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## Factories, Machinery and Construction Works Act, 1972

Act 17 of 1972

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# Factories, Machinery and Construction Works Act, 1972

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## eSwatini

# Factories, Machinery and Construction Works Act, 1972

Act 17 of 1972

Assented to on 5 April 1972

Commenced

*[This is the version of this document at 1 December 1998.]*

**An Act to provide for the registration of factories and the regulation of working conditions and the use of machinery at factories, construction works and other premises subject to this Act, and for matters incidental thereto.**

## Part I – Preliminary

### 1. Short title and commencement

This Act may be cited as the Factories, Machinery and Construction Works Act, 1972, and shall come into force by notice in the *Gazette*.

### 2. Interpretation

In this Act unless the context otherwise requires—

“**accident**” includes any accident reportable under this Act or under the Workmen’s Compensation Act, [No. 4 of 1963](#);

“**approved**” means approved by the commissioner;

“**article**” includes any solid, liquid, vapour, gas or any combination thereof;

“**bodily injury**” includes injury to health;

“**commissioner**” means the Labour Commissioner appointed under section 4 of the Employment Act, [No. 51 of 1962](#);

“**construction work**” means—

- (a) any work in connection with the erection, alteration, repair, repainting, maintenance, renovation or demolition of any building or structure;
- (b) the construction, structural alteration, repair (including repainting) or demolition of any road, bridge, tunnel, inland navigation, viaduct, waterworks, reservoir, dam, aquaduct, sewage works, gas holder, pipeline for whatever purpose required, and includes any excavation work; and
- (c) such other construction work as the Minister may prescribe by notice in the *Gazette*;

“**employee**” means any person who is employed by or works for or assists an employer, in or at any factory, construction work or other premises subject to this Act;

“**employer**” means an occupier or person who in connection with any factory, construction work or other premises subject to this Act employs or provides work for or permits any person in any manner whatsoever to assist him in the carrying out of his business in or about a factory, construction work or such other premises, and “employ” and “employment” have corresponding meanings;

“**factory**” means premises described in [section 3](#);

“**fume**” includes gas or vapour;

**“industrial disease”** includes any disease mentioned in the First Schedule under the Workmen’s Compensation Act, [No. 4 of 1963](#);

**“institution”** includes any institution conducted for medical, mental, educational, training, religious, charitable, reformatory or penal purposes, whether controlled or managed by the Government or any person;

**“inspector”** means an inspector designated by the Minister under [section 7](#);

**“machinery”** means—

- (a) any engine, motor or other prime mover which provides mechanical power;
- (b) any boiler or other steam apparatus, any pressure vessel or portable gas container; and
- (c) any appliance or combination of appliances used or intended to be used for generating, developing, receiving, storing, conveying, transforming or transmitting any form of power or energy, or for lifting or conveying persons or goods,

but does not include a motor vehicle or domestic appliance;

**“magistrates’ court”** means a court established under the Subordinate Courts Proclamation (Cap. 20);

**“mechanical power”** means energy or motion transmitted from an engine, motor or other prime mover from steam, water, wind, electricity, the combustion of fuel or other source;

**“Minister”** means the Minister responsible for Factories and Machinery;

**“occupier”** means any person in actual occupation of a factory or other premises or parts of premises subject to this Act and having the management or control of any activity or business conducted therein;

**“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 them if the premises were let;

**“premises”** includes any land, structure, vehicle or vessel;

**“user”** in relation to machinery or plant means the owner of, or person benefiting from the use of such machinery or plant at any premises or place subject to this Act, and includes the person charged with the supervision of such machinery or plant.

### 3. Interpretation of “factory”

- (1) Subject to subsection (2) and (3) **“factory”** means any premises where any person performs work in connection with any business, undertaking or institution as an employer, employee, pupil or inmate of an institution or otherwise in any one or more of the following activities—
- (a) the making of any article or part of an article;
  - (b) the altering, repairing, renovating, ornamenting, painting, spraying, polishing, finishing, cleaning, dyeing, washing, or breaking-up of any article;
  - (c) the adaptation for consumption, use or sale of any article;
  - (d) the sorting, assembling or packing (including washing or filling bottles or other containers) of any article;
  - (e) the construction, re-construction, assembling, repairing or breaking-up of vehicles or parts thereof, excluding premises used for the purpose of housing vehicles where only minor adjustments are carded out;
  - (f) the printing by letterpress, lithography, photography or other similar process, including any activity associated with the printing industry, and any photographic or reproduction processes;

