OCCUPATIONAL HEALTH AND SAFETY ACT NO 85 OF 1993

To provide for the health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery; the protection of persons other than persons at work against hazards to health and safety arising out of or in connection with the activities of persons at work; to establish an advisory council for occupational health and safety; and to provide for matters connected therewith.

1. Definitions.

(1) In this Act, unless the context otherwise indicates —

"approved inspection authority" means an inspection authority approved by the chief inspector: Provided that an inspection authority approved by the chief inspector with respect to any particular service shall be an approved inspection authority with respect to that service only;

"biological monitoring" means a planned programme of periodic collection and analysis of body fluid, tissues, excreta or exhalant air in order to detect and quantify the exposure to or absorption of any substance or organism by persons;

"building" includes —

(a) any structure attached to the soil;

(b) any building or such structure or part thereof which is in the process of being erected; or

(c) any prefabricated building or structure not attached to the soil;

"chief executive officer", in relation to a body corporate or an enterprise conducted by the State, means the person who is responsible for the overall management and control of the business of such body corporate or enterprise;

"chief inspector" means the officer designated under section 27 as chief inspector, and includes any officer acting as chief inspector;

"Council" means the Advisory Council for Occupational Health and Safety established by section 2;

"danger" means anything which may cause injury or damage to persons or property;

"Department" means the Department of Manpower;

"employee" means, subject to the provisions of subsection (2), any person who is employed by or works for an employer and who receives or is entitled to receive any remuneration or who works under the direction or supervision of an employer or any other person;

"employer" means, subject to the provisions of subsection (2), any person who employs or provides work for any person and remunerates that person or expressly or tacitly undertakes to remunerate him, but excludes a labour broker as defined in section 1 (1) of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"employers' organization" means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

[Definition of "employers' organization" inserted by s. 1 (a) of Act No. 181 of 1993.]

"employment" or "employed" means employment or employed as an employee;

"explosives" means any substance such as is listed in Class 1 Explosives on the South African Bureau of Standards Code of Practice for the Identification and Classification of Dangerous Substances and Goods, SABS 0228;

"hazard" means a source of or exposure to danger;

"health and safety committee" means a committee established under section 19;

"health and safety equipment" means any article or substance, whether manufactured, provided or installed in the interest of the health or safety of any person;

"health and safety representative" means a person designated in terms of section 17 (1);

"health and safety standard" means any standard, irrespective of whether or not it has the force of law, which, if applied for the purposes of this Act, will in the opinion of the Minister promote the attainment of an object of this Act;

"healthy" means free from illness or injury attributable to occupational causes;

"incident" means an incident as contemplated in section 24 (1);

"industrial court" means the industrial court referred to in section 17 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

"inspection authority" means any person who with the aid of specialized knowledge or equipment or after such investigations, tests, sampling or analyses as he may consider necessary, and whether for reward or otherwise, renders a service by making special findings, purporting to be objective findings, as to —

(a) the health of any person;

(b) the safety or risk to health of any work, article, substance, plant or machinery, or of any condition prevalent on or in any premises; or

(c) the question of whether any particular standard has been or is being complied with with respect to any work, article, substance, plant or machinery, or in any premises or with a condition prevalent on or in any premises, or with respect to any other matter,

and by issuing a certificate, stating such findings, to the person whom the service is rendered;

"inspector" means a person designated under section 28;

"listed work" means any work declared to be listed work under section 11;

"local authority" means —

(a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act No. 32 of 1961);

(b) any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985);

(c) any other institution or body or the holder of any office declared by the Minister by notice in the Gazette to be a local authority for the purposes of this Act;

"machinery" means any device or combination of articles assembled, arranged or connected and which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used, whether incidental thereto or not, for developing, receiving, storing, containing, confining, transformating, transmitting, transferring or controlling any form of energy;

"major hazard installation" means an installation —

(a) where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily; or

(b) where any substance is produced, processed, used, handled or stored in such a form and in such a quantity that it has the potential to cause a major incident;

"major incident" means an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a work-place;

"manufacturer" includes an agent, a contractor or a subcontractor who, but without derogating from his status in his own right as an employer or a user;

"medical surveillance" means a planned programme or periodic examination (which may include clinical examinations, biological monitoring or medical tests) of employees by an occupational health practitioner or, in exceptional cases, by an occupational medicine practitioner;

