report”) to the Minister and the Minister shall cause copies of the annual report to be laid before each House of the Oireachtas.

Reports and information to the Minister.

(2) The annual report shall be in the form that the Minister may direct and shall include—

- (a) information on the performance of the Authority’s functions during the year to which the report relates having regard to the strategy statement and work programme of the Authority,
- (b) information on the performance of any agreement under *section 34(2)*,
- (c) information in relation to any annual report furnished to the Authority under *section 33(3)*, and
- (d) any other information that the Authority considers appropriate or that the Minister may require.

(3) The Authority—

- (a) may, as it considers appropriate, make any other reports to the Minister relating to its functions, and
- (b) shall publish its annual report.

CHAPTER 2

Staff of Authority

52.—(1) The Authority may, with the consent of the Minister and the Minister for Finance, appoint such number of persons to be members of the staff of the Authority as it from time to time determines.

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(2) A member of the staff of the Authority (other than the Chief Executive) shall—

(a) be employed on the terms and conditions (including terms and conditions relating to remuneration) that the Authority, with the consent of the Minister and the Minister for Finance, may determine, and

(b) be paid out of moneys at the disposal of the Authority the remuneration and allowances for expenses (if any) incurred by him or her as the Authority, with the consent of the Minister and the Minister for Finance, may determine.

(3) The grades of the staff of the Authority, and the numbers of staff in each grade shall be determined by the Authority with the consent of the Minister and the Minister for Finance.

(4) Notwithstanding the repeal of the Act of 1989 by *section 4*, every person who, immediately before the commencement of that section, was a member of the staff of the Authority shall continue to be a member of the staff of the Authority and each such person shall not, after such commencement, be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or remuneration to which he or she was subject immediately before the said commencement.

Remuneration of
staff of Authority.

53.—The Authority, in determining the remuneration or allowances for expenses to be paid to members of its staff (including the Chief Executive) or the other terms or conditions subject to which such members hold or are to hold their employment, shall have regard to Government or nationally agreed guidelines which are for the time being extant and to Government policy concerning remuneration and conditions of employment that is so extant and, in addition to the foregoing, the Authority shall comply with any directives with regard to such remuneration, allowances, terms or conditions that the Minister may give to the Authority with the consent of the Minister for Finance.

Transfer of officers
etc., to Authority.

54.—(1) Every officer of the Minister who has been designated by the Minister at any time before such day as may be appointed by the Minister by order shall, on the day of such designation, be transferred to, and become a member of the staff of, the Authority.

(2) The Minister shall not make an order under *subsection (1)* without having notified in writing the officer concerned and any recognised trade unions or staff associations concerned and the Authority of his or her intention to do so and having considered any representations made by him or her, or by them or by any of them, in relation to the matter within the time specified in the notification.

(3) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, an officer designated under *subsection (1)*, who is transferred by that subsection to the staff of the Authority shall not, while in the service of the Authority, receive a lesser scale of pay or be subject to less beneficial terms and conditions of service (other than those relating to tenure of office) than the scale of pay to which he or she was entitled and the terms and conditions of service (other than those

relating to tenure of office) to which he or she was subject immediately before the day on which he or she was transferred.

(4) Until such time as the scales of pay and the terms and conditions of service (other than those relating to tenure of office) of officers transferred under *subsection (1)* are varied by the Authority, following consultation with any recognised trade unions and staff associations concerned, the scales of pay to which they were entitled and the terms and conditions of service (other than those relating to tenure of office), restrictions, requirements and obligations to which they were subject immediately before their transfer shall continue to apply to them and may be applied or imposed by the Authority or the Chief Executive, as the case may be, while they are in the service of the Authority, and no such variation shall operate to worsen the scales of pay or the terms or conditions of service applicable to an officer immediately before the day on which he or she was transferred under *subsection (1)*, save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned.

(5) (a) The terms and conditions relating to tenure of office which are granted by the Authority to an officer designated under *subsection (1)* and transferred to its staff shall not, while he or she is in the service of the Authority, be less favourable to him or her than those applicable for the time being in the civil service.

(b) Any alteration in the conditions in regard to tenure of office of any such officer shall not be such as to render those conditions less favourable to him or her than those applicable in the civil service at the time of the alteration, save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned.

(c) If a dispute arises between the Authority and any such officer as to conditions applicable in the civil service, the matter shall be determined by the Minister for Finance after consultation with the Minister.

(6) In relation to officers transferred to the staff of the Authority under *subsection (1)*, previous service in, or service reckonable for the purposes of any superannuation benefits payable by or on behalf of, the civil service shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2003, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2001, the Unfair Dismissals Acts 1977 to 2001 and the Terms of Employment (Information) Acts 1994 and 2001.

55.—(1) The Authority shall, following consultation with the Minister and the Minister for Finance, draw up a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of its staff. Code of conduct.

(2) The Authority shall publish any code of conduct drawn up under *subsection (1)*.

56.—(1) The Authority shall prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of its staff (including the Chief Executive). Superannuation of staff of Authority.

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(2) A scheme under this section shall fix the time and conditions of retirement for all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of person.

(3) The Authority may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section including a scheme under this subsection or a scheme to which *subsection (5)* applies.

(4) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the Authority in accordance with its terms.

(5) Notwithstanding the repeal of the Act of 1989 by *section 4*, any scheme for the granting of superannuation benefits to or in respect of any members of staff of the Authority in operation immediately before the commencement of the said *section 4* shall continue in operation after such commencement.

(6) A scheme or schemes under this section shall, as respects a person transferred under *section 54* to be a member of the staff of the Authority, provide for the granting to or in respect of him or her of superannuation benefits upon and subject to terms and conditions that are not less favourable to him or her than the terms and conditions applied to him or her immediately before the day on which he or she was so transferred in relation to the grant of such benefits.

(7) Where, during the period between commencement of this section and the coming into operation of a scheme under this section, superannuation benefits would have been granted to or in respect of a person transferred by *section 54* to the staff of the Authority in respect of his or her employment as an officer of the Minister, the superannuation benefits shall be granted and paid to or in respect of the person by the Authority and for that purpose his or her pensionable service with the Authority shall be aggregated with his or her previous pensionable service.

(8) Subject to *subsection (7)*, no superannuation benefit shall be granted by the Authority to or in respect of any members of its staff (including the Chief Executive) who are members of a scheme under this section, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons, otherwise than in accordance with a scheme submitted and approved under this section or with the consent of the Minister and the Minister for Finance.

(9) If a dispute arises as to the claim of a person to, or the amount of, a superannuation benefit payable in respect of a scheme under this section, the dispute shall be submitted to the Minister who shall refer it to the Minister for Finance.

(10) The Minister shall cause every scheme submitted and approved under this section, including an amendment of a scheme, to be laid before each House of the Oireachtas as soon as practicable after it is approved and, if a resolution annulling the scheme is passed by either House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, 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.—(1) The Authority shall—

Review of
legislation.

- (a) keep under review—
 - (i) the relevant statutory provisions, and
 - (ii) the associated statutory provisions,
- (b) submit, from time to time, to the Minister any proposals that it considers appropriate relating to the relevant statutory provisions or for making or revoking any instruments under those provisions,
- (c) submit, from time to time, to the Minister and to the Minister having responsibility for any of the associated statutory provisions any proposals that it considers appropriate relating to those provisions or for making or revoking any instruments under those provisions,
- (d) undertake such reviews of relevant statutory provisions as the Minister may direct, and
- (e) assist in the preparation of draft legislation as the Minister may direct.

(2) Before submitting proposals to the Minister, the Authority shall consult any other person or body that appears to the Authority to be appropriate having regard to the proposals to be submitted or as directed by the Minister.

58.—(1) Subject to *subsections* (2) and (3), the Minister may—

Regulations.

- (a) by regulations provide, subject to this Act, for any matter referred to in this Act as prescribed or to be prescribed,
- (b) make regulations generally for the purposes of giving full effect to this Act, and
- (c) without prejudice to the generality of *paragraph* (b), make regulations for or in respect of any of the matters set out in *Schedule 7*.

(2) Before making regulations under this Act (other than as a consequence of a proposal made by the Authority under *section 57*), the Minister—

- (a) shall consult with the Authority, and
- (b) may publish in such manner as the Minister thinks fit notice of the Minister's intention to do so and shall give persons desiring to make representations in relation to the proposed regulations a period of 21 days to do so.

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(3) The Minister shall consult with the Authority before making regulations giving effect with modifications to any proposal made by the Authority under *section 57*.

