

CHAPTER 44:01 FACTORIES

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Act 31, 1973,
S.I. 159, 1978.

An Act to make provision for the regulation of the conditions of employment in factories and other places as regards the safety, health and welfare of persons employed therein and for the safety and inspection of certain plant and machinery and for purposes incidental to or connected with matters aforesaid.

[Date of Commencement: 1st January, 1979]

PART I

Preliminary and Application of Act (ss 1-4)

1. Short title and Minister's power of exemption

(1) This Act may be cited as the Factories Act.

(2) The Minister may, by order published in the *Gazette*, exempt certain factories or classes of factories from the provisions of this Act.

2. General application of Act

Except as otherwise expressly provided in this Act, the provisions of this Act shall apply to all factories.

3. Application to factories belonging to the Government

This Act shall apply to factories belonging to or in the occupation of the Government and to building operations and works of engineering construction undertaken by or on behalf of the Government, and to the employment by or under the Government of persons engaged in painting or renovating buildings.

4. Power to exempt in case of public emergency

In the case of any public emergency the Minister may, by order, to the extent and during the period named in the order published in the *Gazette*, exempt from this Act either factories generally or any class or description of factory.

PART II

Interpretation (ss 5-6)

5. Interpretation of expression "factory"

(1) Subject to the provisions of this section, the word "factory" means any premises in which persons are employed in manual labour in any process for or incidental to any of the following purposes, namely-

- (a) the making of any article or part of any article;
- (b) the altering, repairing, ornamenting, finishing, cleaning, washing, breaking up or demolition of any article; or
- (c) the adapting of any article for sale,

being premises in which, or within the close or curtilage or precincts of which, the work is being carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control, and whether or not they are factories by reason of the foregoing definition the word "factory" also includes the following premises in which persons are employed in manual labour, that is to say-

- (i) any premises in which the business of washing or filling of bottles or containers or the packing of articles is carried on incidental to the purpose of any factory;
- (ii) any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being premises used for the housing of locomotives or vehicles where only

cleaning, washing or minor adjustments are carried out;

- (iii) any premises in which printing by letterpress, lithography, photogravure or other similar process, or bookbinding is carried on by way of trade or for purposes of gain or incidental to another business carried on;
- (iv) any premises in which mechanical power is used in connection with the making or repair of articles of metal or wood or any other material incidental to any business carried on by way of trade or for purposes of gain;
- (v) any premises in which articles are made or prepared incidental to the carrying on of building operations or works of engineering construction not being premises in which such operations or works are being carried on;
- (vi) any premises in which persons are regularly employed in or in connection with the generation of electrical energy for supply by way of trade, or for the supply for the purposes of any industrial or commercial undertaking or for any public building or public institution, or for supply to streets or other public places;
- (vii) any premises in which mechanical power is used for the purpose of or in connection with a water supply, being premises in which persons are regularly employed;
- (viii) any sewage works in which mechanical power is used and any pumping station used in connection with any sewage works:

Provided that the Minister may, if in special circumstances he thinks it expedient to do so, at any time by order published in the *Gazette* exempt any premises or part of any premises, being a factory as hereinbefore defined, from the application of all or any of the provisions of this Act.

(2) Where the Minister has made an order under section 61 extending the application of this Act or any Part thereof to any premises, process or operation, such premises, process or operation shall be deemed to be a factory for the purposes of this Act or the Part thereof so applied.

(3) Any line or siding (not being part of a railway) which is used in connection with and for the purposes of a factory shall be deemed to be part of the factory; and if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding shall be deemed to be a separate factory, and the provisions of this Act shall apply as if such different occupiers were jointly the occupiers of the line or siding so deemed to be a factory.

(4) Any workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace of a factory if the persons working therein were in the employment of the owner or occupier, shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace, the provisions of this Act shall apply as if the owner or occupier of the workplace were the occupier of the factory and the persons working therein were persons employed in the factory.

(5) No premises to which the provisions of the Mines, Quarries, Works and Machinery Act

apply shall be deemed to be a factory.

(6) Where a place situate within the close, curtilage or precincts forming a factory is solely used for some purpose other than the process carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act.

(7) Premises shall not be excluded from the definition of a factory by reason only that they are open air premises.

(8) No premises belonging to or in the occupation of the Government or any local authority shall be deemed not to be a factory by reason only that the work carried on thereat is not carried on by way of trade or for purposes of gain.

6. General interpretation

(1) In this Act, unless the context otherwise requires-

"**article**" includes any solid, liquid or gas, or any combination thereof;

"**bodily injury**" includes injury to health;

"**building operation**" means the construction, structural alteration, repair or maintenance of a building (including re-pointing, re-decoration and external cleaning the structure), the demolition of a building, and the preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction within the meaning of this Act;

"**chief inspector**" means the chief inspector of factories appointed under this Act;

"**class or description**", in relation to factories, includes a group of factories described by reference to locality;

"**driving belt**" includes any driving strap or rope;

"**fume**" includes gas or vapour;

"**general register**" means the register kept in accordance with the requirements of section 63;

"**inspector**" means an inspector of factories appointed under this Act and includes the chief inspector;

"**Labour Commissioner**" means the Labour Commissioner in the Ministry for the time being responsible for labour matters;

"**local authority**" includes, in any area, such person or body of persons as the Minister may by regulations made under section 55 declare to be a local authority for the purposes of this Act;

"**machinery**" includes any driving belt;

"**maintained**" means maintained in an efficient state, in efficient working order and in good repair;

"**mine**" has the same meaning assigned to it in the Mines, Quarries, Works and

Machinery Act;

"**owner**" means the person for the time being receiving the rents or profits of the premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if the premises were leased;

"**prime mover**" means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source;

"**process**" includes the use of any locomotive;

"**railway**" means any railway used for the purpose of public traffic, whether passenger goods or other traffic, and includes any works used in connection with and for the purposes of the railway;

"**sanitary conveniences**" includes urinals, water closets, earth closets, chemical closets, privies, ashpits and any similar conveniences;

"**steam boiler**" means any closed vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure and includes any economizer used to heat water being fed to any such vessel, and any superheater used for heating steam;

"**transmission machinery**" means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving belt or any other device by which the motion of a prime mover is transmitted to or received by any machine or appliance;

"**work of engineering construction**" means the construction of any railway line or siding, and the construction, structural alteration or repair (including re-pointing and re-painting) or the demolition of any tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, sewage works, or gas holder, and includes such other works as may be specified by the Minister by order published in the *Gazette*.

(2) For the purposes of this Act, machinery or plant shall be deemed to have been constructed or reconstructed before the commencement of this Act or the making of regulations under this Act, and a factory or building shall be deemed to have been constructed, reconstructed, extended, added to or converted for use as a factory, before the commencement of this Act or the coming into operation of any provision of this Act, or the making of regulations under this Act, if the construction, reconstruction, extension, addition or conversion was begun before the commencement of this Act, or the making of regulations under this Act, or the coming into operation of any provision of this Act, as the case may be.

(3) For the purposes of this Act, mechanical power shall not be deemed to be used in a factory by reason only that mechanical power is used for the purpose of heating, cooling, ventilating or lighting the workrooms or other parts of the factory.

(4) For the purposes of this Act, an apprentice shall be deemed to be a person employed.

PART III

Registration of Factories (ss 7-12)

7. Register of factories

The chief inspector shall keep a register of factories, in which he shall cause to be entered such particulars in relation to every factory required to be registered under this Act as he may consider necessary or desirable.

8. Registration of existing factories

(1) Every person who, at the commencement of this Act, occupies a factory shall, within one month after such commencement, apply for the registration of such factory by sending to the chief inspector a written notice containing the particulars set out in the First Schedule.

(2) Upon receipt of such notice the chief inspector shall cause the factory to be registered and shall issue to the applicant a certificate of registration in the form set out in the Second Schedule.

(3) Any person who, without having been issued to him a certificate of registration under this section, and after the period of one month after the commencement of this Act, continues to occupy or use as a factory premises which were so occupied or used by him at such commencement shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both, and if the contravention in respect of which he was convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P30 or to imprisonment for a term not exceeding 14 days, or to both, for each day on which the offence was so continued.

9. Registration of new factories

(1) Before any person occupies or uses as a factory any premises which were not so occupied or used by him at the commencement of this Act, he shall apply for registration of such premises by sending to the chief inspector a written notice containing the particulars set out in the First Schedule.

(2) Upon receipt of such notice and on being satisfied that the premises are suitable for use as a factory of the nature stated in the notice, the chief inspector shall cause the premises to be registered and shall issue to the applicant a certificate of registration in the form set out in the Second Schedule.

(3) Any person who, without having been issued to him a certificate of registration referred to in subsection (2), occupies or uses as a factory any premises which were not so occupied or used by him at the commencement of this Act, shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both, and if the contravention in respect of which he was convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P30 or to imprisonment for a term not exceeding 14 days, or to both, for each day on which the offence was so continued.

(4) Where the chief inspector refuses to issue a certificate of registration under this section he shall, if so required by the applicant, state in writing the grounds of such refusal.

10. Plans of new factories

Where, under the provisions of any written law, plans of an intended factory or of any intended building appurtenant to a factory or an existing building for use as a factory are submitted to any local authority, such authority shall, before approving such plans, forward

copies thereof to the chief inspector and, notwithstanding the provisions of any such written law, shall not approve the plans until notified by the chief inspector that the premises concerned are, in his opinion, suitable for use as a factory of the nature proposed.

11. Appointment of Factories Appeal Board

(1) Subject to the provisions of subsection (2), the Minister may, by notice published in the *Gazette*, appoint such persons as he thinks fit to be a Factories Appeal Board (in this Act referred to as "the Board") for the purpose of hearing and determining any appeal that may be submitted to it under the provisions of section 12.

(2) The Board shall consist of a chairman, who shall be a person qualified to be admitted as an advocate or attorney under the Legal Practitioners Act, and not less than six other members.

(3) At any meeting of the Board, a quorum shall be the chairman and two other members.

(4) The Minister may make regulations regulating the procedure of the Board and, in the absence of any such regulations, the Board shall regulate its own procedure.

12. Appeal to Board from decision of chief inspector

(1) If any person is aggrieved by a decision of the chief inspector under the provisions of this Part he may, within 30 days from the date of such decision, send to the chairman of the Board and to the chief inspector written notice of his intention to appeal to the Board against the decision and such notice shall state the grounds of appeal.