"Minister" means the Minister of Manpower;

"occupational health" includes occupational hygiene, occupational medicine and biological monitoring;

"occupational health practitioner" means an occupational medicine practitioner or a person who holds a qualification in occupational health recognized as such by the South African Medical and Dental Council as referred to in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), or the South African Nursing Council as referred to in the Nursing Act, 1978 (Act No. 50 of 1978);

"occupational hygiene" means the anticipation, recognition, evaluation and control of conditions arising in or from the work-place, which may cause illness or adverse health effects to persons;

"occupational medicine" means the prevention, diagnosis and treatment of illness, injury and any other health disorder in relation to persons at work;

"occupational medicine practitioner" means a medical practitioner as defined in the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974), who holds a qualification in occupational medicine or an equivalent qualification or equivalent is recognized as such by the South African Medical and Dental Council referred to in the said Act;

"office" means an office as defined in section 1 (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

"officer" means an officer or employee as defined in section 1 (1) of the Public Service Act, 1984 (Act No. 111 of 1984);

"organism" means any biological entity which is capable of causing illness to persons;

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

"premises" includes any building, vehicle, vessel, train or aircraft;

"prescribed" means prescribed by regulation;

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

"reasonably practicable" means practicable having regard to —

(a) the severity and scope of the hazard or risk concerned;

(b) the state of knowledge reasonably available concerning that hazard or risk and of any means of removing or mitigating that hazard or risk;

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

(d) the cost of removing or mitigating that hazard or risk in relation to the benefits deriving therefrom;

"regulation" means a regulation made under section 43;

"remuneration" means any payment in money or in kind or both in money and in kind, made or owing to any person in pursuance of such person's employment;

"risk" means the probability that injury or damage will occur;

"safe" means free from hazard;

"sell" includes —

(a) offer or display for sale or import into the Republic for sale; or

(b) exchange, donate, lease or offer or display for leasing;

"shop" means shop as defined in section 1 (1) of the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

"standard" means any provision occurring —

(a) in a specification, compulsory specification, code of practice or standard method as defined in section 1 of the Standards Act, 1993 (Act No. 29 of 1993); or

(b) in any specification, code or any other directive having standardization as its aim and issued by an institution or organization inside or outside the Republic which, whether generally or with respect to any particular article or matter and whether internationally or in any particular country or territory, seeks to promote standardization;

"substance" includes any solid, liquid, vapour, gas or aerosol, or combination thereof;

"this Act" includes any regulation;

"trade union" means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956);

[Definition of "trade union" inserted by s. 1 (b) of Act No. 181 of 1993.]

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

"work" means work as an employee or as a self-employed person, and for such purpose an employee is deemed to be at work during the time that he is in the course of his employment, and a self-employed person is deemed to be at work during such time as he devotes to work as a self-employed person;

"work-place" means any premises or place where a person performs work in the course of his employment.

(2) The Minister may by notice in the Gazette declare that a person belonging to a category of persons specified in the notice shall for the purposes of this Act or any provision thereof be deemed to be an employee, and thereupon any person vested and charged with the control and supervision of the said person shall for the purposes so deemed to be the employer of such person.

(3) This Act shall not apply in respect of —

(a) a mine, a mining area or any works as defined in the Minerals Act, 1991 (Act No. 50 of 1991), except in so far as that Act provides otherwise;

(b) any load line ship (including a ship holding a load line exemption certificate), fishing boat, sealing boat and whaling boat as defined in section 2 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), or any floating crane, whether or not such ship, boat or crane is in or out of the water within any harbour in the Republic or within the territorial waters thereof,

[Date of commencement of para. (b) to be proclaimed.]

or in respect of any person present on or in any such mine, mining area, works, ship, boat or crane.

2. Establishment of Advisory Council for Occupational Health and Safety. — There is hereby established an Advisory Council for Occupational Health and Safety.

3. Functions of Council. —

(1) The Council shall —

(a) advise the Minister with regard to —

(i) matters of policy arising out of or in connection with the application of the provisions of this Act;

(ii) any matter relating to occupational health and safety;

(b) perform the functions assigned to it by this Act or referred to it by the Minister.