(4) Regulations under this Act may—

- (a) contain any incidental, supplementary and consequential provisions that appear to the Minister to be necessary or expedient for the purposes of the regulations,
- (b) apply either generally or to a specified class or classes of persons, places of work or work activities, article or substance or to any other matter that the Minister may consider to be appropriate,
- (c) include different provisions in relation to different classes of persons, place of work or work activity, article or substance, and
- (d) subject to *subsection (5)* and to any conditions that may be prescribed, exempt from all or any of the provisions of the relevant statutory provisions any specified class of work activity, employment, article or substance or any specified class of person or place of work, where, having regard to the class of work activity, employment, article, substance, person or place of work, the Minister is satisfied that the application of those provisions is unnecessary or impracticable and that adequate protective measures are in place.

(5) Regulations made under this Act may apply to all work activities or to particular work activities, and they may also relate to—

- (a) one or more chemical, physical or biological agents,
- (b) the classification, packaging, labelling, marketing or use of any article or substance,
- (c) the control of major accident hazards,
- (d) the storage or transport of dangerous substances, or
- (e) factories, the extractive industries, office premises or to boilers.

(6) Without prejudice to the generality of *subsections (1)* and *(4)*, regulations under this Act may apply to—

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

(7) Regulations made under this Act may incorporate, adopt, apply or make prescriptions by reference to, with or without modification, any code of practice issued by the Authority in accordance with *section 60*.

(8) The provisions of this section shall be deemed to have been in operation on the commencement of section 28 of the Act of 1989 and to have been incorporated in that section from that date and every regulation made in exercise of the powers under that section and not revoked before the commencement of this section shall be deemed to have been made in the exercise of the powers under the provisions of that section, including the provisions of this section deemed to have been incorporated in that section by this subsection.

(9) Every regulation or order (other than an order made under *section 1(2)*) under this Act shall be laid by the Minister 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 after the regulation or order is laid before it, the regulation or order shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation or order.

(10) The power to make regulations under this section includes power to make provision by regulations to give effect to either—

- (a) any provision of the treaties of the European Communities, or
- (b) any act adopted by an institution of the European Communities, which regulates any of the matters set out in *Schedule 7*.

59.—References to the Minister (other than in respect of making rules, regulations, bye-laws, orders, exemptions or exceptions) contained immediately before the commencement of this Act in any existing enactment shall, insofar as they relate to functions exercisable by the Authority under this Act, be construed as references to the Authority.

Miscellaneous adaptations.

60.—(1) For the purpose of providing practical guidance to employers, employees and any other persons to whom this Act applies with respect to safety, health and welfare at work, or the requirements or prohibitions of any of the relevant statutory provisions, the Authority—

Codes of practice.

- (a) may, and shall if so requested by the Minister, prepare and publish codes of practice, and
- (b) may approve of a code of practice or any part of a code of practice made or published by any other body.

(2) Before publishing or approving of a code of practice or any part of a code of practice under this section, the Authority—

- (a) shall obtain the consent of the Minister,
- (b) may publish in such manner as the Authority considers appropriate a draft of the code of practice or sections of a draft code of practice and shall give persons one month from the date of publication of the draft code or sections

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within which to make written representations to the Authority in relation to the draft code or sections of the draft code, or such further period, not exceeding 28 days, as the Authority in its absolute discretion thinks fit, and

- (c) following consultation and, where relevant, having considered the representations, if any, made, shall submit the draft code to the Minister for his or her consent to its publication or approval under this section, with or without modification.

(3) Where the Authority publishes or approves of a code of practice or approves of any part of a code of practice, it shall publish a notice of such publication or approval in *Iris Oifigiúil* and that notice shall—

- (a) identify the code,
- (b) specify the matters relating to safety, health and welfare at work or the relevant statutory provisions in respect of which the code is published or approved of, and
- (c) specify the date on which the code shall come into operation.

(4) The Authority may with the consent of the Minister and following consultation with any other person or body that the Authority considers appropriate or as the Minister directs—

- (a) amend or revoke any code of practice or part of any code of practice prepared and published by it under this section, or
- (b) withdraw its approval of any code of practice or part of any code of practice approved by it under this section.

(5) Where the Authority amends or revokes, or withdraws its approval of a code of practice or any part of a code of practice published or approved under this section, it shall publish notice of the amendment, revocation or withdrawal, as the case may be, in *Iris Oifigiúil*.

(6) The Authority shall make available for public inspection without charge at its principal office during normal working hours—

- (a) a copy of each code of practice published or approved by it, and
- (b) where a code of practice has been amended, a copy of the code as so amended.

(7) Notwithstanding the repeal of the Act of 1989 by *section 4*, a code of practice in operation immediately before the commencement of that section continues to be a code of practice as if prepared and published under this section.

Use of codes of practice in criminal proceedings.

61.—(1) Where in proceedings for an offence under this Act relating to an alleged contravention of any requirement or prohibition imposed by or under a relevant statutory provision being a provision for which a code of practice had been published or approved by the Authority under *section 60* at the time of the alleged contravention,

subsection (2) shall have effect with respect to that code of practice in relation to those proceedings.

- (2) (a) Where a code of practice referred to in *subsection (1)* appears to the court to give practical guidance as to the observance of the requirement or prohibition alleged to have been contravened, the code of practice shall be admissible in evidence.
- (b) Where it is proved that any act or omission of the defendant alleged to constitute the contravention—
- (i) is a failure to observe a code of practice referred to in *subsection (1)*, or
- (ii) is a compliance with that code of practice,
- then such failure or compliance is admissible in evidence.

(3) A document bearing the seal of the Authority and purporting to be a code of practice or part of a code of practice published or approved of by the Authority under this section shall be admissible as evidence in any proceedings under this Act.

CHAPTER 2

Enforcement

62.—(1) The Authority or a person prescribed under *section 33* may authorise such and so many persons as the Authority or person considers appropriate to be inspectors for the purposes of the enforcement of all or any of the relevant statutory provisions within the relevant area of responsibility in accordance with *section 33* or *34*, as the case may be. Authorisation of inspectors.

- (2) (a) An inspector shall be furnished with a certificate of authorisation as an inspector.
- (b) When exercising a power conferred on him or her by this section, an inspector shall, if requested by a person affected, produce the certificate of authorisation or a copy of it to that person and a form of personal identification.

(3) An authorisation under this section shall cease when the Authority or a person prescribed under *section 33*, as the case may be, revokes the authorisation.

(4) Notwithstanding the repeal of the Act of 1989 by *section 4*, an inspector authorised immediately before the commencement of that section under *section 33* of the Act of 1989 continues to be an inspector as if authorised under this section.

63.—(1) The Authority or a person prescribed under *section 33* may designate in writing any person, including an inspector, who is a registered medical practitioner to receive any notice, report or certificate required by any of the relevant statutory provisions to be sent to the Authority or a person prescribed under *section 33* by a registered medical practitioner, and any person so designated may— Medical examinations.

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- (a) invite any person who, in his or her opinion, either has been or may be exposed in the course of his or her work to any risk of personal injury or other danger to his or her health, and
- (b) for the purpose of comparing with that of other persons the state of health of persons employed in different places of work or specified places of work or in different places in the same place of work, invite any person,

to provide biological samples or to be examined medically, or both, at such place as the person so designated shall designate, 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 shall specify.

(2) References in the relevant statutory provisions to “occupational medical adviser” shall be read as references to persons designated under this section.

Powers of
inspectors.