(2) On receipt of such written notice, the chairman of the Board shall appoint a day and place for the hearing of the appeal and shall notify the parties concerned in the appeal.

(3) For the purposes of subsection (2) the chief inspector shall be a party concerned in the appeal and shall be entitled to appear and be heard before the Board at the hearing of such appeal.

(4) The Board may, on hearing the appeal, confirm, vary or reverse the decision of the chief inspector, and the decision of the Board shall be final and shall not be subject to further appeal.

PART IV

Health - General Provisions (ss 13-20)

13. Cleanliness

Every factory shall be kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance, and without prejudice to the generality of the foregoing-

- (a) accumulations of dirt, refuse and waste materials shall be removed daily by a suitable method from the floors and benches of workrooms and from the staircases and passages;
- (b) the floor of every workroom shall be cleaned at least twice in every week by washing or, if it is effective and suitable, by sweeping or any other method;
- (c) all inside walls or partitions and all ceilings or tops of rooms, and all walls, sides

and tops of passages and staircases shall-

- (i) where they have a smooth impervious surface, at least once in every period of 12 months be washed with hot water and soap or cleaned by some other suitable method;
- (ii) where they are kept painted with oil paint or varnished, be repainted or revarnished at least once in every period of three years, and at least once in every period of 12 months be washed with hot water and soap or cleaned by some other suitable method;
- (iii) in other cases be kept whitewashed or colourwashed and the whitewashing or colourwashing shall be repeated at least once in every period of 12 months:

Provided that where it appears to the Minister that in any class or description of factory or part thereof any of the foregoing provisions of this section are not required for the purpose of keeping the factory in a clean state, or are by reason of special circumstances inappropriate or inadequate for such purpose, he may, if he thinks fit, by order published in the *Gazette*, direct that those provisions shall not apply to factories, or parts of factories, of that class or description, or shall apply as varied by the order.

14. Overcrowding

(1) A factory shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein.

(2) Without prejudice to the generality of subsection (1), a factory shall be deemed to be so overcrowded if the number of persons at a time in any workroom is such that the amount of cubic space allowed for each person employed is less than 10 cubic metres:

Provided that in calculating for the purposes of this subsection the amount of cubic space in any room, no space more than four and one half metres from the floor shall be taken into account, and, where a room contains a gallery, the gallery shall be treated for the purposes of this subsection as if it were partitioned off from the remainder of the room and formed a separate room.

(3) Every workroom shall be not less than three metres in height, measured from the floor to the lowest point of the ceiling, or, where there is no ceiling, to the lowest point of the roofing material:

Provided that, if the Minister is satisfied that owing to the special conditions under which the work is carried on in any workroom the application of the provisions of this subsection to that workroom would be inappropriate or unnecessary, he may by certificate in writing exempt the workroom from the requirements of this section subject to any conditions specified in the certificate.

(4) As respects any room used as a workroom at the date of the commencement of this Act, the provisions of subsections (2) and (3) shall not have effect until after the expiration of a period of two years after that date.

15. Ventilation

Effective and suitable provision shall be made for securing and maintaining, by the

circulation of fresh air in each workroom, the adequate ventilation of the room.

16. Lighting

(1) Effective provision shall be made for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of a factory in which persons are working or passing.

(2) All glazed windows and skylights used for the lighting of workrooms shall, as far as practicable, be kept clean on both the inner and outer surfaces and free from obstruction of light:

Provided that this subsection shall not affect the whitewashing or shading of windows and skylights for the purpose of mitigating heat or glare.

17. Drainage of floors

Where any process is carried on which renders the floor liable to be wet to such an extent that the wet is capable of being removed by drainage, effective means shall be provided and maintained for draining off the wet.

18. Sanitary conveniences

(1) Sufficient and suitable sanitary conveniences for the persons employed in the factory shall be provided, maintained and kept clean, and effective provision shall be made for lighting the conveniences; and, where persons of both sexes are or are intended to be employed (except in cases where the only persons employed are members of the same family dwelling there), such conveniences shall afford proper separate accommodation for persons of each sex.

(2) Regulations may be made determining for factories or for any class or description of factory what is sufficient and suitable provision for the purposes of this section.

19. Enforcement of provisions of section 18 by local authorities

The provisions of section 18, and any regulations made thereunder, shall, in such areas as the Minister may by order direct, be enforced by the local authority.

20. Duty of inspector as to sanitary defects remediable by local authority

Where an inspector finds any act, default, nuisance or other matter in relation to any sanitary convenience in a factory which appears to him to be the concern of a local authority under this Part, he shall give notice thereof in writing to the local authority, which shall proceed as soon as possible to take steps to enforce such provisions of section 18 and any regulations made thereunder as have been contravened.

PART V

Safety - General Provisions (ss 21-45)

21. Prime movers

(1) Every flywheel directly connected to any prime mover and every moving part of any prime mover, except any prime mover mentioned in subsection (3), shall be securely fenced, whether the flywheel or prime mover is situated in any engine house or not.

(2) The head and tail race of every water wheel and of every water turbine shall be securely fenced.

(3) Every part of any electric generator, alternator, motor or rotary converter, and every flywheel directly connected thereto shall be securely fenced unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

22. Transmission machinery

(1) Every part of any transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

(2) Efficient devices or appliances shall be provided and maintained in every room or place where work is carried on by which the power can be promptly cut off from the transmission machinery in that room or place.

(3) Every machine intended to be driven by mechanical power shall be provided with an efficient starting and stopping appliance, the control of which shall be in such a position as to be readily and conveniently operated by the person operating the machine.

(4) No driving belt when not in use shall be allowed to rest or ride upon a revolving shaft which forms part of the transmission machinery.

(5) Suitable striking gear or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery, and any such gear and appliances shall be so constructed, placed and maintained as to prevent the driving belt from creeping back on the fast pulley.

(6) The chief inspector may by certificate in writing grant, subject to any conditions specified in the certificate, exemption from compliance with any of the requirements of subsections (2), (3), (4) and (5) in any case where he is satisfied that compliance with the requirement is unnecessary or impracticable.

23. Other machinery

(1) Every dangerous part of any machinery, other than prime movers and transmission machinery, shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced:

Provided that, insofar as the safety of a dangerous part of any machinery cannot, by reason of the operation, be secured by means of a fixed guard, the requirements of this subsection shall be deemed to have been complied with if a device is provided which, in the opinion of the chief inspector, satisfactorily protects the operator from coming into contact with that part.

(2) Any part of a stock-bar which projects beyond the headstock of a lathe shall be securely fenced unless it is in such a position as to be safe to every person employed or working on the premises as it would be if securely fenced.

24. Provisions as to unfenced machinery

(1) Subject to the provisions of subsection (2), in determining, for the purposes of the foregoing provisions of this Part, whether any part of machinery is in such a position or of such construction as to be as safe to every person employed or working on the premises as it would be if securely fenced-

- (a) no account shall be taken of any person carrying out, while the part of the machinery is in motion, an examination thereof or any lubrication or adjustment shown by such examination to be immediately necessary, being an examination, lubrication or adjustment which it is necessary to carry out while the part of the machinery is in motion; and
- (b) in the case of any part of transmission machinery used in any process in any factory with respect to which the chief inspector has declared, by certificate in writing, that he is satisfied that, owing to the continuous nature of the process, the stopping of that part would seriously interfere with the carrying on of the process in such factory, no account shall be taken of any person carrying out, by such methods and in such circumstances and subject to such conditions as may be specified in the certificate, any lubrication or any mounting or shipping of belts.

(2) This section shall only apply where-

- (a) the examination, lubrication or other operation is carried out by a male person who-
 - (i) has attained the apparent age of 18 years;
 - (ii) has been appointed by the occupier of the factory, by certificate attached to the general register, to carry out such examination, lubrication or other operation, and has been furnished by the occupier with a copy of such certificate signed by him;
 - (iii) has been sufficiently trained for the purposes of the work entailed by, and is acquainted with the dangers of moving machinery arising in connection with, such examination, lubrication or other operation; and
 - (iv) has been provided by the occupier with and is wearing a close fitting garment in good repair, which is fastened by means having no exposed loose ends and has no external pockets other than a hip pocket;
- (b) another person, instructed as to the steps to be taken in case of emergency, is immediately available within sight or hearing of any person carrying out such examination, lubrication or other operation; and
- (c) any ladder in use for the carrying out of such examination, lubrication or other operation is securely fixed or lashed, or is firmly held by a person stationed at the foot of the ladder.

25. Construction and maintenance of fencing

All fencing or other safeguards provided in pursuance of the foregoing provisions of this Part shall be of substantial construction, and constantly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed for examination and for any lubrication or

adjustment shown by such examination to be immediately necessary, and all the conditions specified in section 24(2) are complied with.

26. Construction and disposal of new machinery

(1) In the case of any machine in a factory being a machine intended to be driven by mechanical power-

- (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger; and
- (b) all spur or other toothed or friction gearing, which does not require frequent adjustment while in motion, shall be completely encased unless it is so situated as to be as safe as it would be if completely encased.

(2) Any person who sells or lets on hire, or as agent of the seller or hirer causes or procures to be sold or let on hire for use in a factory, any machine intended to be driven by mechanical power which does not comply with the requirements of this section, shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both.

(3) The Minister may, by order published in the *Gazette*, extend the provisions of subsection (2) to machinery or plant which does not comply with such requirements of this Act as may be specified in the order and any order under this subsection may relate to machinery or plant in a specified process.

(4) Nothing in this section shall apply to any machine constructed before the commencement of this Act and no order under this section shall apply to any machinery or plant constructed before the publication of such order.

27. Vessels containing dangerous liquids

(1) Every fixed vessel, structure, sump or pit, of which the edge is level with or less than one metre above the adjoining ground or platform shall, if it contains any scalding, corrosive or poisonous liquid, either be securely covered or securely fenced to at least that height, or where by reason of the nature of the work neither secure covering nor secure fencing to that height is practicable, all practical steps shall be taken by covering, fencing or other means to prevent any person from falling into the vessel, structure, sump or pit.

(2) As respects any such plant mentioned in subsection (1), a warning notice, indicating the nature of the danger, and in a form readily understood by the persons employed, shall be marked on or attached to the plant, or, if this is not reasonably practicable, be posted nearby.

28. Self-acting machines

(1) No traversing part of any self-acting machine and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass, whether in the course of his employment or otherwise, be allowed on its outward or inward traverse to run within a distance of half a metre from any fixed structure not being part of the machine.