(2) The Council may —

(a) with a view to the performance of its functions, do such research and conduct such investigations as it may deem necessary;

(b) make rules relating to the calling of meetings of the Council, the determining of a quorum for and the procedure at such meetings, and generally relating to all matters which may be necessary for the effective performance of the functions of the Council or, subject to section 6, of a technical committee;

(c) advise the Department concerning —

(i) the formulation and publication of standards, specifications or other forms of guidance for the purpose of assisting employers, employees and users to maintain appropriate standards of occupational health and safety;

(ii) the promotion of education and training in occupational health and safety; and

(iii) the collection and dissemination of information on occupational health and safety.

(3) The Council may for the purposes of the performance of any of its functions, with the approval of the Minister, and with the concurrence of the Minister of State Expenditure, enter into an agreement for the performance of a particular act or particular work or for the rendering of a particular service, on such conditions and at such remuneration as may be agreed upon, with anybody who in the opinion of the Council is fit to perform such act or work or to render such service.

(4) Subject to the laws governing the Public Service, the Minister shall provide the Council with such personnel as he may deem necessary for the effective performance of the functions of the Council, and such persons shall perform their functions subject to the control and directions of the chief inspector.

4. Constitution of Council. —

(1) The Council shall consist of 20 members, namely —

(a) the chief inspector, ex officio, who shall be the chairman;

(b) one officer serving in the Department;

(c) the Workmen's Compensation Commissioner, or his nominee;

(d) one person nominated by the Minister for National Health and Welfare;

(e) one person nominated by the Minister of Mineral and Energy Affairs;

(f) six persons to represent the interests of employers from a list of the names of persons nominated by employers' organizations or federations of employers' organizations;

[Para. (f) substituted by s. 2 of Act No. 181 of 1993.]

(g) six persons to represent the interests of employees from a list of the names of persons nominated by trade unions or federations of trade unions;

[Para. (g) substituted by s. 2 of Act No. 181 of 1993.]

(h) one person who in the opinion of the Minister has knowledge of occupational safety matters;

(i) one person who in the opinion of the Minister has knowledge of occupational medicine and who was recommended by the Minister for National Health and Welfare;

(j) one person who in the opinion of the Minister has knowledge of occupational hygiene.

(2) The members referred to in subsection (1) (b) up to and including (j) shall be appointed by the Minister.

5. Period of office and remuneration of members of Council. —

(1) The members of the Council referred to in section 4 (2) shall be appointed for a period of three years, and on such conditions as the Minister may determine with the concurrence of the Minister of State Expenditure.

(2) Any person whose period of office as a member of the Council has expired shall be eligible for re-appointment.

(3) A member referred to in section 4 (1) (f), (g), (h), (i) or (j) who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.

6. Establishment of technical committees of Council. —

(1) The Council may with the approval of the Minister establish one or more technical committees to advise the Council on any matter regarding the performance by the Council of its functions.

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

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

(4) A member of a technical committee who is not an officer may be paid from money appropriated for such purpose by Parliament such allowances as the Minister may determine with the concurrence of the Minister of State Expenditure.

7. Health and safety policy. —

(1) The chief inspector may direct —

(a) any employer in writing; and

(b) any category of employers by notice in the *Gazette*,

to prepare a written policy concerning the protection of the health and safety of his employees at work, including a description of his organization and the arrangements for carrying out and reviewing that policy.

(2) Any direction under subsection (1) shall be accompanied by a statement of the contents of the policy concerned.

(3) An employer shall prominently display a copy of the policy referred to in subsection (1), signed by the chief executive officer, in the work-place where his employees normally report for service.

8. General duties of employers to their employees. —

(1) Every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees.

(2) Without derogating from the generality of an employer's duties under subsection (1), the matters to which those duties refer include in particular —

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

(b) taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees, before resorting to personal protective equipment;

(c) making arrangements for ensuring, as far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances;

(d) establishing, as far as is reasonably practicable, what hazards to the health or safety of persons are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in his business, and he shall, as far as is reasonably practicable, further establish what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons, and he shall provide the necessary means to apply such precautionary measures;

(e) providing such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of his employees;

(f) as far as is reasonably practicable, not permitting any employee to do any work or to produce, process, use, handle, store or transport any article or substance or to operate any plant or machinery, unless that precautionary measures contemplated in paragraphs (b) and (d), or any other precautionary measures which may be prescribed, have been taken;

(g) taking all necessary measures to ensure that the requirements of this Act are complied with by every person in his employment or on premises under his control where plant or machinery is used;

(h) enforcing such measures as may be necessary in the interest of health and safety;

(i) ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented; and

(j) causing all employees to be informed regarding the scope of their authority as contemplated in section 37 (1) (b).