64.—(1) An inspector shall, for the purposes of the relevant statutory provisions have power to do any one or more of the following:

- (a) subject to *subsection (5)*, at any time enter any place—
 - (i) which he or she has reasonable grounds for believing is used as a place of work,
 - (ii) in which he or she has reasonable grounds for believing that articles or substances or records are kept, or
 - (iii) to which the relevant statutory provisions apply,

and inquire into, search, examine and inspect that place and any work activity, installation, process or procedure at that place which is subject to the relevant statutory provisions and any such articles, substances or records to ascertain whether the relevant statutory provisions have been or are being complied with and for those purposes take with him or her and use any equipment or materials required for those purposes;

- (b) direct that that place or any part of that place and anything in that place be left undisturbed for so long as is reasonably necessary for the purpose of any search, examination, investigation, inspection or inquiry under the relevant statutory provisions;
- (c) direct that a safety statement be amended in accordance with *section 20(5)(c)*;
- (d) require the employer, any employee, the owner or person in charge of the place to produce to the inspector any records and in the case of such information in a non-legible form to reproduce it in a legible form and to give to the inspector such information as the inspector may reasonably require in relation to any entries in those records;
- (e) inspect and take copies of or extracts from any such records or any electronic information system at the place, including in the case of information in a non-legible form,

copies of or extracts from such information in a permanent legible form or require that such copies be provided;

- (f) require a person by whom or on whose behalf a computer is or has been used to produce or store records or any person having charge of, or otherwise concerned with the operation of the computer, to afford the inspector all reasonable assistance in relation thereto;
- (g) remove and retain the records (including documents stored in a non-legible form) and copies taken and detain the records for such period as the inspector reasonably considers to be necessary for further examination or until the conclusion of any legal proceedings;
- (h) require that records be maintained for such period of time as may be reasonable;
- (i) require the employer, any employee, the owner or person in charge of the place to give to the inspector any information that the inspector may reasonably require for the purposes of any search, examination, investigation, inspection or inquiry under the relevant statutory provisions;
- (j) require the employer, owner, any person in charge of the place or any employee to give to the inspector such assistance and facilities within the person's control or responsibilities as are reasonably necessary to enable the inspector to exercise any of his or her powers under the relevant statutory provisions;
- (k) summon, at a time and place specified by written notice to the person concerned, the employer, any employee, the owner or person in charge of the place to give to the inspector any information 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 to the inspector any records that are in that person's power or control;
- (l) subject to *subsection (9)*, examine any person whom the inspector reasonably believes to be able to give information relevant to any search, examination, investigation, inspection or inquiry under the relevant statutory provisions and require the person to answer such questions as the inspector may put relative to the search, examination, investigation, inspection or inquiry and to sign a declaration of the truth of the answers;
- (m) require that any article be operated or set in motion or that a procedure be carried out that may be relevant to any search, examination, investigation, inspection, or inquiry under the relevant statutory provisions;
- (n) take any measurements or photographs or make any tape, electrical or other recordings which the inspector considers necessary for the purposes of any search, examination, investigation, inspection or inquiry under the relevant statutory provisions;

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- (o) where appropriate, install, use and maintain in, at or on the place monitoring instruments, systems and seals for the purposes of the relevant statutory provisions;
- (p) there, or at any other place, carry out, or have carried out, such testing, examination or analysis of any article or substance found at the place, as he or she reasonably considers to be necessary, and for that purpose require the employer or owner or person in charge of the place to supply to the inspector without charge any article or substance or samples thereof, or remove any article, substance or samples thereof, for such testing, examination or analysis;
- (q) cause any article or substance found at the place which appears to the inspector to be or to have been a risk to safety or health, to be dismantled or subjected to any process or test in accordance with *paragraph (p)* (but not so as to damage or destroy it unless this is in the circumstances necessary for the purposes of the relevant statutory provisions) and where an inspector proposes to exercise the power conferred by this paragraph in the case of an article or substance found at any place, he or she shall, if so requested by the employer, owner or person in charge of the place, cause anything which is to be done by virtue of that power to be done in the presence of that person;
- (r) take samples of the atmosphere in any place of work;
- (s) in relation to any article or substance found at the place in accordance with *paragraph (q)*, to remove and retain it for such period as is necessary for all or any of the following purposes, namely:
 - (i) to examine or arrange for the examination of it and do to it anything which he or she has power to do under *paragraph (q)*;
 - (ii) to ensure that it is not tampered with before the examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings;
- (t) exercise such other powers as may be necessary for carrying out his or her functions.

(2) Where an article or substance is used at work, and a request is made in that behalf by an inspector in the course of a search, examination, investigation, inspection or inquiry, the employer shall give to the inspector the name and address of the supplier from whom the article or substance was purchased or otherwise obtained.

(3) Before exercising the power conferred by *subsections (1)(p)* and *(q)* in the case of any article or substance, an inspector shall, in so far as it is practicable to do so, consult such persons as appear to him or her to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he or she proposes to do under that power.

(4) Where under the power conferred by *subsection (1)(s)* an inspector takes possession of any article or substance found at or in

any place of work, he or she shall if it is practicable for him or her to do so, take a sample thereof and give to a responsible person at the place of work a portion of the sample marked in a manner sufficient to identify it.

(5) An inspector shall not enter a dwelling other than—

(a) with the consent of the occupier, or

(b) in accordance with a warrant from a District Court issued under *subsection (7)* authorising such entry.

(6) Where an inspector in the exercise of his or her powers under this section is prevented from entering any place, an application may be made to the District Court for a warrant under *subsection (7)* authorising such entry.

(7) Without prejudice to the powers conferred on an inspector by or under any other provision of this section, if a judge of the District Court is satisfied on the sworn information of an inspector that there are reasonable grounds for believing that—

(a) there are any articles or substances being used in a place of work or any records (including documents stored in a non-legible form) or information, relating to a place of work, that the inspector requires to inspect for the purposes of the relevant statutory provisions, held in, at or on any place or any part of any place, or

(b) there is, or such an inspection is likely to disclose, evidence of a contravention of the relevant statutory provisions,

the judge may issue a warrant authorising an inspector, accompanied by such other inspectors or such other competent persons as may be appropriate or members of the Garda Síochána as may be necessary, at any time or times, within one month from the date of issue of the warrant, on production of the warrant if requested, to enter the place, if need be by reasonable force, and perform the functions conferred on an inspector by or under the relevant statutory provisions.

(8) An inspector, where he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty or otherwise considers it necessary, may be accompanied by a member of the Garda Síochána or any other person authorised by the Authority, when performing any functions conferred on an inspector by or under the relevant statutory provisions.

(9) No person is required on examination or inquiry under this section to give any answer or information tending to incriminate that person.

(10) Where an inspector upon reasonable grounds believes that a person has committed an offence under the relevant statutory provisions he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

65.—(1) Where an inspector is of the opinion that there is occurring or likely to occur any activity which involves or is likely to involve a risk to the safety, health or welfare of persons, he or she may give a written direction to the employer concerned requiring submission to him or her of an improvement plan.

Directions for
improvement plan.

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- (2) A direction given under *subsection (1)* shall—
- (a) identify the activity which is or is likely to be a risk,
 - (b) require the submission to the inspector, within a period of one month, of an improvement plan specifying the remedial action proposed to be taken,
 - (c) require the employer to implement the plan, and
 - (d) include any other requirements that the inspector considers necessary.

(3) Where there is a safety representative in a place of work in respect of which a direction is given under *subsection (1)*, the inspector shall give a copy of the direction to the safety representative.

(4) Within one month of receipt of an improvement plan submitted under *subsection (2)*, an inspector, by written notice to the person who submitted the plan—

- (a) shall confirm whether or not he or she is satisfied that the plan is adequate, or
- (b) may direct that the plan be revised as specified in the notice and resubmitted to the inspector within a period specified in the notice.

Improvement
notice.

66.—(1) An inspector who is of the opinion that a person—

- (a) is contravening or has contravened any of the relevant statutory provisions, or
- (b) has failed to comply with a direction under *section 65(1)* to submit an improvement plan or, in the case of a notice under *section 65(4)(b)*, a revised improvement plan, or has failed to implement the improvement plan or revised improvement plan,

may serve a written notice (in this Act referred to as an “improvement notice”) on the person who has or may reasonably be presumed to have control over the work activity concerned.

- (2) An improvement notice shall—
- (a) state that the inspector is of the opinion referred to in *subsection (1)*,
 - (b) state the reasons for that opinion,
 - (c) identify the relevant statutory provision in respect of which that opinion is held,
 - (d) specify the reasons why he or she is of that opinion,
 - (e) direct the person to remedy the contravention or the matters occasioning that notice by a date specified in the notice, that shall not be earlier than the end of the period within which an appeal may be made under *subsection (7)*,

- (f) include information regarding the making of an appeal under *subsection (7)*,
- (g) include any other requirement that the inspector considers appropriate, and
- (h) be signed and dated by the inspector.

(3) An improvement notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.

(4) Where there is a safety representative in a place of work in respect of which an improvement notice is served under *subsection (1)*, the inspector shall give a copy of the improvement notice to the safety representative and inform the safety representative in writing where an improvement notice is withdrawn under *subsection (11)*.

(5) A person on whom an improvement notice has been served who is of the opinion that the improvement notice has been complied with shall confirm in writing to the inspector that the matters referred to in the notice have been so remedied and shall give a copy of the confirmation to the safety representative, if any.

(6) Where a person on whom an improvement notice has been served confirms in writing to the inspector in accordance with *subsection (5)* that the matters referred to in the improvement notice have been remedied, the inspector shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give written notice to the person concerned of compliance with the improvement notice.