(2) All practical steps shall be taken by instructions to the person in charge of the machine and otherwise to ensure that no person employed shall be in the space between any traversing part of a self-acting spinning mule and any fixed part of the machine towards

which the traversing part moves on the inward run, except when the machine is stopped with the traversing part on the outward run.

29. Training and supervision of inexperienced workers

No person shall be employed at any machine or in any process, being a machine or process likely to cause bodily injury, unless he has been fully instructed as to the dangers likely to arise in connection therewith and the precautions to be observed, and-

- (a) has received sufficient training in work at the machine or in the process; or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process.

30. Hoists and lifts

(1) Every hoist or lift shall be of good mechanical construction, sound material and adequate strength, and be properly maintained.

(2) Every hoist or lift shall be thoroughly examined at least once in every period of six months by a person approved for the purposes of this section by the chief inspector by certificate in writing, and a report of the result of every such examination in the prescribed form and containing the prescribed particulars shall be signed by the person making the examination and shall within 14 days be entered in or attached to the general register.

(3) Every hoistway or liftway shall be efficiently protected by a substantial enclosure fitted with gates, being such an enclosure as to prevent, when the gates are shut, any person falling down the way or coming into contact with any moving part of the hoist or lift.

(4) Any such gate shall be fitted with an efficient interlocking or other device to secure that the gate cannot be opened except when the cage or platform is at the landing and that the cage or platform cannot be moved away from the landing until the gate is closed.

(5) Every hoist or lift and every such enclosure shall be so constructed as to prevent any part of any person or any goods carried in the hoist or lift being trapped between any part of the hoist or lift and any fixed structure, or between the counterbalance weight and any other moving part of the hoist or lift.

(6) There shall be marked conspicuously on every hoist or lift the maximum working load which it can safely carry and no load greater than that load shall be carried on such hoist or lift.

(7) The following additional requirements shall apply to hoists and lifts used for carrying persons, whether together with goods or otherwise-

- (a) efficient automatic devices shall be provided and maintained to prevent the cage or platform over-running;
- (b) every cage shall, on each side from which access is afforded to a landing, be fitted with a gate, and in connection with every such gate, efficient devices shall be provided to secure that when persons or goods are in the cage, the cage cannot be raised or lowered unless the gate is closed, and will come to rest when the gate is opened;

(c) in the case of a hoist or lift constructed or reconstructed after the commencement of this Act, where the platform or cage is suspended by rope or chain, there shall be at least two ropes or chains separately connected with the platform or cage, each rope or chain and its attachments being capable of carrying the whole weight of the platform or cage and its maximum working load, and efficient devices shall be provided and maintained which will support the platform or cage with its maximum working load, in the event of a breakage of the ropes or chains or any of their attachments.

(8) In the case of a hoist or lift not connected with mechanical power-

(a) subsection (7) shall not apply;

(b) for subsection (4) the following subsection shall be substituted-

"(4) Any such gate shall be kept closed and fastened except when the cage or platform is at rest at the landing;" and

(c) in subsection (2), for the reference to six months there shall be substituted a reference to 12 months.

(9) For the purposes of this section, no lifting machine or appliance shall be deemed to be a hoist or lift unless it has a platform or cage, the direction of movement of which is restricted by a guide or guides.

(10) If it is shown to the satisfaction of the chief inspector that it would be unreasonable in the special circumstances of the case to enforce any requirement of this section in respect of any class or description of hoist, lift, hoistway or liftway, he may, by notice published in the *Gazette*, exempt from such requirements, hoists, lifts, liftways or hoistways of that class or description; and any such exception may be unqualified or may be subject to such conditions as may be contained in the notice.

31. Chains, ropes and lifting tackle

(1) The following provisions shall be complied with in respect of every chain, rope or lifting tackle used for the purpose of raising or lowering persons, goods or materials-

(a) no chain, rope or lifting tackle shall be used unless it is of good construction, sound material, adequate strength and free from patent defect;

(b) a table showing the safe working loads of every kind and size of chain, rope or lifting tackle in use, and, in the case of a multiple sling, the safe working load at different angles of the legs, shall be prominently displayed on the premises, except, however, that the foregoing provisions of this paragraph shall not apply in relation to any lifting tackle if the safe working load thereof or, in the case of a multiple sling, the safe working load at different angles of the legs, is plainly marked upon it;

(c) no chain, rope or lifting tackle shall be used for any load exceeding the safe working load thereof as shown by the table or marked upon it;

(d) all chains, ropes and lifting tackle in use shall be thoroughly examined at least once in every period of six months, or at such greater intervals as the chief inspector may in any particular case permit, by a person approved for the purposes of this section

by the chief inspector by certificate in writing;

- (e) no chain, rope or lifting tackle, except a fibre rope or fibre rope sling, shall be taken into use in any factory for the first time in that factory unless it has been tested and thoroughly examined by a person approved by the chief inspector for the purposes of this section and a certificate of such a test and examination specifying the safe working load and signed by the person making the test and examination, has been obtained and is kept available for inspection:

Provided that the provisions of this paragraph shall not apply to any chain, rope or lifting tackle in respect of which there has been obtained, and is kept available for inspection, a certificate of test and thorough examination issued by the manufacturer of the chain, rope or lifting tackle;

- (f) every chain and lifting tackle, except a rope sling, shall, unless of a class or description exempted by the chief inspector by notice published in the *Gazette*, be annealed at least once in every 14 months, or, in the case of chains or slings of 12 millimetres bar or smaller, or chains used in connection with molten metal or molten slag, in every six months, so, however, that chains and lifting tackle not in regular use need be annealed only when necessary.

(2) In this section the expression "lifting tackle" includes chain slings, rope slings, rings, hooks, shackles and swivels.

32. Cranes and other lifting machines

(1) All parts and working gear whether fixed or movable, including the anchoring and fixing appliances of every lifting machine shall be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained.

(2) All such parts and gear shall be thoroughly examined, at least once in every period of 14 months, by a person approved for the purposes of this section by the chief inspector in writing.

(3) No lifting machine shall be taken into use in any factory for the first time in that factory unless it has been tested, and all such parts and working gear of the machine as are specified in subsection (1) have been thoroughly examined by a person approved by the chief inspector for the purposes of this section, and a certificate of such test and examination, specifying the safe working load or loads of the machine and signed by the person making the test and examination, has been obtained and is kept available for inspection:

Provided that the provisions of this subsection shall not apply to any lifting machine in respect of which there has been obtained, and is kept available for inspection, a certificate of test and thorough examination issued by the manufacturer of the machine.

(4) All rails on which a travelling crane moves and every track on which the carriage of a transporter or runway moves shall be of a proper size and adequate strength, and have an even running surface, and any such rails or track shall be properly laid, adequately supported or suspended, and properly maintained.

(5) There shall be plainly marked on every lifting machine the safe working load or loads thereof, except that, in the case of a jib crane so constructed that the safe working load may

be varied by the raising or lowering of the jib, there shall be attached thereto either an automatic indicator of safe working loads at corresponding inclination of the jib or corresponding radii of the load.

(6) No lifting machine shall, except for the purpose of a test, be loaded beyond the safe working load as marked or indicated under subsection (5).

(7) If any person is employed or working on or near the wheel track of a self-propelled overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within six metres of that place.

(8) A lifting machine shall not be operated except by a person trained and competent to operate that machine, except that it shall be permissible for such machine to be operated by a person who is under the direct supervision of a qualified person for the purpose of training; and no person under 18 years of age shall be employed to operate any lifting machine driven by mechanical power or to give signals to the operator of any such machine.

(9) In this section the expression "lifting machine" means a crane, grab, winch, teagle, pulley block, gin wheel, transporter or runway.

33. Register of chains, ropes and lifting tackle and lifting machines

A register, containing the particulars set out in the Third Schedule, shall be kept in every factory with respect to all chains, ropes or lifting tackle (except fibre rope slings) to which section 31 applies and with respect to all lifting machines to which section 32 applies.

34. Safe means of access and safe place of employment

(1) All floors, steps, stairs and passages and gangways shall be of sound construction and properly maintained.

(2) All openings in floors shall be securely fenced or covered, except insofar as the nature of the work renders such fencing impracticable.

(3) There shall, as far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work.

(4) For every staircase in a building or affording a means of exit in a building, a substantial handrail shall be provided and maintained, which, if the staircase has an open side, shall be on that side, and, in the case of a staircase having two open sides, such a handrail shall be provided and maintained on both sides; any open side of a staircase shall also be guarded by the provision and maintenance of a lower rail or other effective means.

(5) All ladders shall be soundly constructed and properly maintained.

(6) Sufficient clear and unobstructed space shall be maintained at every machine while in motion to enable the work to be carried on without unnecessary risk.

(7) Where any person is to work at a place from which he will be liable to fall a distance more than two metres, then, unless the place is one which affords secure foothold, and, where necessary, secure handhold, means shall be provided so far as is reasonably practicable, by fencing or otherwise for ensuring his safety.

(8) Every teagle, opening or similar doorway used for hoisting or lowering goods or materials, whether by mechanical power or otherwise, shall be securely fenced, and shall be provided with a secure handhold on each side of the opening or doorway; the fencing shall be properly maintained and shall, except when the hoisting or lowering of goods or materials is being carried on at the opening or doorway, be kept in position.

35. Precautions in places where dangerous fumes are liable to be present

Where work has to be done inside any chamber, vessel, tank, vat, pit or other confined space in which dangerous fumes are liable to be present-

- (a) the confined space shall be provided with adequate means of egress for persons entering or working therein;
- (b) no person shall enter the confined space for any purpose unless-
 - (i) all practicable steps have been taken to remove any fumes that may be present and to prevent any ingress of fumes and, unless it has been ascertained by a suitable test that the space is free from dangerous fumes, the person entering shall wear a belt to which there is securely attached a rope of which the free end is held by a person outside; or
 - (ii) the person entering wears suitable breathing apparatus;
- (c) suitable breathing apparatus and a suitable reviving apparatus and suitable belts and ropes shall be provided and maintained so as to be readily accessible; and
- (d) a sufficient number of persons employed in the factory shall be trained and practised in the use of such apparatus and in the method of restoring respiration.