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

(1) Every employer shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

(2) Every self-employed person shall conduct his undertaking in such a manner as to ensure, as far as is reasonably practicable, that he and other persons who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.

10. General duties of manufacturers and others regarding articles and substances for use at work. —

(1) Any person who designs, manufactures, imports, sells or supplies any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risks to health when properly used and that it complies with all prescribed requirements.

(2) Any person who erects or installs any article for use at work or on in any premises shall ensure, as far as is reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used.

(3) Any person who manufactures, imports, sells or supplies any substance for use at work shall —

(a) ensure, as far as is reasonably practicable, that the substance is safe and without risks to health when properly used; and

(b) take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risks to health and safety associated with such substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance.

(4) Where a person designs, manufactures, imports, sells or supplies an article or substance for or to another person and that other person undertakes in writing to take specified steps sufficient to ensure, as far as is reasonably practicable, that the article or substance will comply with all prescribed requirements and will be safe and without risks to health when properly used, the undertaking shall have the effect of the first-mentioned person from the duty imposed upon him by this section to such an extent as may be reasonable having regard to the terms of the undertaking relieving.

11. Listed work. —

(1) The Minister may, subject to the provisions of subsections (2) and (3), by notice in the *Gazette* declare any work, contained in such notice, to be listed work.

(2) (*a*) Before the Minister declares any work to be listed work, he shall cause to be published in the *Gazette* a draft of his proposed notice and at the same time invite interested persons to submit to him in writing within a specified period, comments and representations in connection with the proposed notice.

(*b*) A period of not less than three months shall elapse between the draft notice and the notice under subsection (1).

(3) The provisions of subsection (2) shall not apply —

(*a*) if the Minister in pursuance of comments and representations received in terms of subsection (2) (*a*), decides to publish the notice referred to in subsection (1) in an amended form; and

(*b*) to any declaration in terms of subsection (1) in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

(4) A notice under subsection (1) may at any time be amended or withdrawn by like notice.

12. General duties of employers regarding listed work. —

(1) Subject to such arrangements as may be prescribed, every employer whose employees undertake listed work or are liable to be exposed to the hazards emanating from listed work, shall, after consultation with the health and safety committee established for that work place —

(*a*) identify the hazards and evaluate the risks associated with such work constituting a hazard to the health of such employees, and the steps that need to be taken to comply with the provisions of this Act;

(*b*) as far as is reasonably practicable, prevent the exposure of such employees to the hazards concerned or, where prevention is not reasonably practicable, minimise such exposure; and

(*c*) having regard to the nature of the risks associated with such work and the level of exposure of such employees to the hazards, carry out an occupational hygiene programme and biological monitoring, and subject such employees to medical surveillance.

(2) Every employer contemplated in subsection (1) shall keep the health and safety representatives designated for their work-places or sections of the work-places, informed of the actions taken under subsection (1) in their respective work-places or sections thereof and of the results of such actions: Provided that individual results of biological monitoring and medical surveillance relating to the work of the employee, shall only with the written consent of such employee be made available to any person other than an inspector, the employer or the employee concerned.

13. Duty to inform. —

Without derogating from any specific duty imposed on an employer by this Act, every employer shall —

(*a*) as far as is reasonably practicable, cause every employee to be made conversant with the hazards to his health and safety attached to any work which he is to perform, any article or substance which he has to produce, process, use, handle, store or transport and any plant or machinery which he is required or permitted to use, as well as with the precautionary measures which should be taken and observed with respect to those hazards;

(*b*) inform the health and safety representatives concerned beforehand of inspections, investigations or formal inquiries of which he has been notified by an inspector, and of any application for exemption made by him in terms of section 40; and

(*c*) inform a health and safety representative as soon as reasonably practicable of the occurrence of an incident in the work-place or section of the work-place for which such representative has been designated.