(7) A person aggrieved by an improvement notice may, within 14 days beginning on the day on which the notice is served on him or her, appeal in the prescribed manner against the notice to a judge of the District Court in the district court district in which the notice was served in the prescribed manner and, in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(8) A person who appeals under *subsection (7)* shall at the same time notify the Authority or the person prescribed under *section 33*, as the case may be, of the appeal and the grounds for the appeal and the Authority or the person prescribed under *section 33* shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(9) Where an appeal under *subsection (7)* is taken, and the notice is not cancelled, the notice shall take effect on the later of—

- (a) the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn, or
- (b) the day specified in the notice.

(10) Where there is no appeal under *subsection (7)*, the notice shall take effect on the later of—

- (a) the end of the period for making an appeal, or
- (b) the day specified in the notice.

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- (11) An inspector may—
- (a) withdraw an improvement notice at any time, or
 - (b) where no appeal is made or pending under *subsection (7)*, extend the period specified under *subsection (2)(e)*.

Prohibition notice.

67.—(1) Where an inspector is of the opinion that at any place of work there is occurring or is likely to occur any activity (whether by reference to any article or substance or otherwise) which involves or is likely to involve a risk of serious personal injury to any person, the inspector may serve a written notice (in this Act referred to as a “prohibition notice”) on the person who has or who may reasonably be presumed to have control over the activity concerned.

- (2) A prohibition notice shall—
- (a) state that the inspector is of the opinion referred to in *subsection (1)*,
 - (b) state the reasons for that opinion,
 - (c) specify the activity in respect of which that opinion is held,
 - (d) where in his or her opinion the activity involves a contravention, or likely contravention, of any of the relevant statutory provisions, specify the relevant statutory provision,
 - (e) prohibit the carrying on of the activity concerned until the matters which give rise or are likely to give rise to the risk are remedied, and
 - (f) be signed and dated by the inspector.

(3) A prohibition notice may include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.

(4) Where there is a safety representative in a place of work in respect of which a prohibition notice is served under *subsection (1)*, the inspector shall give a copy of the prohibition notice to the safety representative and inform the safety representative in writing where a prohibition notice is withdrawn under *subsection (12)*.

- (5) A prohibition notice shall take effect—
- (a) immediately the notice is received by the person on whom it is served, or
 - (b) where an appeal is taken, on the later of the day next following the day on which the notice is confirmed on appeal or the appeal is withdrawn or the day specified in the notice.

(6) The bringing of an appeal against a prohibition notice which is to take effect in accordance with *subsection (5)* shall not have the effect of suspending the operation of the notice but the appellant may apply to the court to have the operation of the notice suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(7) A person aggrieved by a prohibition notice may, within 7 days beginning on the day on which the notice is served on him or her, appeal in the prescribed manner against the notice to a judge of the District Court in the district court district in which the notice was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(8) Where, on the hearing of an appeal under this section, a prohibition notice is confirmed, notwithstanding *subsection (5)*, the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the judge considers appropriate.

(9) A person who—

- (a) appeals under *subsection (7)*, or
- (b) applies for a direction suspending the application of a prohibition notice under *subsection (8)*,

shall at the same time notify the Authority or a person prescribed under *section 33*, as the case may be, of the appeal or the application and the grounds for the appeal or the application and the Authority or the person prescribed under *section 33* shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(10) A person on whom a prohibition notice has been served who is of the opinion that the matters referred to in the notice have been remedied by the date specified in the notice shall confirm in writing to the inspector that those matters have been so remedied and shall give a copy of the confirmation to the safety representative, if any.

(11) Where a person on whom a prohibition notice has been served confirms in writing to the inspector in accordance with *subsection (10)* that the matters referred to in the prohibition notice have been remedied, the inspector shall, on being satisfied that the matters have been so remedied, within one month of receipt of such confirmation, give written notice to the person concerned of compliance with the prohibition notice.

(12) An inspector may at any time withdraw a prohibition notice by written notice to the person on whom it was served where—

- (a) the inspector is satisfied that the activity to which the notice relates no longer involves a risk of serious personal injury to any person, or
- (b) the inspector is satisfied that the notice was issued in error or is incorrect in some material respect.

(13) The withdrawal of a notice under *subsection (12)* has effect when the notice of withdrawal is given to the person on whom the prohibition notice was served.

(14) The withdrawal of a notice under this section does not prevent the service of any other prohibition notice.

Contravention of prohibition notice — application to High Court.

68.—(1) Where a prohibition notice has been served under *section 67* and activities are carried on in contravention of the notice, the High Court may, on the application of an inspector, by order prohibit the continuance of the activities.

(2) An application to the High Court for an order under *subsection (1)* may be ex parte and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate, and the order by which an application under this subsection is determined may contain such terms and conditions (if any) regarding the payment of costs that the Court considers appropriate.

Notices to be displayed.

69.—Where an improvement notice or a prohibition notice is served, the person to whom it is addressed shall on receipt of the notice—

- (a) bring the notice to the attention of any person whose work is affected by the notice, and
- (b) display the notice or a copy of the notice in a prominent place at or near any place of work, article or substance affected by the notice.

Investigations and special reports.

70.—(1) Without prejudice to this Chapter and subject to *subsection (6)*, the Authority may at any time direct any of its staff or any other competent person as it considers appropriate to—

- (a) investigate the causes and circumstances surrounding any accident, incident, personal injury, occurrence or situation or any other matter related to the general purposes of this Act, and
- (b) make a report (in this Act referred to as a “special report”) of the investigation to the Authority.

(2) A person, who is not an inspector, carrying out an investigation under this section shall, for the purposes of the investigation, have all the powers of an inspector under this Act.

(3) In the case of a person directed to carry out an investigation and make a special report under *subsection (1)* (other than a member of the staff of the Authority), the Authority may pay to the person such fees and expenses as the Minister may determine with the approval of the Minister for Finance.

(4) The Authority may, to the extent that the Minister may determine, discharge the costs, other than those incurred under *subsection (3)*, if any, incurred in the preparation of a special report.

(5) A copy of a special report made under *subsection (1)* shall be presented to the Minister as soon as practicable and the Authority may cause the report to be made public in such manner as it considers appropriate.

(6) The Authority in discharging its functions under *subsection (1)* shall not, save with the consent of the Minister given with the concurrence of any other Minister of the Government that he or she considers appropriate, investigate, examine or inquire into any of the following—

- (a) an accident within the meaning of the Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997 (S.I. No. 205 of 1997),
- (b) a rail accident, or
- (c) a marine casualty (within the meaning of the Merchant Shipping (Investigation of Marine Casualties) Act 2000).

71.—(1) Where the Authority or a person prescribed under *section 33*, as the case may be, 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 a place of work should be restricted or immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, the Authority or the person prescribed under *section 33* may apply, ex parte, to the High Court for an order restricting or prohibiting the use of the place of work or part of a place of work accordingly.

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

(2) The Court may make any interim or interlocutory order that it considers appropriate.

(3) Any order made by the Court under this section shall have effect notwithstanding the terms of any permission given under any other enactment for the use of the place of work or part of the place of work to which the application under this section relates.

(4) On an application by any person for the revocation or variation of an order under *subsection (1)*, the Authority or a person prescribed under *section 33*, as appropriate, shall be entitled to be heard.

CHAPTER 3

Obtaining and Disclosure of Information

72.—(1) The Authority or a person prescribed under *section 33* may, by written notice (referred to in this Act as an “information notice”) served on a person, require the person to give to the Authority, within such period and in such form as may be specified in the notice, any information specified in the notice that the Authority or the person prescribed under *section 33* may reasonably require in performing its functions.

Power to require information.

(2) The period specified in the information notice under *subsection (1)* may be extended at the discretion of the Authority on the written application of the person on whom the notice is served.

(3) A person on whom an information notice is served under this section may, within 7 days beginning on the day on which the notice is served on him or her, appeal in the prescribed manner against the notice to a judge of the District Court in the district court district in which the notice was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under *subsection (3)*, a notice is confirmed or varied, the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the notice for such period as in the circumstances of the case the judge considers appropriate.

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(5) A person on whom an information notice is served shall comply with the notice before the later of—

- (a) where no appeal is made against the notice under *subsection (3)*—
 - (i) the end of the period for bringing an appeal under that subsection,
 - (ii) the end of the period specified in the notice for the purpose of giving the specified information, or
 - (iii) where the period referred to in *subparagraph (ii)* is extended under *subsection (2)*, the end of that extended period,
- (b) where an appeal is made and the information notice is confirmed or varied or the appeal is withdrawn—
 - (i) the day following the day on which the notice is confirmed or varied or the appeal is withdrawn,
 - (ii) the end of the period specified in the notice, or
 - (iii) where the operation of the notice has been suspended in accordance with *subsection (3)*, on the expiration of the period that the judge of the District Court considered appropriate for the purpose of that subsection.