36. Precautions in respect of explosive or inflammable dust, gas, vapour or substance

(1) Where, in connection with any grinding, sieving or other process giving rise to dust, gas or vapour, there may escape into any workroom dust, gas or vapour of such a character and such an extent as to be liable to explode on ignition, all practicable steps shall be taken to prevent such an explosion by enclosure of any plant used in the process, and by the removal or prevention of accumulation of the dust, gas or vapour and by exclusion or effective enclosure of possible sources of ignition.

(2) When there is present in any plant used in any such process, dust, gas or vapour of such character and to such an extent as to be liable to explode on ignition, then, unless the plant is so constructed as to withstand the pressure likely to be produced by any such explosion, all practical steps shall be taken to restrict the spread and effects of such an explosion by the provision, in connection with the plant, of chokes, baffles and vents or other equally effective appliances.

(3) No plant, tank or vessel which contains or has contained any explosive or inflammable substance shall be subject to any welding, brazing or soldering operation or to any cutting operation or any process which involves the application of heat, until all practical steps have been taken to remove the substance and any fumes arising therefrom, or to render them non-explosive or non-flammable; and if any plant, tank or vessel has been subjected to any such operation, no explosive or inflammable substance shall be allowed to enter the plant,

tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance or fumes.

(4) The chief inspector may, by certificate in writing, grant, subject to any conditions specified in the certificate, exemption from compliance with any of the requirements of the last foregoing subsection in any case where he is satisfied that compliance with the requirements is unnecessary or impracticable.

37. Steam boiler

(1) Every steam boiler and all its fittings and attachments shall be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained.

(2) Every steam boiler, whether separate or one of a range-

(a) shall have attached to it-

- (i) a suitable safety valve (separate from and incapable of being isolated by any stop valve) which shall be so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure and shall be fixed directly to, or as close as practical to, the boiler;
- (ii) a suitable stop valve connecting the boiler to the steam pipe;
- (iii) a correct steam pressure gauge, connected to the steam space and easily visible by the boiler attendant, which shall indicate the pressure of steam in the boiler in kg per cm² and have marked upon it, in a distinctive colour, the maximum permissible working pressure;
- (iv) at least one water gauge of transparent material or other material approved by the chief inspector to show the water level in the boiler, and, if the gauge is of the glass tubular type and the working pressure in the boiler normally exceeds 2,8 kg per cm², the gauge shall be provided with an efficient guard but not so as to obstruct the reading of the gauge; and
- (v) where it is one of two or more boilers, a plate bearing a distinctive number which shall be easily visible;

(b) shall be provided with means for attaching a test pressure gauge; and

(c) shall be provided with a fusible plug or an efficient low water alarm device:

Provided that paragraph (a)(ii) shall not apply to economisers, and subparagraphs (iii), (iv) and (v) of paragraph (a) and paragraphs (b) and (c) shall not apply to either economizers or superheaters.

(3) For the purposes of subsection (2), a lever-type valve shall not be deemed a suitable safety value.

(4) Every steam boiler attendant shall be properly instructed as to his duties.

(5) No person shall enter or be in any steam boiler which is one of a range of two or more

steam boilers unless-

- (a) all inlets through which steam or hot water might otherwise enter the boiler from any other part of the range are disconnected from that part; or
- (b) all valves or taps controlling such entry are closed and securely locked, and, where the boiler has a blow-off pipe in common with one or more other boilers or delivering into a common blow-off vessel or sump, the blow-off valve or tap on each such boiler is so constructed that it can only be opened by a key which cannot be removed until the valve or tap is closed and is the only key in use for that set of blow-off valves or taps.

(6) No work shall be permitted in any boiler, furnace or boiler flue until it has been sufficiently cooled by ventilation or otherwise to make work safe for the persons employed.

(7) Every steam boiler and all its fittings and attachments shall be thoroughly examined by an authorized boiler inspector at least once in every period of 14 months, and also after any extensive repairs:

Provided that-

- (i) the person making any such examination may specify in writing a period exceeding 14 months but not exceeding 18 months within which the next examination is to be made; and
- (ii) in the case of any range of boilers used at the date of the commencement of this Act for the purposes of a process requiring a continuous supply of steam, any stop valve on the range which cannot be isolated from steam under pressure need only be examined as far as is practicable without such isolation, but this proviso shall cease to have effect at the expiration of a period of two years from the date of the commencement of this Act.

(8) Any examination in accordance with the requirements of subsection (7) shall consist, in the first place, of an examination of the boiler when it is cold and the interior and exterior have been prepared in the prescribed manner; and, secondly, except in the case of an economizer or superheater, of an examination when it is under normal steam pressure, the examination under steam pressure shall be made as soon as possible after the examination of the boiler when cold and the person making the examination shall ensure that the safety valve is so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.

(9) A report of the result of every such examination, in the prescribed form and containing the prescribed particulars (including particulars of the maximum permissible working pressure) shall, as soon as practicable and in any case within 28 days of the completion of the examination, be entered in, or attached to, the general register and the report shall be signed by the person making the examination.

(10) For the purposes of subsection (9) and the succeeding provisions of this section relating to reports of examinations, the examination of a boiler when it is cold and its examination when it is under steam pressure, shall be treated as separate examinations.

(11) No steam boiler which has previously been used shall be taken into use in any factory for the first time in that factory until it has been examined and reported on in

accordance with subsections (7), (8) and (9); and no new steam boiler shall be taken into use unless there has been obtained from an authorized boiler inspector a certificate specifying the maximum permissible working pressure of the boiler and stating the nature of the test to which the boiler and fittings have been submitted, and the certificate is kept available for inspection, and the boiler is so marked as to enable it to be identified as the boiler to which the certificate relates.

(12) Where the report of any examination under this section specifies conditions for securing the safe working of a steam boiler, the boiler shall not be used except in accordance with those conditions.

(13) Any person who, for the purposes of this section, desires that the examination of a steam boiler should be carried out by, and any person who desires to obtain the certificate referred to in subsection (11) from, any authorized boiler inspector who is a public officer shall notify the chief inspector accordingly, and on payment by such person of the prescribed fee, the chief inspector shall instruct such an authorized boiler inspector to carry out the said examination, or carry out the necessary tests with a view to the issue of the said certificates, as the case may be.

(14) In this section-

"authorized boiler inspector" means any person (whether a public officer or not), who is authorized by the chief inspector, by certificate in writing, to carry out examinations of steam boilers in accordance with, and for the purposes of, this section, and to issue the certificates referred to in subsection (11);

"maximum permissible working pressure" means, in the case of a new steam boiler, that specified in the certificate referred to in subsection (11), and, in the case of a steam boiler which has been examined in accordance with the provisions of this section, that specified in the report of the last examination.

(15) This section shall not apply to the boiler of any locomotive operated by the Botswana Railways.

38. Steam receivers and steam containers

(1) Every steam receiver and all its fittings shall be of good construction, sound material, adequate strength and free from patent defect and shall be properly maintained.

(2) Every steam receiver not so constructed and maintained as to withstand with safety the maximum permissible working pressure of the boiler or the maximum pressure which can be obtained in the pipe connecting the receiver with any other source of supply shall be fitted with-

- (a) a suitable reducing valve or other suitable automatic appliance to prevent the safe working pressure of the receiver being exceeded;
- (b) a suitable safety valve so adjusted as to permit the steam to escape as soon as the safe working pressure is exceeded, or a suitable appliance for cutting off automatically the supply of steam as soon as the safe working pressure is exceeded;
- (c) a correct steam pressure gauge, which shall indicate the pressure of steam in the

receiver in kg per cm²;

- (d) a suitable stop valve; and
- (e) except where only one steam receiver is in use, a plate bearing a distinctive number which shall be easily visible,

and the safety valve and pressure gauge shall be fitted either on the steam receiver or on the supply pipe between the receiver and the reducing valve or other appliance to prevent the safe working pressure being exceeded.

(3) For the purposes of subsection (2), except paragraph (e) thereof, any set of receivers supplied with steam through a single pipe and forming part of a single machine may be treated as one receiver, and for the purposes of the said provisions, except paragraphs (d) and (e), any other set of receivers supplied with steam through a single pipe may be treated as one receiver:

Provided that this subsection shall not apply to any such set of receivers unless the reducing valve or other appliance to prevent the safe working pressure being exceeded is fitted on the said single pipe.

(4) Every steam receiver and all its fittings shall be thoroughly examined by an authorized boiler inspector, so far as the construction of the receiver permits, at least once in every period of 26 months.

(5) A report of the result of every such examination, in the prescribed form and containing the prescribed particulars (including particulars of the safe working pressure), shall be entered in or attached to the general register, and the report shall be signed by the person making the examination.

(6) No steam receiver which has previously been used shall be taken into use in any factory for the first time in that factory until it has been examined and reported on in accordance with subsections (4) and (5); and no new steam receiver shall be taken into use unless there has been obtained from the manufacturer of the receiver, or from an authorized boiler inspector, a certificate specifying the safe working pressure of the receiver and stating the nature of the tests to which the receiver and fittings have been submitted, and the certificate is kept available for inspection, and the receiver is so marked as to enable it to be identified as the receiver to which the certificate relates.

(7) Any person who, for the purposes of this section, desires that an examination of a steam receiver should be carried out by, and any person who desires to obtain the certificate referred to in subsection (6) from any authorized boiler inspector who is a public officer, shall notify the chief inspector accordingly and, on payment by such person of the prescribed fee, the chief inspector shall instruct such an authorized boiler inspector to carry out the said examination, or to carry out the necessary tests with a view to the issue of the said certificate, as the case may be.

(8) Every steam container shall be so maintained as to secure that the outlet is at all times kept open and free from obstruction.

(9) In this section-

"authorized boiler inspector" means any person (whether a public officer or not), who is

authorized by the chief inspector, by certificate in writing, to carry out examinations of steam receivers in accordance with, and for the purposes of, this section and to issue the certificate referred to in subsection (6);

"maximum permissible working pressure" has the same meaning as in section 37;

"safe working pressure" means, in the case of a new steam receiver, that specified in the certificate referred to in subsection (6), and, in the case of a steam receiver which has been examined in accordance with the provisions of this section, that specified in the report of the last examination;

"steam receiver" means any vessel or apparatus (other than a steam boiler, steam container, a steam pipe or coil or part of a prime mover), used for containing steam under greater pressure than atmospheric pressure;

"steam container" means any vessel (other than a steam pipe or coil) constructed with a permanent outlet into the atmosphere or into a space where the pressure does not exceed atmospheric pressure, and through which steam is passed at atmospheric pressure, or at approximately that pressure, for the purpose of heating, boiling, drying, evaporating or other similar purpose.