14. General duties of employees at work. —

Every employee shall at work —

(*a*) take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions;

(*b*) as regards any duty or requirement imposed on his employer or any other person by this Act, co-operate with such employer or person to enable that duty or requirement to be performed or complied with;

(*c*) carry out any lawful order given to him, and obey the health and safety rules and procedures laid down by his employer or by anyone authorized thereto by his employer, in the interest of health or safety;

(*d*) if any situation which is unsafe or unhealthy comes to his attention, as soon as practicable report such situation to his employer or to the health and safety representative for his work-place or section thereof, as the case may be, who shall report it to the employer; and

(*e*) if he is involved in any incident which may affect his health or which has caused an injury to himself, report such incident to his employer or to anyone authorized thereto by the employer, or to his health and safety representative for his work-place or section thereof, as the case may be, who shall report the incident to the employer: Provided that if such shift during which the incident occurred, unless the circumstances were such that the reporting of the incident was not possible, in which case he shall report the incident as soon as practicable thereafter.

15. Duty not to interfere with, damage or misuse. —

No person shall intentionally or recklessly interfere with, damage or misuse anything which is provided in the interest of health or safety.

16. Chief executive officer charged with certain duties. —

(1) Every chief executive officer shall, as far as is reasonably practicable ensure that the duties of his employer as contemplated in this Act, are properly discharged.

(2) Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection to any person under his control, which person shall subject to the control and directions of the chief executive officer perform such duty.

(3) The provisions of subsection (1) shall not, subject to the provisions of section 37, relieve an employer of any responsibility or liability under this Act.

(4) For the purpose of subsection (1), the head of department of any department of State shall be deemed to be the chief executive officer of that department.

17. Health and safety representatives. —

(1) Subject to the provisions of subsection (2), every employer who has more than 20 employees in his employment at any work-place, shall, within four months after the commencement of this Act or after commencing his business, or for such shorter period after such commencement as may be prescribed, in writing designate in the prescribed manner and subject to the provisions of this section, as the case may be, designate in writing for a specified period health and safety representatives for such work-place or for different sections thereof.

(2) An employer shall designate representatives of his employees recognized by him or, where there are no such representatives, the employees shall consult in good faith regarding the arrangements and procedures for the nomination or election, period of office and subsequent designation of health and safety representatives in terms of subsection (1): Provided that if such consultation fails, the matter shall be referred for arbitration to a person nominated by the chairman of the Commission for Conciliation, Mediation and Arbitration, as the case may be, designated in writing for a specified period hereof and such arbitration shall be final: Provided further that if the parties do not agree within 14 days on an arbitrator, the employer shall give notice to this effect in writing to the President of the Industrial Court, who shall in consultation with the chief inspector designate an arbitrator, whose decision shall be final.

[Sub-s. (2) substituted by s. 4 of Act No. 181 of 1993.]

(3) Arbitration in terms of subsection (2) shall not be subject to the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), and a failure of the consultation contemplated in that subsection shall not be deemed to be a dispute in terms of the Labour Relations Act, 1956 (Act No. 28 of 1956): Provided that the Minister may prescribe the manner of arbitration and the remuneration of the arbitrator designated by the President of the Industrial Court.

[Sub-s. (3) substituted by s. 4 of Act No. 181 of 1993.]

(4) Only those employees employed in a full-time capacity at a specific work-place and who are acquainted with conditions and activities at that work-place or section thereof, as the case may be, shall be eligible for designation as health and safety representatives for that work-place or section.

(5) The number of health and safety representatives for a work-place or section thereof shall in the case of shops and offices be at least one health and safety representative for every 100 employees or part thereof, and in the case of all other work-places at least one health and safety representative for every 50 employees or part thereof: Provided that those employees performing work at a work-place other than that where they ordinarily report for duty, shall be deemed to be working at the work-place where they so report for duty.

(6) If an inspector is of the opinion that the number of health and safety representatives for any work-place or section thereof, including a work-place or section with 20 or fewer employees, is inadequate, he may by notice in writing direct the employer to designate such number of employees as the inspector may determine as health and safety representatives for that work-place or section thereof in accordance with the arrangements and procedures referred to in subsection (2).

(7) All activities in connection with the designation, functions and training of health and safety representatives shall be performed during ordinary working hours, and any time reasonably spent by any employee in this regard shall for all purposes be deemed to be time spent by him in the carrying out of his duties as an employee.