Prohibition on unauthorised disclosure of confidential information.

73.—(1) Save as otherwise provided by law and subject to *subsection (2)*, a person shall not, unless duly authorised by the Authority, disclose confidential information obtained by the person while performing or as a result of performing any functions as—

- (a) a member of the Authority,
- (b) a member of the staff (including the Chief Executive) of the Authority,
- (c) a member of an advisory committee, or
- (d) a consultant or adviser to the Authority or an employee of such person.

(2) *Subsection (1)* does not prohibit the disclosure of information by means of a report made—

- (a) to the Authority,
- (b) to the Minister, by or on behalf of the Authority, or
- (c) to a coroner holding an inquest under the Coroners Act 1962 on the body of a person whose death may have been caused through personal injury.

(3) The Freedom of Information Act 1997 is amended in the Third Schedule thereto—

- (a) by the deletion—
 - (i) in column (1), of “No. 7 of 1989”,

(ii) in column (2), of “Safety, Health and Welfare at Work Act 1989.”, and

(iii) in column (3), of “Section 45.”,

and

(b) by the addition to Part 1 at the end thereof—

(i) in column (2), of “*Safety, Health and Welfare at Work Act 2005.*”, and

(ii) in column (3), of “*Section 73.*”.

74.—The Freedom of Information Act 1997 is amended in section 46(1) (as amended by section 29 of the Freedom of Information (Amendment) Act 2003), by inserting the following after paragraph (db):

Amendment of Freedom of Information Act 1997.

“(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.—(1) The Revenue Commissioners may, where they consider it appropriate for the purpose of facilitating the exercise or performance by the Authority or a person prescribed under *section 33* of any of their powers or duties under the relevant statutory provisions, authorise the disclosure to the Authority or to a person prescribed under *section 33* or to an inspector of the Authority or of a person prescribed under *section 33* of any information obtained by the Revenue Commissioners in relation to articles or substances imported into the State.

Disclosure of information.

(2) The Minister for Health and Children and the Minister for Social and Family Affairs may give to the Authority or a person prescribed under *section 33* such information in relation to personal injury to persons at work as may be necessary for promoting the safety, health and welfare of persons at work.

(3) A member of the Garda Síochána may give to the Authority or a person prescribed under *section 33* such information in relation to personal injury to a person at work as may be necessary for enforcement of the relevant statutory provisions.

(4) The Minister, following consultation with any other Minister of the Government that he or she considers appropriate, may prescribe persons requiring them to give to the Authority or a person prescribed under *section 33* such information in relation to personal injury to persons at work as may be necessary for promoting the safety, health and welfare of persons at work.

76.—(1) An inspector shall, where he or she considers it necessary to do so for the purpose of providing adequate information to employees and their safety representatives (if any) at any place of work in relation to their safety, health and welfare at work, give to

Disclosure of information by inspector in certain circumstances.

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those employees and their safety representatives (if any) the following information—

- (a) subject to *subsection (3)*, factual information obtained by the inspector under the relevant statutory provisions relating to the place of work concerned or any article or substance or any activity being carried on in the place of work, and
 - (b) information with respect to any action which the inspector has taken or proposes to take in or in connection with that place of work in performing his or her functions.
- (2) Where an inspector gives any information to employees or their safety representatives under *subsection (1)* he or she shall give the same information to the employer concerned.
- (3) (a) An inspector shall not disclose any information relating to any manufacturing, trade or commercial secrets or work processes that was obtained by the inspector in the performance of his or her functions under this Act.
- (b) *Paragraph (a)* does not prevent the disclosure of information where that disclosure is—
- (i) for the purpose of his or her functions under this Act,
 - (ii) made with the relevant consent, or
 - (iii) for the purposes of any legal proceedings or of any investigation or special report under *section 70*.

PART 7

OFFENCES AND PENALTIES

Offences.

- 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—

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- (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.—(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. Penalties.

- (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 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 both.

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(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 advisers engaged by the Authority or the prescribed person under *section 33*, as the case may be.

Provisions regarding certain offences.

79.—(1) If an inspector has reasonable grounds for believing that a person is committing or has committed a prescribed offence under the relevant statutory provisions, he or she may serve the person with a notice in the prescribed form stating that—

- (a) the person is alleged to have committed the offence, and
- (b) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) A person on whom a notice is served under *subsection (1)* may, during the period of 21 days beginning on the day of the notice, make to the Authority or to a person prescribed under *section 33*, as appropriate, at the address specified in the notice a payment not exceeding €1,000 as may be prescribed.

(3) Where a notice is served under *subsection (1)*—

- (a) the Authority or a person prescribed under *section 33*, as specified in the notice, may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstance by the person who made it, and
- (b) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(4) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made shall lie on the accused.

Liability of directors and officers of undertakings.

80.—(1) Where an offence under any of the relevant statutory provisions has been committed by an undertaking and the doing of the acts that constituted the offence has been authorised, or consented to by, or is attributable to connivance or neglect on the part of, a person, being a director, manager or other similar officer of the undertaking, or a person who purports to act in any such capacity,

that person as well as the undertaking shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(2) Where a person is proceeded against as aforesaid for such an offence and it is proved that, at the material time, he or she 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 shall be presumed, until the contrary is proved, that the doing of the acts by the undertaking which constituted the commission by it of the offence concerned under any of the relevant statutory provisions was authorised, consented to or attributable to connivance or neglect on the part of that person.

(3) Where the affairs of a body corporate are managed by its members, *subsections (1) and (2)* shall apply in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.

81.—In any proceedings for an offence under any of the relevant statutory 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 shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement. Onus of proof.

82.—(1) Subject to *subsection (2)*, summary proceedings in relation to an offence under any of the relevant statutory provisions may be brought and prosecuted by the Authority. Prosecution of offences.

(2) Summary proceedings in relation to an offence under any of the relevant statutory provisions may be brought and prosecuted by a person prescribed under *section 33* whose function it is, in accordance with any of the relevant statutory provisions, to enforce the provision concerned.

(3) Notwithstanding *section 10(4)* of the Petty Sessions (Ireland) Act 1851, but without prejudice to *subsection (4)*, summary proceedings for an offence under any of the relevant statutory provisions may be instituted at any time within 12 months from the date on which the offence was committed.

(4) Where a special report on any matter to which *section 70* applies is made and it appears from the report that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject matter of the report, summary proceedings against any person liable to be proceeded against in respect of the contravention may be instituted at any time within 6 months of the making of the report or 12 months after the date of the contravention, whichever is the later.

83.—Any person (including the Authority or a person prescribed under *section 33*) aggrieved by an order made by the District Court on determining a complaint under this Act may appeal therefrom to Appeals from orders.

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a judge of the Circuit Court within whose circuit is situated the District Court in which the decision was given, and the decision of the judge of the Circuit Court on any such appeal shall be final and conclusive.

Evidence.

84.—(1) If a person is found to be carrying on a work activity in any place of work at any time at which work is being carried on, he or she shall, until the contrary is proved, be deemed for the purposes of this Act to have been employed in that place of work either by the person who has or who may reasonably be presumed to have overall control over the work activity concerned or by another employer carrying on work activities in that place of work.

(2) Where any entry is required by any of the relevant statutory provisions to be made in any record, the entry made by an employer or on behalf of an employer shall, as against the employer, be admissible as evidence of the facts therein stated, and the fact that any entry so required with respect to the observance of any of the relevant statutory provisions has not been made, shall be admissible as evidence that the provision has not been observed.

(3) In any proceedings under this Act a copy record may be given in evidence and shall be prima facie evidence of the facts stated in it, if the court is satisfied as to the reliability of the system used to make the copy record and the original entry on which it was based.

Publication of names of certain persons.

85.—(1) The Authority may from time to time compile a list of names and addresses and the description of business or other activity of every person—

- (a) on whom a fine or other penalty was imposed by a court under any of the relevant statutory provisions,
- (b) on whom a prohibition notice was served under *section 67*, or
- (c) in respect of whom an interim or interlocutory order was made under *section 71*.

(2) The Authority may at any time cause any list referred to in *subsection (1)* to be published in such manner as it considers appropriate.