39. Air receivers

(1) Every air receiver shall-

- (a) have marked upon it, so as to be plainly visible, the safe working pressure;
- (b) in the case of a receiver connected with an air compressing plant, either be so constructed as to withstand with safety the maximum pressure which can be obtained in the compressor, or be fitted with a suitable reducing valve or other suitable appliance to prevent the safe working pressure of the receiver being exceeded;
- (c) be fitted with a suitable safety valve so adjusted as to permit the air to escape as soon as the safe working pressure is exceeded;
- (d) be fitted with a correct pressure gauge indicating the pressure in the receiver in kg per cm²;
- (e) be fitted with a suitable appliance for draining the receiver;
- (f) be provided with a suitable manhole, or other means that will allow the interior to be thoroughly cleaned and examined; and
- (g) in a case where more than one receiver is in use in the factory, bear a distinguishing mark which shall be easily visible.

(2) For the purposes of the provisions of subsection (1) relating to safety valves and pressure gauges, any set of air receivers supplied with air through a single pipe may be treated as one receiver:

Provided that, in a case where a suitable reducing valve or other suitable appliance to prevent the safe working pressure being exceeded is required to be fitted, this subsection

shall not apply unless the valve or appliance is fitted on the said single pipe.

(3) Every air receiver shall be of sound construction and properly maintained.

(4) Every air receiver shall be thoroughly cleaned and examined at least once in every period of 26 months:

Provided that in the case of a receiver of solid drawn construction-

- (i) the person making any such examination may specify in writing a period exceeding 26 months but not exceeding four years within which the next examination is to be made; and
- (ii) if it is so constructed that the internal surface cannot be thoroughly examined, a suitable hydraulic test of the receiver shall be carried out in lieu of internal examination,

and every such examination and test shall be carried out by an approved person, and a report of the result of every such examination and test in the prescribed form and containing the prescribed particulars (including particulars of the safe working pressure), shall be entered in or attached to the general register, and the report shall be signed by the person making the examination or test.

(5) Any occupier of a factory who, for the purposes of this section, desires that an examination of an air receiver should be carried out by an approved person who is a public officer shall notify the chief inspector accordingly, and, on payment by such occupier of the prescribed fee, the chief inspector shall instruct such an approved person to carry out the said examination.

(6) In this section-

"air receiver" means-

- (a) any vessel (other than a pipe or coil, or any accessory, fitting or part of a compressor) for containing compressed air and connected with an air compressing plant; or
- (b) any fixed vessel for containing compressed air or compressed exhaust gases and used for the purpose of starting an internal combustion engine;

"approved person" means any person (whether a public officer or not) who is approved by the chief inspector, by certificate in writing, for the purpose of carrying out examinations and tests of air receivers in accordance with, and for the purposes of, this section.

40. Exemption as to steam boilers, steam receivers, steam containers and air receivers

The chief inspector may, by notice published in the *Gazette*, exempt from any of the provisions of sections 37, 38 and 39 any class or type of steam boiler, steam receiver, steam container or air receiver to which he is satisfied that such provision cannot reasonably be applied and any such exemption may be unqualified or may be subject to such conditions as may be contained in the notice.

41. Prevention of fire

(1) In every factory there shall be provided and maintained so as to be readily accessible means for extinguishing fire, which shall be adequate and suitable, having regard to the circumstances of each case.

(2) All stocks of inflammable substances shall be kept in a fire-resistant store or in a separate safe store outside any building:

Provided that no such store shall be so situated as to endanger the means of escape from the factory or from any part thereof in the event of a fire occurring in the store.

42. Safety provisions in case of fire

(1) Every factory shall be provided with adequate means of escape, in case of fire, for the persons employed therein, having regard to the circumstances of each case.

(2) All such means of escape shall be properly maintained and kept free from obstruction.

(3) The contents of any room in which persons are employed shall be so arranged or disposed that there is a free passageway for all persons in the room to a means of escape in case of fire.

(4) While any person is within a factory for the purpose of employment or meals, the doors of the factory, and of any room therein in which the person is, and any doors which afford a means of exit for persons employed in the factory from any building or from any enclosure in which the factory is situated, shall not be locked or fastened in such manner that they cannot be easily and immediately opened from the inside.

(5) In the case of any factory constructed or converted for use as a factory after the coming into operation of this section, all doors affording a means of exit from the factory for the persons employed therein shall, except in the case of sliding doors, be constructed to open outwards.

(6) Every hoistway or liftway inside a building constructed after the coming into operation of this section shall, subject as hereinafter provided, be completely enclosed with fire-resistant materials, and all means of access to the hoist or lift shall be fitted with doors of fire-resistant materials:

Provided that any such hoistway or liftway shall be enclosed at the top only by some materials easily broken by fire, or be provided with a vent at the top.

(7) Every window, door or other exit affording a means of exit in case of fire or giving access thereto, other than the means of exit in ordinary use, shall be distinctively and conspicuously marked by a notice printed in red letters of an adequate size, and all such notices shall be in Setswana and English and in such other language as an inspector may direct.

(8) In every factory, effective steps shall be taken to ensure that all the persons employed are familiar with the means of escape in case of fire, and with the routine to be followed in case of fire and that such routine, in the form of fire drill, is carried out at least once in every period of one month.

(9) Every factory in which 25 or more persons are employed shall be provided with means

of giving warning in case of fire, which shall be clearly audible throughout the buildings comprising the factory, and the appliances for giving the alarm and the means for operating such appliances shall be sited close to the exit doors and shall be painted red.

43. Power of court to make orders as to dangerous conditions and practices

(1) If, on complaint by an inspector, a court is satisfied either-

- (a) that any part of the ways, works, machinery or plant used in a factory is in such a condition or is so constructed or is so placed that it cannot be used without risk or bodily injury; or
- (b) that any process or work is carried on or anything is or has been done in any factory in such a manner as to cause risk or bodily injury,

the court shall, as the case may require, by order-

- (i) prohibit the use of that part of the ways, works, machinery or plant, or, if it is capable of repair or alteration, prohibit its use until it is duly repaired or altered; or
- (ii) require the occupier of the factory to take such steps as may be specified in the order for remedying the danger complained of.

(2) Where a complaint is, or has been made, under subsection (1), the court may, on application made *ex parte* by the chief inspector, and on receiving evidence that the use of any such part of the ways, works, machinery or plant, or, as the case may be, the carrying on of any process or work or the doing of anything in such a manner, involves risk of serious bodily injury, make an interim order prohibiting, either absolutely or subject to conditions, the use, carrying on or doing thereof until the earliest opportunity for hearing and determining the complaint.

(3) In the event of a contravention, in relation to any factory, of an order of a court made under this section, the occupier of the factory shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both, and if the contravention of which he was so convicted is continued after the conviction he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P30 or to imprisonment for a term not exceeding 14 days, or to both, for each day on which the offence was so continued.

44. Power of court to make orders as to dangerous factory

(1) A court may, on complaint by an inspector, and on being satisfied that any factory or any part of a factory is in such a condition or is constructed or placed that any process or work carried on therein, or intended to be carried on therein, cannot be so carried on with due regard to the safety and health of the persons employed, by order, prohibit the use thereof for the purpose of that process or work.

(2) An order made by a court under this section may-

- (a) prohibit the carrying on of any process or work either indefinitely, or until such steps have been taken as may be specified in the order to enable the process or work to be carried on with due regard to the safety and health of the persons employed;

and

- (b) be revoked or varied on the application by way of complaint by the occupier or owner of the factory:

Provided that, on any such application, an inspector shall be entitled to be heard.

(3) If any process or work is carried on in a factory or part of a factory in contravention of an order of a court made under this section, the occupier of the factory shall be guilty of an offence and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both, and if the contravention in respect of which he was so convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding P30 or to imprisonment for a term not exceeding 14 days, or to both for each day on which the offence was so continued.

45. Appeal from orders made on complaint

Any person (including an inspector) aggrieved by an order made by a court on determining a complaint under sections 43 and 44 may appeal therefrom to the High Court.

PART VI

Welfare - General Provisions (ss 46-50)

46. Supply of drinking water

(1) An adequate supply of potable drinking water shall be provided and maintained at suitable points conveniently accessible to all persons employed.

(2) A supply of drinking water which is not laid on shall be contained in suitable vessels, and shall be renewed at least daily, and all practical steps shall be taken to preserve the water and vessels from contamination; and a drinking water supply (whether laid on or not) shall, in such cases as an inspector may direct, be clearly indicated by a notice in Setswana and English and in such other language as the inspector may direct.

47. Washing facilities

(1) There shall be provided and maintained for the use of all persons employed adequate and suitable facilities for washing, which shall be conveniently accessible and shall be kept in a clean and orderly condition.

(2) The chief inspector may, by certificate in writing, exempt from any of the requirements of subsection (1) any factory, where, by reason of the difficulty of obtaining an adequate supply of water or the fact that accommodation is restricted and adequate and suitable washing facilities are otherwise conveniently available, or such other special circumstances as may be specified in the certificate, the application of the requirements would, in his opinion, be unreasonable.

(3) The Minister may by regulations prescribe, either generally or in respect of any class or description of factory or in respect of the persons employed in any process, a standard of adequate and suitable washing facilities.

48. Accommodation for clothing

There shall be provided and maintained for the use of all persons employed, adequate

and suitable accommodation for clothing not worn during working hours.

49. First aid

(1) There shall be provided and maintained, so as to be readily accessible, a first aid box or cupboard stocked to the prescribed standard.

(2) Nothing except appliances or requisites for first aid shall be kept in a first aid box or cupboard.

(3) Each first aid box shall be placed under the charge of a responsible person who shall always be readily available during working hours, and a notice shall be affixed in every workroom stating the name of the person in charge of the first aid box or cupboard provided in respect of that room.

50. Exemption if ambulance room provided

If an ambulance room is provided at a factory and such arrangements are made as to ensure the immediate treatment there of all injuries occurring in such factory, the chief inspector may, by certificate in writing, exempt such factory from the requirements of section 49 to such extent and subject to such conditions as he may specify in the certificate.

PART VII

Health, Safety and Welfare - Special Provisions and Regulations (ss 51-58)

51. Removal of dust or fumes

(1) In every factory which, in connection with any process carried on, there is given off any dust or fume or other impurity of such a character and to such an extent as to be likely to be injurious or offensive to the persons employed, or any substantial quantity of dust of any kind, all practical measures shall be taken to protect the persons employed against inhalation of the dust or fume or other impurity and to prevent its accumulation in any workroom, and, in particular, where the nature of the process makes it practicable, exhaust appliances shall be provided and maintained, as near as possible to the point of origin of the dust or fume or other impurity, so as to prevent it entering the air of any workroom.