18. Functions of health and safety representatives. —

(1) A health and safety representative may perform the following functions in respect of the work-place or section of the work-place for which he has been designated, namely —

(*a*) review the effectiveness of health and safety measures;

(*b*) identify potential hazards and potential major incidents at the work-place;

(*c*) in collaboration with his employer, examine the causes of incidents at the work-place;

(*d*) investigate complaints by any employee relating to that employee's health or safety at work;

(*e*) make representations to the employer or a health and safety committee on matters arising from paragraphs (*a*), (*b*), (*c*) or (*d*), or where such representations are unsuccessful, to an inspector;

(*f*) make representations to the employer on general matters affecting health or safety of employees at the work-place;

(*g*) inspect the work-place, including any article, substance, plant, machinery or health and safety equipment at that work-place with a view to the health and safety of employees, at such intervals as may be agreed upon with the employer: Provided that the health and safety representative shall give reasonable notice of his intention to carry out such an inspection to the employer, who may be present during the inspection;

(*h*) participate in consultations with inspectors at the work-place and accompany inspectors on inspections of the work-place;

(*i*) receive information from inspectors as contemplated in section 36; and

(*j*) in his capacity as a health and safety representative attend meetings of the health and safety committee of which he is a member, in connection with any of the above functions.

(2) A health and safety representative shall, in respect of the work-place or section of the work-place for which he has been designated be entitled to —

(*a*) visit the site of an incident at all reasonable times and attend any inspection *in loco*;

(*b*) attend any inquiry into any incident in terms of this Act;

(*c*) in so far as it is reasonably necessary for performing his functions, inspect any document which the employer is required to keep in terms of this Act;

(*d*) accompany an inspector on any inspection;

(*e*) with the approval of the employer (which approval shall not be unreasonably withheld), be accompanied by a technical adviser, on any inspection; and

(*f*) participate in any internal health or safety audit.

[Sub-s. (2) substituted by s. 5 of Act No. 181 of 1993.]

(3) An employer shall provide such facilities, assistance and training as a health and safety representative may reasonably require and as have been agreed upon for the carrying out of his functions.

(4) A health and safety representative shall not be liable for the fact only that he failed to do anything which he may do or is required to do in terms of this Act.

19. Health and safety committees. —

(1) An employer shall in respect of each work-place where two or more health and safety representatives have been designated, establish one or more health and safety committees and, at every meeting of such a committee as contemplated in subsection (4), consult with the committee with a view to initiating, developing, promoting, maintaining and reviewing measures to ensure the health and safety of his employees at work.

(2) A health and safety committee shall consist of such number of members as the employer may from time to time determine: Provided that —

(*a*) if one health and safety committee has been established in respect of a work-place, all the health and safety representatives for that work-place shall be members of the committee;

(*b*) if two or more health and safety committees have been established in respect of a work-place, each health and safety representative for that work-place shall be a member of at least one of those committees; and

(*c*) the number of persons nominated by an employer on any health and safety committee established in terms of this section shall not exceed the number of health and safety representatives on that committee. The persons nominated by an employer on a health and safety committee shall be designated in writing by the employer for such period as may be determined by him, while the health and safety representatives shall be members of the committee for the period of their designation in terms of section 17 (1).

(3) A health and safety committee shall hold meetings as often as may be necessary, but at least once every three months, at a time and place determined by the committee: Provided that an inspector may by notice in writing direct the members of a health and safety committee to hold a meeting at a time and place determined by him: Provided further that, if more than 10 per cent of the employees at a specific work-place has handed a written request to an inspector, the inspector may by written notice direct that such a meeting be held.

(5) The procedure at meetings of a health and safety committee shall be determined by the committee.

(6) (*a*) A health and safety committee may co-opt one or more persons by reason of his or their particular knowledge of health or safety matters as an advisory member or as advisory members of the committee.

(*b*) An advisory member shall not be entitled to vote on any matter before the committee.

(7) If an inspector is of the opinion that the number of health and safety committees established for any particular work-place is inadequate, he may in writing direct the employer to establish for such work-place such number of health and safety committees as the inspector may determine.

20. Functions of health and safety committees. —

(1) A health and safety committee —

(*a*) may make recommendations to the employer or, where the recommendations fail to resolve the matter, to an inspector regarding any matter affecting the health or safety of persons at the work-place or any section thereof for which such committee has been established;

(*b*) shall discuss any incident in the work-place or section of which or in consequence of which any person was injured, became ill or died, and may in writing report on the incident to an inspector; and

(*c*) shall perform such other functions as may be prescribed.