(3) Any list referred to in *subsection (1)* shall specify in respect of each person named in the list such particulars, as the Authority thinks fit, of—

- (a) the matter occasioning any fine, penalty, notice or order, as the case may be, imposed on the person, and
- (b) any fine, penalty, notice or order occasioned by the matter referred to in *paragraph (a)*.

PART 8

MISCELLANEOUS

Indemnification of inspectors, etc.

86.—(1) Where the Authority or a person prescribed under *section 33* is satisfied that any inspector appointed by the Authority

or a person prescribed under *section 33*, or any employee of the Authority or person prescribed under *section 33* has carried out his or her duties in relation to the enforcement of the relevant statutory provisions in a bona fide manner, the Authority or the person prescribed under *section 33*, as the case may be, shall indemnify the inspector or other employee against all actions or claims howsoever arising in respect of the carrying out by him or her of those duties.

(2) No action or other proceedings shall lie or be maintainable against the Authority, any person prescribed under *section 33* or any person referred to in *section 34(2)(a)* for the recovery of damages in respect of any 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 of the functions imposed on the Authority, any person prescribed under *section 33* or any person referred to in *section 34(2)(a)*.

87.—For the purpose of facilitating the exercise or performance by the Authority of any powers or duties conferred on it under any of the relevant statutory provisions, an officer of customs and excise, when authorised to do so by the Revenue Commissioners following a written request in that behalf by the Authority or a person prescribed under *section 33*, may detain any article or substance being imported for so long as is reasonably necessary for an inspector to examine it for the purposes of this Act, which period shall not in any case exceed 48 hours from the time when the article or substance concerned is detained.

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

88.—(1) The Minister may, for the purpose of protecting the safety, health and welfare of persons at work, prescribe any work activity to which the provisions of the Act apply as being an activity which may not be carried on except in accordance with the terms or conditions of a licence issued by the Authority or a person prescribed under *section 33*, which licence the Authority or the person so prescribed is hereby authorised to issue.

Licences.

(2) The Authority or a person prescribed under *section 33* may attach such conditions to a licence issued in accordance with *subsection (1)* as it thinks proper including conditions as to its expiry or revocation.

(3) The Authority or a person prescribed under *section 33* may at its discretion grant or refuse an application for a licence under this section.

(4) The Authority or a person prescribed under *section 33* may, if it so thinks proper, publish particulars of an application for a licence under this section and invite representations concerning it from interested persons.

(5) (a) The Authority or a person prescribed under *section 33* shall cause a register of all licences granted by it under this section to be kept in such form and containing such particulars as it thinks proper.

(b) Any person, upon payment of a prescribed fee and an inspector, without payment, shall be entitled at all reasonable times to inspect and take copies of or extracts from a register kept under this subsection.

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(6) If the Authority or a person prescribed under *section 33* refuses to grant a licence or grants a licence on conditions with which the applicant is dissatisfied, the Authority or person so prescribed shall, at his or her request, deliver to him or her a certificate stating the grounds on which it has refused a licence or attached the conditions.

(7) The applicant may appeal to the High Court from the decision of the Authority or a person prescribed under *section 33* within 10 days after receipt of the certificate or such further time as the High Court may allow.

(8) On the hearing of an appeal from a decision of the Authority or a person prescribed under *section 33* refusing the grant of a licence or granting a licence on conditions with which the applicant is dissatisfied, the High Court may confirm the decision or may direct the Authority or person prescribed under *section 33* to grant the licence, to attach specified conditions to the licence or to amend or delete a condition attached to the licence, as may be appropriate.

(9) A decision of the High Court on an appeal under this section shall be final save that, by leave of that Court, an appeal shall lie to the Supreme Court on a specified question of law.

Amendment of
National Standards
Authority of
Ireland Act 1996.

89.—Section 32 of the National Standards Authority of Ireland Act 1996 is amended by inserting the following after subsection (4):

“(5) The powers of prosecution conferred on the Director of Consumer Affairs under this section shall be deemed to be functions of the Director for the purposes of sections 9 and 16 of the Consumer Information Act 1978.”.

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SCHEDULE 1

Section 2.

ASSOCIATED STATUTORY PROVISIONS

Chapter, Number and Year (1)	Short Title (2)	Associated Statutory Provisions (3)
5 & 6 Vict., c. 55	Regulation of Railways Act 1842	The whole Act
34 & 35 Vict., c. 78	Regulation of Railways Act 1871	The whole Act
38 & 39 Vict., c. 17	Explosives Act 1875	The whole Act
	Merchant Shipping Acts 1894 to 2000	The whole Acts
1894 c. 28	Notice of Accidents Act 1894	The whole Act
1900 c. 27	Railway Employment (Prevention of Accidents) Act 1900	The whole Act
	Electricity (Supply) Acts 1927 to 2004	The whole Acts
No. 40 of 1936	Air Navigation and Transport Act 1936	Section 60
No. 12 of 1961	Poisons Act 1961	Sections 14 and 15
	Road Traffic Acts 1961 to 2004	The whole Acts
No. 30 of 1976	Gas Act 1976	Sections 7, 8(2) (as substituted by section 11 of the Gas (Interim) (Regulation) Act 2002 (No. 10 of 2002)) and 38
No. 9 of 1987	Gas (Amendment) Act 1987	Sections 2(1) and (2)
No. 10 of 2002	Gas (Interim) (Regulation) Act 2002	Section 11
No. 27 of 1993	Social Welfare (Consolidation) Act 1993	Chapter 10 of Part II
No. 30 of 1981	Fire Services Act 1981	Section 3 and Parts I, II and III
No. 15 of 2003	Licensing of Indoor Events Act 2003	Part III
No. 6 of 1987	Air Pollution Act 1987	The whole Act

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Sections 2 and 4.

SCHEDULE 2

EXISTING ENACTMENTS

PART 1

ENACTMENTS

Chapter, Number and Year (1)	Title (2)
45 & 46 Vict., c. 22	Boiler Explosions Act 1882
53 & 54 Vict., c. 35	Boiler Explosions Act 1890
No. 7 of 1965	Mines and Quarries Act 1965
	Dangerous Substances Acts 1972 and 1979
	Safety in Industry Acts 1955 and 1980
	Safety, Health and Welfare (Offshore Installations) Acts 1987 and 1995
No. 7 of 1989	Safety, Health and Welfare at Work Act 1989

Section 2.

PART 2

REGULATIONS MADE UNDER THE EUROPEAN COMMUNITIES ACT 1972
WHICH ARE EXISTING ENACTMENTS

1986	European Communities (Major Accident Hazards of Certain Industrial Activities) Regulations 1986 (S.I. No. 292 of 1986)
1989	European Communities (Protection of Workers) (Exposure to Asbestos) Regulations 1989 (S.I. No. 34) European Communities (Major Accident Hazards of Certain Industrial Activities) (Amendment) Regulations 1989 (S.I. No. 194 of 1989)
1990	European Communities (Protection of Workers) (Exposure to Noise) Regulations 1990 (S.I. No. 157 of 1990)
1992	European Communities (Major Accident Hazards of Certain Industrial Activities) (Amendment) Regulations 1992 (S.I. No. 21 of 1992)
1993	European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 1993 (S.I. No. 276 of 1993)
1999	European Communities (Equipment and Protective Systems Intended for Use in Potentially Explosive Atmospheres) Regulations 1999 (S.I. No. 83 of 1999)
2000	European Communities (Protection of Workers) (Exposure to Asbestos) (Amendment) Regulations 2000 (S.I. No. 74 of 2000) European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000 (S.I. No. 476 of 2000)
2001	European Communities (Safety Advisers for Transport of Dangerous Goods by Road and Rail) Regulations 2001 (S.I. No. 6 of 2001) European Communities (Machinery) Regulations 2001 (S.I. No. 518 of 2001)
2002	European Communities (Export and Import of Certain Dangerous Chemicals) (Industrial Chemicals) (Enforcement) Regulations 2002 (S.I. No. 395 of 2002)

2003	<p>European Communities (Classification, Packaging and Labelling and Notification of Dangerous Substances) Regulations 2003 (S.I. No. 116 of 2003)</p> <p>European Communities (Dangerous Substances and Preparations) (Marketing and Use) Regulations 2003 (S.I. No. 220 of 2003)</p> <p>European Communities (Control of Major Accident Hazards Involving Dangerous Substances) (Amendment) Regulations 2003 (S.I. No. 402 of 2003)</p> <p>European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2003 (S.I. No. 503 of 2003)</p>
2004	<p>European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations 2004 (S.I. No. 62 of 2004)</p> <p>European Communities (Transportable Pressure Equipment) Regulations 2004 (S.I. No. 374 of 2004)</p> <p>European Communities (Dangerous Substances and Preparations) (Marketing and Use) (Amendment) Regulations 2004 (S.I. No. 852 of 2004)</p>

SCHEDULE 3

Section 8.