(2) No stationary internal combustion engine shall be used unless provision is made for conducting the exhaust gases from the engine into the open air.

52. Meals in certain dangerous trades

Where in any room any poisonous or otherwise injurious substance is so used as to give rise to any dust or fume, no person shall be permitted to partake of food or drink in that room.

53. Protective clothing and appliances

Where, in any factory, workers are employed in any process involving excessive exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances, including, where necessary, suitable gloves, footwear, goggles, head or face coverings or any other necessary clothing or appliance required by the chief inspector, shall be provided and maintained for the use of such workers.

54. Protection of eyes in certain processes

(1) In the case of any of the processes specified in the Fourth Schedule, suitable goggles or effective screens shall be provided to protect the eyes of the persons employed in the process.

(2) Where, in any factory, electric welding is carried on, effective provision shall be made, by screening or otherwise, to prevent persons employed (other than persons employed in the welding process) being exposed to the electric arc flash.

55. Power to make regulations for safety, health and welfare

(1) The Minister may by statutory instrument make regulations for any matter required to be made by regulations under this Act, for the better carrying out of the objects and purposes of this Act, for giving effect to its principles and provisions and for the health, safety and welfare of employees, and such regulations may, without prejudice to the generality of the foregoing-

- (a) prescribe anything to be or that may conveniently be prescribed under this Act;
- (b) specify the fees to be paid in respect of any matter or thing to be done under this Act;
- (c) prohibit the employment of, or modify or limit the hours of employment of, all persons or any class of persons in connection with any manufacture, machinery, plant, equipment, appliance, process or description of manual labour;
- (d) prohibit, limit or control the use of any material or process;
- (e) modify or extend with respect to any class or description of factory any provisions of Parts IV, V, VI or this Part, being provisions imposing requirements as to safety, health or welfare; and
- (f) apply provisions relating to-
 - (i) arrangements for preparing or heating and taking meals;
 - (ii) ambulance and first aid arrangements; and
 - (iii) rest rooms.

(2) Regulations made under subsection (1) may apply to all factories or to any premises, process or operation to which the provisions of this Act are extended by virtue of an order made under section 61 or to any specified class or description of factory and may be made to apply to any specified class or description of factory either absolutely or subject to conditions.

56. Power to take samples

(1) An inspector may at any time, after informing the occupier or, if the occupier is not readily available, a manager or other responsible person in the factory, take for analysis sufficient samples of any substance used or intended to be used in a factory, being a substance in respect of which he suspects a contravention of any regulations made under this Part, or which he thinks may prove, on analysis, to be likely to cause bodily injury to the

persons employed.

(2) The occupier or manager or other responsible person may, at the time when a sample is taken under this section, and on providing the necessary appliances, require the inspector to divide the sample into three parts, to mark and seal and fasten up each part in such manner as its nature permits, and-

- (a) to deliver one part to the occupier, or manager or other responsible person;
- (b) to retain one part for future comparison; and
- (c) to submit one part to an analyst,

and any analysis made under this section shall, if so required, be carried out by a Government analyst.

(3) A certificate purporting to be a certificate by a Government analyst as to the result of the analysis of a sample taken under this section shall, in any proceedings under this Act, be admissible as evidence of the matters stated therein, but either party may require the person by whom the analysis was made to be called as a witness.

(4) It shall not be lawful for any person, except insofar as is necessary for the purposes of a prosecution for an offence under this Act, to publish or disclose to any person the results of an analysis made under this section, and if any person acts in contravention of this subsection he shall be liable to a fine not exceeding P200.

57. Notification of accidents and dangerous occurrences

(1) Where any accident occurs in a factory or other place or process or operation to which the provisions of this Act apply-

- (a) whereby loss of life is caused to a person employed in that factory;
- (b) whereby any person is disabled for more than three days from earning full wages at the work at which he was employed; or
- (c) which is one of the classes of dangerous occurrences specified in the Fifth Schedule,

written notice of the accident in the prescribed form and accompanied by the prescribed particulars shall forthwith be sent to the chief inspector.

(2) Where any accident causing disablement is notified under this section and, after notification thereof, results in the death of the person disabled, notice in writing of the death shall be sent to the chief inspector by the occupier of the factory as soon as the death comes to his knowledge.

(3) Where any accident to which this section applies occurs to a person employed in a factory and the occupier of the factory is not the employer of the person killed or injured, the employer shall, if he fails to report the accident to the occupier immediately, be guilty of an offence.

58. Notification of industrial diseases

The occupier of any factory who believes, or suspects or has reasonable ground for

believing or suspecting, that any case of industrial disease, being one of those specified in the Sixth Schedule, has occurred in the factory, shall forthwith send written notice of such case to the chief inspector in the prescribed form; and the provisions of this Act with respect to the notification of accidents shall apply to any such case in like manner as to any such accident mentioned in these provisions.

PART VIII
Special Applications and Extensions (ss 59-61)

59. Premises where part of building is separate factory

(1) Where a part of a building is let off as a separate factory, the provisions of this Act hereafter in this subsection mentioned shall apply to any other part of the building used for the purposes of the factory but not comprised therein, that is to say-

- (a) the provisions of Part IV with respect to cleanliness and lighting;
- (b) the provisions of Part V with respect to prime movers, transmission, machinery, hoists and lifts, chains, ropes and lifting tackle, lifting machines, safe means of access and safe place of employment, steam boilers, steam receivers, steam containers and air receivers (including the provisions as to exemption of steam boilers, steam receivers, steam containers and air receivers); and
- (c) the provisions of Part V with respect to the power of a court to make orders as to dangerous conditions and practices, and as to dangerous factories,

and the owner of the building shall be responsible for any contravention of the said provisions and shall also be responsible, instead of the occupier of the factory, for any contravention in respect of the factory of the provisions of Part IV relating to sanitary conveniences, and of the provisions of Part V relating to hoists and lifts, prevention of fire, and safety provisions in case of fire, and, for the purposes of the provisions relating to prevention of fire and safety provisions in case of fire, the factory shall be deemed to include any part of the building used for the purpose of the factory:

Provided that the owner of the building shall be responsible for the cleanliness of sanitary conveniences only when used in common by several tenants, and shall be responsible for any contravention of any of the aforementioned provisions of Part V only insofar as the said provisions relate to matters within his control; and the occupier of the factory shall, in any case, be responsible for any contravention, whether in respect of the factory or otherwise, of any of the said provisions of Part V relating to any machinery or plant belonging to or supplied by him.

(2) In sections 43 and 44, as they apply in relation to the factory and as they are applied by subsection (1), references to the occupier shall be taken as references to the occupier of the factory or to the owner of the building, according to which of them is responsible in respect of the matters complained of.

(3) For the purposes of the provisions applied by subsection (1), lifting machines attached to the outside of the building, and chains, ropes and lifting tackle used in connection with those machines, shall be treated as being in the building, but any lifting machine not used for the purposes of the factory, and any chains, ropes or lifting tackle not used in connection with a lifting machine, shall be disregarded.

(4) Where, under subsection (1), any provision is applied containing a reference to the general register, then, in relation to matters in respect of which the owner of the building is responsible, that reference shall be taken as a reference to a register to be kept by him, and section 63(2) shall apply in relation to any such register as if the owner were the occupier of a factory.

60. Premises in which steam boilers are used

(1) The occupier of any premises (not being premises forming part of a factory) in which a steam boiler is used shall, within one month after the commencement of this Act, send to the chief inspector a written notice containing the particulars set out in the Seventh Schedule to this Act; and if after the commencement of this Act a steam boiler is newly taken into use in any premises (not being premises forming part of a factory) the occupier shall, within one month after the date on which the boiler is first used, send a like notice to the chief inspector.

(2) The provisions of this Act, hereafter in this subsection mentioned, shall apply to any premises (not being premises forming part of a factory or premises to which the application of this Act is otherwise extended by this Part), in which a steam boiler is used, as if the premises were a factory and as if the person having the actual use or occupation of the premises were the occupier of a factory, that is to say-

- (a) Part I;
- (b) Part II;
- (c) the provisions of Part V relating to steam boilers and to steam receivers and steam containers (including the provisions as to exemption of steam boilers, steam receivers and steam containers) so, however, that the owner of the boiler, receiver or container shall, instead of the person deemed to be the occupier, be responsible for any contravention of the said provisions insofar as they relate to matters within his control;
- (d) the provisions of Part V relating to the power of a court to make orders as to dangerous conditions and practices;
- (e) the provisions of Part VII relating to regulations for safety, health and welfare;
- (f) the provisions of Part IX relating to general registers (so far as applicable), and preservation of registers and records, subject to such modifications as may be made by regulations made by the Minister, and the provisions of the said Part IX relating to duties of persons employed;
- (g) the provisions of Part X relating to powers and duties of inspectors and to regulations and orders made under this Act;
- (h) Part XI; and
- (i) Part XII.

61. Power to extend application of provisions of Act

The Minister may, by order published in the *Gazette*, and subject to such conditions as may be specified in the order, extend the application of all or any of the provisions of this Act

to any of the following classes of premises, process or operation, that is to say-

- (a) warehouses (not forming part of any factory);
- (b) any premises (not being premises forming part of a factory) in which a hoist or lift is used;
- (c) building operations undertaken by way of trade or business, or for the purpose of any industrial undertaking, and any line or siding which is used in connection therewith and for the purpose thereof and is not part of a railway; or
- (d) works of engineering construction undertaken by way of trade or business or for the purpose of any industrial or commercial undertaking, and any line or siding which is used in connection therewith and for the purposes thereof and is not part of a railway.

PART IX
Miscellaneous (ss 62-67)

62. Posting of abstract of Act, regulations and notices

- (1) There shall be kept posted in a prominent position in every factory-
- (a) the prescribed abstract of this Act;
 - (b) a notice of the address of the chief inspector and the nearest labour officer;
 - (c) printed copies of any regulations made under Part VII which are for the time being in force in the factory; or the prescribed abstracts of such regulations; and
 - (d) every other notice and document required by this Act to be posted in the factory.

(2) All such documents shall be in Setswana and English and in such other language as an inspector may direct, and if a form has been prescribed for any document, it shall be posted in that form.