(2) A health and safety committee shall keep record of each recommendation made to an employer in terms of subsection (1) (*a*) and of any report made to an inspector in terms of subsection (1) (*b*).

(3) A health and safety committee or a member thereof shall not incur any civil liability by reason of the fact only that it or he failed to do anything which it or he may or is required to do in terms of this Act.

(4) An employer shall take the prescribed steps to ensure that a health and safety committee complies with the provisions of section 19 (4) and performs the duties assigned to it by subsections (1) and (2).

21. General prohibitions. —

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

(*a*) that no employer shall require or permit any employee belonging to a category of employees specified in the notice to perform work on or in any premises on or in which an activity specified in the notice is carried out which in the opinion of the Minister is an activity which threatens or is likely to threaten the health or safety of an employee belonging to that category of employees, or that no employer shall require or permit any such employee to perform any work on or in such premises otherwise than on the conditions specified in the notice;

(*b*) that no employer shall require or permit any employee to perform any work in connection with the carrying out of a process specified in the notice which in the opinion of the Minister is a process which threatens or is likely to threaten the health or safety of an employee, or that no employer shall require or permit an employee to perform any work in connection with the carrying out of such a process otherwise than on the conditions specified in the notice; and

(*c*) that no employer shall require or permit any employee, otherwise than on the conditions specified in the notice, to perform any work on or in any premises where an article or substance specified in the notice is produced, processed, used, handled, stored or transported which in the opinion of the Minister is an article or substance which threatens or is likely to threaten the health or safety of an employee.

(2) (*a*) The Minister shall, before he publishes a notice under subsection (1), cause a draft of the proposed notice to be published in the *Gazette* and at the same time invite interested persons to submit to him in writing, within a specified period, comments and representations in connection with the proposed notice.

(*b*) The provisions of paragraph (*a*) shall not apply if the Minister, in pursuance of comments and representations received, decides to publish the notice referred to in subsection (1) in an amended form.

(3) A notice under subsection (1) may at any time be amended or withdrawn by like notice.

(4) A notice shall not be issued under subsection (1) or (3) unless the Minister for National Health and Welfare and the Council have been consulted.

(5) A notice issued or deemed to have been issued under section 13 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), and which was in force immediately prior to the commencement of this Act, shall be deemed to have been issued under this section.

22. Sale of certain articles prohibited. —

Subject to the provisions of section 10 (4), if any requirement (including any health and safety standard) in respect of any article, substance, plant, machinery or health and safety equipment or for the use or application thereof has been prescribed, no person shall sell or market in any manner whatsoever such article, substance, plant, machinery or health and safety equipment unless it complies with that requirement.

23. Certain deductions prohibited. —

No employer shall in respect of anything which he is in terms of this Act required to provide or to do or in the interest of the health or safety of an employee, make any deduction from any employee's remuneration or require or permit any employee to make any payment to him or any other person.

[S. 23 substituted by s. 6 of Act No. 181 of 1993.]

24. Report to inspector regarding certain incidents. —

(1) Each incident occurring at work or arising out of or in connection with the conduct of any person, or in connection with the use of plant or machinery, in which, or in consequence of which —

(*a*) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he is likely either to die or to suffer a permanent physical defect or likely to be unable for a period of at least 14 days either to work or to continue with the activity for which he was employed or is usually employed;

(*b*) a major incident occurred; or

(*c*) the health or safety of any person was endangered and where —

(i) a dangerous substance was spilled;

(ii) the uncontrolled release of any substance under pressure took place;

(iii) machinery or any part thereof fractured or failed resulting in flying, falling or uncontrolled moving objects; or

(iv) machinery ran out of control,

shall, within the prescribed period and in the prescribed manner, be reported to an inspector by the employer or the user of the plant or machinery concerned, as the case may be.

(2) In the event of an incident in which a person died, or was injured to such an extent that he is likely to die, or suffered the loss of a limb or part of a limb, no person shall without the consent of an inspector disturb the site at which the incident occurred or remove any article or substance involved in the incident therefrom: Provided that such action may be taken as is necessary to prevent a further incident, to remove the injured or dead, or to rescue persons from danger.

(3) The provisions of subsections (1) and (2) shall not apply in respect of —

(*a*) a traffic accident on a public road;

(*b*) an incident occurring in a private household, provided the householder forthwith reports the incident to the South African Police; or

(*c*) any accident which is to be investigated under section 12 of the Aviation Act, 1962 (Act No. 74 of 1962).