GENERAL PRINCIPLES OF PREVENTION

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 as regards 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.

SCHEDULE 4

Section 26.

SAFETY COMMITTEES

1. Should they so wish the employees employed in a place of work to which *section 26* applies may select and appoint from amongst their number members of a safety committee to perform the functions assigned to safety committees under this Act.
2. The number of members of a safety committee shall not be less than 3 and shall not exceed one for every 20 persons employed in a

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place of work at the time when the committee is appointed or 10, whichever is the less.

3. Where pursuant to *paragraph 2* the number of members of which a safety committee is to be comprised is—

(a) 4 or less, one member of the committee may be appointed by the employer, and the remaining members of the committee may be selected and appointed by the employees,

(b) not more than 8 and not less than 5, 2 members of the committee may be appointed by the employer, and the remaining members may be selected and appointed by the employees, and

(c) more than 8, 3 members of the committee may be appointed by the employer and the remaining members may be selected and appointed by the employees.

4. Where, in a place of work, a safety representative or representatives have been appointed under *section 25*, at least one such safety representative shall be selected and appointed by the employees to be a member of the committee.

5. Where a safety committee is appointed under *section 26* the following provisions shall have effect—

(a) the safety committee shall assist the employer and employees concerned in relation to the relevant statutory provisions,

(b) the quorum for a meeting of a safety committee shall be such number, being not less than 3, as shall for the time being be fixed by the committee,

(c) where a member of a safety committee ceases to be employed in the place of work concerned, he or she shall at the same time cease to be a member of the committee,

(d) the employer shall be entitled to attend personally, or to nominate a person or persons to attend on his or her behalf at each meeting of the safety committee,

(e) the employer or his or her nominee or nominees shall attend the first meeting of the safety committee and shall, as soon as may be after it is available, present to the members of the safety committee the statement required under *section 20*, and

(f) the safety committee shall consider any representations made to it by the employer on matters affecting the safety, health and welfare of persons employed in the place of work.

6. On a request being made in that behalf by a safety committee, the employer shall consult with the safety committee with the object of reaching agreement concerning—

(i) facilities for holding meetings of the safety committee, and

(ii) the frequency, duration and times of meetings of the safety committee.

7. Subject to the terms of any agreement between the employer and a safety committee, meetings of the safety committee shall be held from time to time on such days as the committee shall decide

and such meetings may be held during normal working hours, without loss of remuneration to the members of the committee if the following conditions are satisfied, namely:

- (i) except in the case of an emergency such meeting shall not be held more frequently than once every three months;
- (ii) the duration of each such meeting shall not exceed one hour;
- (iii) the number of members of the safety committee attending such a meeting shall be at least such as is required to form a quorum, and
- (iv) the times at which the meetings of the safety committee are held shall be compatible with the efficient operation of the place of work.

SCHEDULE 5

Sections 32 and 37.

THE AUTHORITY

1. In this Schedule, except where the context otherwise requires, “member” means a member of the Authority, including the chairperson.

2. (1) The seal of the Authority shall be authenticated by the signature of—

- (a) the chairperson of the Authority or other member authorised by the Authority to act in that behalf, and
- (b) the Chief Executive or a member of staff of the Authority authorised by the Authority to act in that behalf.

(2) Judicial notice shall be taken of the seal of the Authority and every document purporting to be an instrument made by, and to be sealed with the seal of, the Authority (purporting to be authenticated in accordance with *subparagraph (1)*) shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.

3. Subject to this Act, a member shall hold office on the terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) that may be determined by the Minister, with the consent of the Minister for Finance.

4. A member shall be appointed by the Minister in a part-time capacity and shall hold office for 3 years and a member whose term of office expires shall be eligible for reappointment.

5. A member shall not be eligible for reappointment where he or she has served 2 terms of office.

6. A member may resign from office by written notice given to the Minister and the resignation shall take effect on the date specified in the notice or on the date on which the Minister receives the notice, whichever is the later.

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7. The Minister may remove a member from office—

- (a) if the member becomes incapable through ill-health of effectively performing his or her functions,
- (b) for stated misbehaviour, or
- (c) if the member's removal appears to the Minister to be necessary for the effective performance by the Authority of its functions,

and the Minister shall cause to be laid before each House of the Oireachtas a written statement of the reasons for any such removal.

8. A member shall cease to be and shall be disqualified from being a member where the member—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence,
- (d) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
- (e) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts 1963 to 2003).

9. (1) The Minister may appoint a person to fill a casual vacancy which arises in the membership of the Authority due to the death, resignation, disqualification or removal from office of a member and the person so appointed shall be appointed in the same manner as the member who occasioned the casual vacancy.

(2) A person appointed to be a member under this paragraph shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy.

10. (1) A member of the Authority who is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy,

thereupon ceases to be a member of the Authority.

(2) A member of the staff of the Authority who is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy,

thereupon stands seconded from employment by the Authority and shall not be paid by, or be entitled to receive from, the Authority remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either House or that Parliament.

(3) A period referred to in *subparagraph (2)* shall not be reckoned as service with the Authority for the purposes of any superannuation benefits, gratuities or other allowances payable on death, retirement or resignation.

(4) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in the House or who is a representative in the European Parliament shall, while he or she is so entitled or is such a representative, be disqualified from becoming a member of, or from employment in any capacity by, the Authority.

(5) The Authority shall not employ or otherwise retain in any capacity a person who would otherwise be disqualified under this paragraph from becoming a member of the Authority.

11. (1) The Authority shall hold such and so many meetings as may be necessary for performing its functions but in any case shall meet not less than once in every 3 months.

(2) The arrangements referred to in *paragraph 15* may, with the approval of the Minister, provide for the discharge, under the general direction of the Authority, of any of its functions by a committee of the Authority.

12. The quorum for a meeting of the Authority shall be 6 or such greater number of members as the Authority may from time to time determine.

13. At a meeting of the Authority—

- (a) the chairperson shall, if present, be the chairperson of the meeting, or
- (b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the deputy chairperson of the Authority shall be chairperson of the meeting, or
- (c) if and so long as the chairperson is not present or if the office of chairperson is vacant or the deputy chairperson is not present or the office of deputy chairperson is vacant, the members who are present shall choose one of their number to be chairperson of the meeting.

14. Every question that is to be decided at a meeting of the Authority shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

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15. Subject to *paragraph 12* the Authority may act notwithstanding one or more than one vacancy among its membership or any deficiency in the appointment of a member that may subsequently be discovered.

16. Subject to this Act, the Authority shall make arrangements for the regulation of its proceedings and business.

Section 39.

SCHEDULE 6

THE CHIEF EXECUTIVE

1. The Chief Executive shall be appointed on the terms and conditions (including terms and conditions relating to duration of contract, performance, remuneration, allowances for expenses and removal from office) that the Authority may from time to time determine with the consent of the Minister and the Minister for Finance.

2. The Chief Executive shall be paid by the Authority out of such moneys at its disposal such remuneration and such allowances for expenses (if any) incurred by him or her as the Authority, with the consent of the Minister and the Minister for Finance, may determine.

3. The Chief Executive shall perform his or her functions subject to such policies as may be determined from time to time by the Authority and shall be accountable to the Authority for the efficient and effective management of the Authority and for the due performance of his or her functions.

4. The Chief Executive may delegate any of his or her functions to an employee of the Authority, subject to such conditions as the Chief Executive considers appropriate, unless they are delegated to the Chief Executive subject to the condition that they shall not be sub-delegated, and the employee concerned shall be accountable to the Chief Executive for the performance of the functions so delegated to him or her.

5. Notwithstanding any delegation under *paragraph 3*, the Chief Executive shall at all times remain accountable to the Authority for the performance of the functions so delegated.

6. The Chief Executive shall not hold any other office or employment or carry on any business without the consent of the Authority.

Section 58.