63. General registers

(1) There shall be kept in every factory a register, in the prescribed form, called the general register, and there shall be entered in, or attached to, that register-

- (a) the certificate of registration of the factory;
- (b) every other certificate issued in respect of the factory by the chief inspector under the provisions of this Act;
- (c) the prescribed particulars as to washing, whitewashing or colourwashing, painting or varnishing of the factory;
- (d) the prescribed particulars as to every accident and case of occupational disease occurring in the factory;
- (e) all reports and particulars required by any other provision of this Act to be entered in or attached to the general register; and

(f) such other matters as may be prescribed.

(2) The occupier of a factory shall send to the chief inspector such extracts from the general register as the chief inspector may from time to time require for the purpose of the execution of his duties under this Act.

64. Preservation of registers and records

The general register and every other register or record kept in pursuance of this Act shall be preserved and shall be kept available for inspection by an inspector for two years after the date of the last entry in the register or record, or such other period, if any, as may be prescribed for any class or description of register or record.

65. Periodical return of persons employed

(1) The occupier of every factory, or of any premises or process or operation to which any of the provisions of this Act apply shall, if so required by the Minister by order published in the *Gazette*, send to the chief inspector, at such intervals and on or before such days as may be specified in the order, a correct return showing with respect to such day or days, or such period, as may be specified in the order, the number of persons employed in the factory or place and giving such particulars as to such other matters as the order may require.

(2) The Minister may, for the purpose of facilitating the rendering of returns by occupiers under the provisions of this section, arrange for the consolidation of those returns with any other returns required from occupiers under the provisions of any other written law for the time being in force.

66. Duties of persons employed

(1) No person employed in a factory shall wilfully interfere with or misuse any means, appliance, convenience or other thing provided in pursuance of this Act for securing the safety, health and welfare of the persons employed in the factory and where any means or appliance for securing safety or health is provided for the use of any such person under this Act he shall use that means or appliance.

(2) No person employed in a factory shall wilfully and without reasonable cause do anything likely to endanger himself or any other person.

67. Prohibition of deductions from wages

The occupier of a factory shall not, in respect of anything to be done or provided by him in pursuance of this Act, make any deduction from the sum contracted to be paid by him to any person employed, or receive, or allow any person in his employment to receive any payment from any such person.

PART X ***Administration (ss 68-69)***

68. Appointment of chief inspector and inspectors

(1) For the purposes of this Act there shall be appointed a chief inspector of factories.

(2) The Minister may designate such public officers and may appoint such other persons

to be inspectors of factories as he considers necessary (under whatever title he may from time to time determine) for the purposes of this Act.

(3) Notice of the designation or appointment of every inspector shall be published in the *Gazette*.

(4) Every inspector shall be furnished with a certificate of his designation or appointment, and when visiting a factory or place to which any of the provisions of this Act apply shall, if so required, produce the said certificate to the occupier or other person holding a responsible position of management in the factory.

(5) A person who is the occupier of a factory, or is directly interested therein or in any process or business carried on therein, or in a patent connected therewith, or is employed in or about a factory, shall not act as an inspector.

(6) No inspector, except insofar as is necessary for the purposes of a prosecution for an offence under this Act, shall publish or disclose to any person the details of any manufacturing or commercial or working process which may come to his knowledge in the course of his duties.

(7) An inspector shall treat as absolutely confidential the source of any complaint bringing to his notice a contravention of the provisions of this Act, and shall give no intimation to the occupier or his representative that a visit of such inspector was made in consequence of such complaint.

(8) A person or inspector who contravenes any of the provisions of subsection (5), (6) or (7) shall be guilty of an offence.

69. Powers of inspectors

(1) An inspector shall, for the purposes of this Act, have power to do any or all of the following things, that is to say-

- (a) to enter, inspect and examine, by day or by night, a factory, and every part thereof when he has reasonable cause to believe that any person is employed therein, and to enter, inspect and examine by day, any place which he has reasonable cause to believe to be a factory and any part of any building of which a factory forms a part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used;
- (b) to take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
- (c) to require the production of the registers, certificates, notes and documents kept in pursuance of this Act, and to inspect, examine and copy any of them;
- (d) to make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act, and of any written law for the time being in force relating to public health, are complied with, so far as it relates to a factory and any person employed in a factory;
- (e) to require any person who he finds in a factory to give such information as is in his power to give as to who is the occupier of the factory;

- (f) to examine any person either alone or in the presence of any other person as he thinks fit, with respect to matters under this Act, and to require every such person to sign a declaration of the truth of the matters respecting which he is so examined; so, however, that no one shall be required under this provision to answer any questions or to give any evidence tending to incriminate himself;
- (g) in the case of an inspector who is a registered medical practitioner, to carry out such medical examinations as may be necessary for the purposes of his duties under this Act; and
- (h) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) The occupier of every factory and his agents and servants shall, when required by an inspector, furnish the means necessary for an entry, inspection, examination, inquiry, the taking of samples, or otherwise for the exercise of his powers under this Act in relation to that factory.

(3) If any person wilfully delays or obstructs an inspector in the exercise of any power under this section, or fails to comply with the requirements of an inspector in pursuance of this section, or to produce any register, certificate, notice or document which he is required by or in pursuance of this Act to produce, or wilfully withholds any information as to who is the occupier of any factory, or conceals or prevents, or attempts to conceal or prevent, a person appearing before or being examined by an inspector, that person shall be deemed to obstruct an inspector in the execution of his duties under this Act.

(4) When an inspector is obstructed in the execution of his powers or duties under this Act, the person obstructing him shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding two years, or to both; and where an inspector is so obstructed in a factory, the occupier of the factory shall be guilty of an offence.

(5) Any notice or certificate issued by the chief inspector under this Act may be issued for a limited period or without limit of period and may be varied or revoked by the chief inspector:

Provided that this subsection shall not apply in respect of any certificate of registration of a factory issued by the chief inspector under the provisions of Part III.

PART XI

Offences, Penalties and Legal Proceedings (ss 70-82)

70. Offences

(1) In the event of any contravention in, or in connection with or in relation to, a factory of the provisions of this Act, the occupier, or (if the contravention is one in respect of which the owner is by or under this Act made responsible), the owner of such factory shall, subject as hereinafter provided in this Act, be guilty of an offence.

(2) In the event of a contravention by an employed person of Part IX with respect to duties of persons employed or of a contravention by any person of any regulations or order made under this Act which expressly imposes any duty upon him, that person shall be guilty of an offence and the occupier or owner, as the case may be, shall not be guilty of an offence by reason only of the contravention of the said provisions of Part IX, or the

contravention of the provision imposing the said duty, as the case may be, unless it is proved that he failed to take all reasonable steps to prevent the contravention; but this subsection shall not be taken as affecting any liability of the occupier or owner in respect of the same matters by virtue of some provision other than the provisions or provision aforesaid.

(3) If the occupier of a factory avails himself of any special exemption allowed under this Act and fails to comply with any of the conditions of the exemption, he shall be deemed to have contravened the provisions of this Act.

(4) If any persons are employed in a factory otherwise than in accordance with the provisions of this Act there shall be deemed to be a separate contravention in respect of each person so employed.

71. Penalty for offences for which no express penalty provided

Subject as hereinafter provided in this Act, any person guilty of an offence under this Act for which no express penalty is provided by this Act shall be liable to a fine not exceeding P100 or to imprisonment for a term not exceeding two months, or to both, and, if the contravention in respect of which he was so convicted is continued after the conviction he shall (subject to the provisions of section 74) be guilty of a further offence and liable in respect thereof to a fine not exceeding P20 for each day on which the contravention was so continued.

72. Power of court to order cause of contravention to be remedied

Where the occupier or owner of a factory is convicted of an offence under this Act, the court may, in addition to or instead of imposing any penalty, order him, within such times as may be specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time specified, and, where such an order is made, the occupier or owner shall not be liable under this Act, in respect of the continuation of the contravention during the time allowed by the court, but if, after the expiration of that time, as originally specified or enlarged by subsequent order, the order is not complied with, the owner or occupier, as the case may be, shall be liable to a fine not exceeding P20 for each day on which the non-compliance continued.

73. Penalty in case of death or injury

If any person is killed, or dies, or suffers any bodily injury, in consequence of the occupier or owner of a factory having contravened any provision of this Act, the occupier or owner of the factory shall be liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both and the whole or any part of any fine may be applied for the benefit of the injured person or his family or otherwise as the court may order, irrespective of whether the deceased person's family, or the injured person, has received compensation from any other source:

Provided that the occupier or owner shall not be liable to a penalty under this section if a charge against him under this Act in respect of the act or default by which the death or injury was caused has been heard and dismissed before the death or injury occurred.

74. Forgery of certificates, false entries and false declarations

If any person-

- (a) forges or counterfeits any certificate required by, under or for the purposes of this Act;
- (b) gives or signs any such certificate knowing it to be false in any material particular;
- (c) knowingly utters or makes use of any such certificate so forged, counterfeited or false;
- (d) knowingly utters or makes use of, as applying to any person, any such certificate which does not so apply;
- (e) personates any person named in any such certificate;
- (f) falsely pretends to be an inspector;
- (g) wilfully connives at any such forging, counterfeiting, giving, signing, uttering, making use of, personating or pretending as aforesaid;
- (h) wilfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Act to be kept or served or sent;
- (i) wilfully makes or signs a false declaration required by, under or for the purposes of this Act; or
- (j) knowingly makes use of any such false entry or declaration as aforesaid,

he shall be guilty of an offence under this Act and liable to a fine not exceeding P400 or to imprisonment for a term not exceeding six months, or to both.

75. Penalty on persons actually committing offence for which occupier is liable

When an act or default for which an occupier or owner of a factory is liable under this Act is in fact the act or default of some agent, servant, worker or other person, that agent, servant, worker or other person shall also be guilty of an offence and liable to the like penalty as if he were the occupier or owner, as the case may be.

76. Power of occupier or owner to exempt himself from liability on conviction of the actual offender

(1) Where the occupier or owner of a factory is charged with an offence under this Act, he shall be entitled, on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person jointly charged with him (whether or not that person is an agent or servant) and brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the occupier or owner of the factory proves to the satisfaction of the court-

- (a) that he used all due diligence to enforce the execution of this Act and of any relevant regulations or order made thereunder; and
- (b) that the said other person committed the offence in question without his consent, connivance or wilful default,

that other person shall be convicted of the offence, and the occupier or owner shall be

acquitted of the offence and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence-

- (a) that the occupier or owner (as the case may be) of the factory has used all due diligence to enforce the execution of this Act;
- (b) by which person the offence has been committed; and
- (c) that it has been committed without the consent, connivance or wilful default of the occupier or owner and in contravention of his orders,

the inspector shall proceed against the person who he believes to be the actual offender without first proceeding against the occupier or owner of the factory.