(4) A member of the South African Police to whom an incident was reported in terms of subsection (3) (*b*), shall forthwith notify an inspector thereof.

25. Report to chief inspector regarding occupational disease. —

Any medical practitioner who examines or treats a person for a disease described in the Second Schedule to the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or any other disease which he believes arose out of that person's employment, shall within the prescribed period and in the prescribed manner report the case to the person's employer and to the chief inspector, and inform that person accordingly.

[S. 25 substituted by s. 7 of Act No. 181 of 1993.]

26. Victimization forbidden. —

(1) No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee has given information to the Minister or to any other person charged with the administration of a provision of this Act which in terms of this Act he is required to give or which relates to the terms, conditions or circumstances of his employment or to those of any other employee of his employer, or has complied with a lawful prohibition, requirement, request or direction of an inspector, or has given evidence before a court of law or the industrial court, or has done anything which he may or is required to do in terms of this Act or has refused to do anything which he is prohibited from doing in terms of this Act.

(2) No employer shall unfairly dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relative to other employees employed by that employer to his disadvantage, by reason of the information that the employer has obtained regarding the results contemplated in section 12 (2) or by reason of a report made to the employer in terms of section 25.

[Sub-s. (2) added by s. 8 of Act No. 181 of 1993.]

27. Designation and functions of chief inspector. —

(1) The Minister shall designate an officer serving in the Department as chief inspector for the purposes of this Act.

(2) The chief inspector shall perform his functions subject to the control and supervision of the Director-General of the Department and may perform any function assigned to an inspector by this Act.

(3) (*a*) The chief inspector may delegate any power conferred upon him by this Act, including a power referred to in section 35 (1) or delegated to him under section 42, to any other officer or authorize any such officer to perform any duty assigned to him by this Act.

(*b*) No delegation of a power under paragraph (*a*) shall prevent the exercise of such power by the chief inspector himself.

(4) Whenever the chief inspector is absent or unable to perform his functions as chief inspector or whenever the designation of a chief inspector is pending, the Minister may designate any other officer serving in the Department to act as chief inspector until the chief inspector returns from his absence or is able to perform such functions or until a chief inspector is designated.

(5) Any person who immediately prior to the commencement of this Act was designated as chief inspector under section 19 of the Machinery and Occupational Safety Act, 1983 (Act No. 6 of 1983), shall be deemed to have been designated as chief inspector under subsection (1) of this section.

28. Functions of inspectors. —

(1) An inspector may, for the purposes of this Act —

(*a*) without previous notice, at all reasonable times, enter any premises which are occupied or used by an employer or on which an employee performs any work or any plant or machinery is used, or which he suspects to be such premises;

(*b*) question any person who is or was on or in such premises, either alone or in the presence of any other person, on any matter to which this Act relates;

(*c*) require from any person who is or was on such premises the control over or custody of a book, record or other document, to produce to him forthwith, or at such time and place as may be determined by him, such book, record or other document;

(*d*) examine any such book, record or other document or make a copy thereof or an extract therefrom;

(*e*) require from such a person an explanation of any entry in such book, record or other document;

(*f*) inspect any article, substance or plant or machinery which is on or in such premises, or any work performed on or in those premises or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;

(*g*) seize any such book, record or other document or any such article or machinery or a part or sample thereof which in his opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the employer or user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure;

(*h*) direct any employer, employee or user, including any former employer, employee or user, to appear before him at such time and place as may be determined by him and question such employer, employee or user either alone or in the presence of any other person on any matter to which this Act relates;

(*i*) perform any other function as may be prescribed.

(2) (*a*) An interpreter, a member of the South African Police or any other assistant may, when required by an inspector, accompany him when he performs his functions under this Act.

(*b*) For the purposes of the application of section 24 of the Act, any such other assistant shall be deemed to be an inspector.

(3) When an inspector enters any premises under subsection (1) the employer occupying or using those premises and each employee performing any work thereon or therein and any user of plant or machinery thereon or therein shall furnish such reasonable assistance as is practically required by the inspector which is reasonably required to enable him and his assistant (if any) to perform effectively and safely his or their functions under this Act.

(4) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (1) (*f*) or (*g*), he shall issue a receipt to the owner or person in control therefrom.

**30. Special pow