SCHEDULE 7

REGULATIONS

The Minister may make regulations under *section 58* for or in respect of any matters including the following:

(1) requirements to be imposed on employers as regards the safety, health and welfare of their employees at work with respect to—

(a) the management and conduct of work activities including the prevention of improper conduct or behaviour,

(b) the design, provision and maintenance of—

- (i) places of work,
 - (ii) safe means of access to and egress from places of work, and
 - (iii) plant and machinery and other articles,
 - (c) the use of any article or substance,
 - (d) the provision, planning, organisation, performance and maintenance of systems of work,
 - (e) the provision of information, instruction, training and supervision, including, as appropriate, such provision in an appropriate language or languages,
 - (f) the determination and implementation of safety, health and welfare measures,
 - (g) the provision, testing, use and maintenance of protective clothing or equipment,
 - (h) the preparation and revision of plans and procedures and measures to be taken in emergencies and in the case of serious and imminent danger,
 - (i) the obtaining of the services of competent persons so as to ensure the safety, health and welfare of persons at work including the training, experience and knowledge required of competent persons,
 - (j) co-operation in matters relating to safety, health and welfare at work, and
 - (k) the safety, health and welfare at work of fixed-term or temporary employees;
- (2) requirements to be imposed on employers as regards the conduct of their undertakings to provide that in the course of work being carried on persons at the place of work not in the employment of the said employers are not exposed to risks to their safety, health and welfare at the undertaking;
- (3) requirements to be imposed on persons to whom *section 15* applies in relation to non-domestic places of work as regards such places of work, any article or substance provided for use in such places and as regards access to or egress from such places;
- (4) requirements to be imposed on an employee in relation to conduct or behaviour likely to endanger his or her own safety, health and welfare at work or that of any other person including as regards intoxication and submission to reasonable and proportionate tests;
- (5) requirements to be imposed on persons as regards interference, misuse or damage of anything provided under the relevant statutory provisions or otherwise for securing the safety, health and welfare of persons at work;
- (6) requirements to be imposed on an employee as regards his or her own safety, health or welfare at work including requirements as regards the use of any appliance, protective clothing, convenience, equipment or means or thing provided for securing their safety, health or welfare at work and attendance at safety and health training;

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(7) requirements to be imposed on persons who design, manufacture, import or supply articles for use at work as regards—

(a) the design, construction, testing, examination or use of any article or prescribed class of article, or

(b) the provision of information relating to the use at work for which any article or prescribed class of article was designed or tested or relating to its being sited, tested, installed, repaired, altered, maintained, dismantled or disposed of in a manner which will be safe and without risk to the health or welfare of persons at work;

(8) requirements to be imposed on persons who design or manufacture articles for use at work as regards the carrying out of research with respect to those articles with a view to the discovery of potential risks or the elimination or minimisation of any risks to the safety, health or welfare of persons at work;

(9) requirements to be imposed on persons who erect or install articles for use at work as regards the erection or installation of those articles so as to be safe and without risks to health or welfare when those articles are used in a place of work;

(10) requirements to be imposed on persons who manufacture, import or supply any substance or prescribed class of substance as regards—

(a) the use, testing or examination of the substance, or

(b) the provision of information about any risk to safety, health or welfare to which the substance may give rise, or

(c) the results of tests on the substance or its use or disposal in a manner which will be safe and without risk to the health or welfare of persons at work;

(11) requirements to be imposed on persons who manufacture, or in a case where the manufacture is undertaken outside the State, import any substances as regards the carrying out of research with a view to the discovery, elimination or minimisation of risks to safety, health or welfare to which the substance may give rise when in use;

(12) requirements to be imposed on persons who commission or procure the construction of places of work as regards the appointment of competent persons to ensure those places are designed, can be constructed, are maintained and comply with the relevant statutory provisions so as to be safe and without risk to the health or welfare of persons at work;

(13) requirements to be imposed on persons who design places of work as regards the design of those places so as to be safe and without risk to the health or welfare of persons at work;

(14) requirements to be imposed on persons who construct places of work as regards the construction of those places so as to be safe and without risk to the health or welfare of persons at work;

(15) requirements to be imposed on employers as regards the identification of hazards and the assessment of risks;

(16) requirements to be imposed on employers as regards safety statements;

(17) requirements to be imposed as regards the regulation, prohibition or control of the use of specified articles for use at work including the guarding, siting, installing, commissioning, protecting, testing, examining, inspecting, altering, adjusting, maintaining or dismantling of any such article;

(18) requirements to be imposed as regards the marking of any article for use at work or designed for use as a component of such article;

(19) requirements to be imposed as regards the regulation, prohibition or control of the use of any specified substance;

(20) requirements to be imposed as regards the testing, examination, classification or labelling of any specified substance including notification of specified particulars in relation to such substance;

(21) requirements to be imposed as regards the prohibition or control of importation or supply of any article or substance for use at work;

(22) requirements to be imposed as regards the prohibition or the regulation of the transport of any article or substance for use at work including requirements as regards the construction, testing and marking of containers and means of transport and the packaging and labelling for transport of those articles or substances;

(23) requirements to be imposed as regards the use or design of specified safety signs at places of work;

(24) requirements to be imposed as regards the making of arrangements for health surveillance of persons at work including medical examinations, biological monitoring or special health surveys;

(25) requirements to be imposed as to the registration in a prescribed register of any specified activity or thing in order to monitor compliance with safety, health and welfare requirements under the relevant statutory provisions;

(26) requirements to be imposed as to the appointment of prescribed persons or classes of persons to do prescribed things in relation to safety, health or welfare at work or to carry out specific activities or undertake specific responsibilities with safety, health and welfare implications;

(27) requirements to be imposed as to the regulation of or prohibition from prescribed classes of employment of prescribed classes of persons in relation to their safety, health and welfare at work;

(28) requirements to be imposed with respect to any matter affecting the conditions in which persons work, including such matters as the structural condition and stability of premises, the means of access to and egress from the premises, cleanliness, temperature, humidity, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations or other physical agent, dust and fumes and exposure to water or other liquids;

(29) regulating or prohibiting atmospheric or other conditions to which an employee may be exposed in a place of work;

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(30) prescribing methods, standards or procedures for determining the amount or level of any atmospheric condition or any biological, chemical or physical agent or combination thereof in a place of work;

(31) requirements to be imposed as to facilities or arrangements for welfare at work (including supply of water, sanitary conveniences, washing or bathing facilities, ambulance and first-aid arrangements, cloakroom facilities, seating, refreshment facilities, facilities for the making or taking of meals or, prohibiting the taking of meals or refreshments in specified circumstances);

(32) requirements to be imposed so as to control or limit—

(a) the emission into a place of work of any specified gas, vapour, smoke, dust, or any other specified substance arising from work activities,

(b) the emission into the working environment of noise, vibration, any ionising or other radiations,

(c) other environmental pollution in the place of work including environmental tobacco smoke, or

(d) the monitoring of any such emissions in a place of work;

(33) conferring powers on inspectors in specified circumstances to require persons to submit written particulars of measures proposed to be taken to achieve compliance with any of the relevant statutory provisions;

(34) requirements to be imposed with respect to the keeping and preservation of records relating to compliance with the relevant statutory provisions in relation to safety, health and welfare at work;

(35) requirements to be imposed as regards the safety, health or welfare of persons with respect to the management of animals in or at places of work;

(36) requirements to be imposed as regards any place of work in relation to—

(a) precautions to be taken against dangers to which the place of work or persons in the place of work are or may be exposed by reason of conditions (including natural conditions) existing in the vicinity of that place, or

(b) securing that persons in a place of work leave that place of work in specified circumstances where there is a risk to their safety or health;

(37) requirements to be imposed as to the doing or prohibition of any specified thing where any accident or other occurrence of a specified kind has occurred;

(38) requirements to be imposed in prescribed circumstances with respect to the taking of precautions in connection with the risk of fire, fire-safety rules and procedures and the provision and maintenance of fire-protection equipment in places of work;

(39) requirements to be imposed with respect to the reporting in the prescribed manner of such matters relating to the safety, health or welfare of persons at work as may be prescribed, or that of other

persons arising out of work activities, (including the giving of such information as may be prescribed relating to accidents, personal injuries or dangerous occurrences) to the Authority or a person prescribed under *section 33* or to an inspector of the Authority or of a person prescribed under *section 33* or to any other person as may be prescribed;

(40) requirements to be imposed with respect to the safe lifting or handling by persons at work of any load likely to cause injury to a person so lifting or handling it;

(41) the prohibition of the carrying on of such work activities as may be prescribed except by or under the supervision of persons with prescribed qualifications, training or experience;

(42) requirements to be imposed as regards joint safety and health agreements;

(43) such further requirements, arrangements, modifications or exemptions as the Minister considers necessary, from time to time, in relation to the operation of *sections 25* and *26*;

(44) such fees as may be charged under *section 47*.