77. Proceedings against persons other than occupiers or owners

Where, under this Act, any person is substituted for the occupier or owner of a factory with respect to any provisions of this Act, any order, summons, notice or proceeding, which for the purpose of those provisions, is by or under this Act required or authorized to be served on or taken in relation to the occupier or owner, is hereby required or authorized (as the case may be) to be served or taken in relation to that person.

78. Prosecution of offences

(1) In any proceedings under this Act, it shall be sufficient in the charge or information to allege that the factory is a factory within the meaning of this Act and to state the name of the ostensible occupier of the factory, or, where the occupier is a firm, the title of the firm; and the burden of proving that the premises are not a factory, or that the occupier specified in the charge or information is not the occupier of the factory, shall lie upon the person alleging such fact.

(2) Where an offence is committed under this Act by reason of a failure to make an examination, enter a report or do any other thing, at or within a time specified by this Act, the offence shall be deemed to continue until the examination is made or the report entered or the other thing done, as the case may be.

79. Special provisions as to evidence

(1) If a person is found in a factory at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in that factory:

Provided that this subsection shall not apply to a factory in which the only persons employed are members of the same family dwelling there.

(2) When an entry is required by this Act to be made in the general register or in any other register or record, the entry made by the occupier of the factory or on his behalf shall, as against him, be admissible as evidence of the facts stated therein, and the fact that any entry as required with respect to the observance of any provision of this Act has not been made, shall be admissible as evidence that that provision has not been observed.

80. Service and sending of documents

(1) Any document (including any summons or order) required or authorized to be served under this Act may be served-

- (a) on any person by delivering it to him, or by leaving it at, or by sending it by post to, his residence or place of business;
- (b) on any firm by delivering it to any partner of the firm, or by leaving it at, or sending it by post to, the office of the firm;
- (c) on the occupier or owner of a factory (including any such occupier or owner being a company to which the Companies Act applies, or a co-operative society to which the Co-operative Societies Act applies) in any such manner as aforesaid, or by delivering it, or a true copy thereof, to any responsible person not apparently under the age of 16 years at the factory.

(2) Any such document may be addressed, for the purpose of the service thereof on the occupier of a factory, to "the occupier" at the proper postal address of the factory, without further name or description.

(3) The provisions of this section shall apply, with the necessary modifications to documents required or authorized under this Act to be sent to any person, firm, occupier or owner, and to the sending, addressing and delivery of such documents.

81. Power to modify agreements

If, by reason of an agreement between the owner and occupier of premises, the whole or any part of which has been let as a factory, such occupier or owner is prevented from carrying out any structural or other alterations in the premises which are necessary to enable him to comply with the provisions of this Act, or in order to conform with any standard or requirement imposed by or under this Act, he may apply to a judge in chambers for the terms of the agreement to be set aside or modified; and the judge, after hearing the parties and any witnesses who they may desire to call, may make such order setting aside or modifying the terms of the agreement, as he considers just and equitable in the circumstances of the case.

82. Power to apportion expenses

Where in any premises the whole or any part of which has been let as a factory any structural or other alterations are required in order to comply with the provisions of this Act or in order to conform with any standard or requirement imposed by this Act, and the occupier or owner, as the case may be, alleges that the whole or part of the expenses of the alterations ought to be borne by the owner or occupier, as the case may be, the occupier or owner may apply to a judge in chambers for the expenses of the alterations to be apportioned between them; and the judge, after hearing the parties and any witnesses who they may desire to call, may make such order concerning the expenses and their apportionment as he considers just and equitable in the circumstances of the case, regard being paid to the terms of any contract between the parties, or, in the alternative, he may, at the request of the owner or occupier, determine the lease.

PART XII

General (ss 83-84)

83. Factories Advisory Board

For the purpose of giving advice and assistance in regard to matters affecting safety, health and welfare in factories and such other places as are subject to the provisions of this Act, the Minister may, by order published in the *Gazette*, establish a Factories Advisory Board of such composition as he considers adequate and suitable.

84. Saving

Except where otherwise expressly provided, the provisions of this Act shall be in addition to, and not in substitution for or diminution of, the provisions of any other written law.

FIRST SCHEDULE PARTICULARS TO BE SUBMITTED BY OCCUPIER OR INTENDING OCCUPIER OF A FACTORY

(ss. 8 and 9)

1. Name of the occupier or intending occupier of the factory.
2. Address and location of the factory.
3. Nature of the work carried on, or proposed to be carried on, in the factory.
4. Whether mechanical power is used or intended to be used and, if so, its nature.
5. Whether steam boilers are used or intended to be used and, if so, the following particulars in respect of each boiler-
 - (a) type, description and distinctive number;
 - (b) country and year of manufacture;
 - (c) date of the last thorough examination and name of the person by whom the examination was made;
 - (d) maximum working pressure in kg per cm².
- 6(a) Total number of persons employed or intended to be employed in the factory. If males and females are to be employed numbers of each sex.
- (b) Where persons are employed, or intended to be employed in shifts, the maximum number employed, or intended to be employed at any one time.

SECOND SCHEDULE CERTIFICATE OF REGISTRATION OF A FACTORY

(ss. 8 and 9)

FACTORIES ACT

No. of Certificate

Date of Issue

I hereby certify that the factory named below has been duly registered in pursuance of section of the Factories Act.

Name of occupier

Address and location of factory

.....

Nature of work carried on

.....
Chief Inspector of Factories

THIRD SCHEDULE REGISTER OF CHAINS, ROPES, LIFTING TACKLE AND LIFTING MACHINES

(s. 33)

1. Name of occupier of the factory.
2. Address and location of the factory.
3. Distinguishing number or mark and description sufficient to identify the chain, rope or lifting tackle or the lifting machine.
4. Date (if after the commencement of the Act) when the chain, rope or lifting tackle or lifting machine was first taken into use in the factory.
5. Date of each examination made under section 31(1)(d) or section 32(2), as the case may be, and the name of the person by whom it was carried out.
6. Particulars of any defect found at any such examination and affecting the safe working load, and of the steps taken to remedy such defect.
7. Date and number of the certificate relating to any test and examination made under section 31(1)(e) or section 32(3), as the case may be, together with the name and address of the person who issued the certificate.
8. In the case of chains and lifting tackle (except rope slings), dates of annealing or other heat treatment.

FOURTH SCHEDULE

**PROCESSES REQUIRING PROVISION OF SUITABLE GOGGLES
OR EFFECTIVE SCREENS**

(s. 54)

1. Dry grinding of metals, or articles of metal, applied by hand to a revolving wheel or disc driven by mechanical power.
2. Turning (external or internal) or non-ferrous metals or of cast iron, or of articles of such metals or such iron, where the work is done dry, other than precision turning where the use of goggles or a screen would seriously interfere with the work, or turning by means of hand tools.
3. Welding or cutting of metals by means of an electrical, oxyacetylene or similar process.
4. The following processes when carried on by means of hand tools or other portable tools-
 - (a) fettling of metal castings involving the removal of metal;
 - (b) cutting out or cutting off (not including drilling or punching back) of cold rivets or bolts from boilers or other plant;
 - (c) chipping or scaling of boilers or other plant;
 - (d) breaking or dressing of stone, concrete or slag.

**FIFTH SCHEDULE
DANGEROUS OCCURRENCES OF WHICH WRITTEN NOTICE MUST BE GIVEN
TO THE CHIEF INSPECTOR**

(s. 57)

1. Bursting of a revolving vessel, wheel, grindstone or grinding wheel moved by mechanical power.
2. Collapse or failure of a crane, derrick, winch, hoist or other appliance used in raising or lowering persons or goods, or any part thereof, or the overturning of a crane.
3. Explosion or fire causing damage to the structure of any room or place in which persons are employed, or to any machine or plant contained therein, and resulting in the complete suspension or ordinary work in such room or place or stoppage of machinery or plant for not less than 24 hours.
4. Electrical short circuit or failure of electrical machinery, plant or apparatus, attended by explosion or fire and causing structural damage thereto, and involving its stoppage or disuse for not less than 24 hours.
5. Explosion of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air), or any liquid or solid resulting from the compression of gas.

6. Explosion from a steam boiler, steam receiver, or air receiver.

SIXTH SCHEDULE INDUSTRIAL DISEASES

(s. 58)

1. Lead poisoning, including poisoning by any preparation or compound of lead.
2. Phosphorous poisoning by phosphorous or its compounds.
3. Mercurial poisoning by mercury, its amalgams or compounds.
4. Manganese poisoning.
5. Arsenical poisoning by arsenic or its compounds.
6. Aniline poisoning.
7. Carbon bisulphide poisoning.
8. Benzene poisoning, including poisoning by any of its homologues, or their nitro or amido derivatives.
9. Chrome ulceration due to chromic acid or bichromate of potassium, sodium or ammonium, or any preparation of these substances.
10. Anthrax.
11. Silicosis.
12. Pathological manifestations due to-
 - (a) radium or other radio-active substances;
 - (b) X-rays.
13. Toxic jaundice due to tetrachlorethane or nitro or amido derivatives of benzene or other poisonous substances.
14. Toxic anaemia.
15. Primary epitheliomatous ulceration of the skin, due to the handling or use of tar, pitch, bitumen, mineral oil or paraffin, or any compound product or residue of any of these substances.
16. Compressed air illness.
17. Asbestosis.
18. Byssinosis.

19. Bagassosis.
20. Tobacosis.

**SEVENTH SCHEDULE
PARTICULARS TO BE SUBMITTED BY OCCUPIER OF PREMISES
(OTHER THAN A FACTORY) IN WHICH A STEAM BOILER IS USED**

(s. 60)

1. Name of the occupier of the premises.
2. Address and location of the premises.
3. Nature of the work carried on in the premises.
4. The following particulars in respect of each steam boiler in use-
 - (a) type, description and distinctive number;
 - (b) country and year of manufacture;
 - (c) date of the last thorough examination and name of the person by whom the examination was made;
 - (d) maximum permissible working pressure in kg per cm².