- (g) the freezing, chilling, or storage in cold storage of any article;
- (h) the slaughtering of livestock;
- (j) any operations in connection with waterworks, irrigation works and sewage works in which machinery is used;

*[Please note: numbering as in original.]*

- (k) the generation, transforming or controlling of electrical energy for public supply or for the purposes of any industrial or commercial undertaking or institution;
  - (l) drawing, book-keeping, typewriting, or any other clerical work incidental to any activity in the preceding paragraphs and carried on in premises forming part of, or adjacent to, the premises in which any factory activity is carried on;
  - (m) any other activity prescribed by the Minister by notice in the *Gazette*.
- (2) Notwithstanding subsection (1) “**factory**” shall not include premises—
- (a) used for the making of any handicraft in which no machinery is used in connection with the making of such handicraft;
  - (b) occupied only as a private dwelling house or boarding house;
  - (c) where any activity included in subsection (1)(d) to (h) inclusive is ordinarily and necessarily incidental to the conduct of any institution or other establishment or business.
- (3) For the purposes of this Act machinery shall not be deemed to be in any premises if it is used only for lighting, ventilating or heating the premises.

#### 4. Application

- (1) This Act shall apply to all factories, including any factories or other premises owned or occupied by the Government, but shall not apply to mines and quarries as defined in the Mines, Works and Machinery Act, [No. 61 of 1960](#).
- (2) Save 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 Act.

#### 5. Construction work

Save for [sections 11 to 15](#) inclusive, and [17](#) and [18](#) of Part II, this Act shall *mutatis mutandis* apply to any construction work undertaken by any employer, contractor or user.

#### 6. Extension of this Act

Notwithstanding [section 3](#), the Minister may by notice published in the *Gazette* and subject to such conditions as may be specified therein, extend the application of all or any of the provisions of this Act to the following premises not forming part of a factory, namely—

- (a) any premises at which a steam boiler or pressure vessel is used;
- (b) any premises at which a lift, elevator or hoist is used;
- (c) any premises occupied or used as a wholesale or retail shop or business, warehouse, wharf, distribution depot or office in which persons are regularly employed;
- (d) any farm, plantation, estate, or forest where machinery is used in connection with any agricultural, horticultural, livestock, forestry or logging operations and where persons are regularly employed.

## 7. Designation of public officers as inspectors

- (1) The Minister may by notice in the *Gazette* designate public officers to act as inspectors under this Act for its proper administration.
- (2) An inspector shall be given a document signed by the commissioner certifying that he is an inspector under this Act.
- (3) The certificate referred to in subsection (2) shall on the request of any interested person be exhibited to him by an inspector visiting or entering any factory or other premises in the course of his duties as an inspector.

## 8. Powers of inspectors

An inspector may in the course of his duties—

- (a) during normal working hours and without previous notice enter any factory or other premises which he has reasonable cause to believe is subject to this Act, and make any such inspection and enquiry as he deems necessary;
- (b) require the production of any certificate, report, record or any other document prescribed under this Act and examine and take a copy of any of them;
- (c) question the occupier, manager, or any other person, either alone or in the presence of any other person who the inspector thinks fit, who he has reasonable cause to believe is or has been working in the factory or other premises, as regards any matters relating to this Act;
- (d) require any such person referred to in paragraph (c) to sign a declaration as to the truth of the matters about which he has been questioned;
- (e) take with him into any factory or other premises an interpreter or other assistant, or a member of the Royal Swaziland Police.

## 9. 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 charge of the factory or other premises to which this Act applies, for purposes of analysis take samples of any material or substance used or intended to be used, which the inspector thinks is likely or which may on analysis prove to be likely to cause bodily injury to persons working at the factory.
- (2) Any analysis under this section may be carried out by the South African Institute of Medical Research or any other institution approved of by the commissioner, or by a qualified chemist, but the report of such analysis shall not be disclosed save for the purpose of securing compliance with this Act or in connection with any criminal prosecution under this Act or any other law.

## 10. Inspector not to disclose information or source of complaints

- (1) No inspector or other person who in pursuance of powers conferred by this Act enters, or is admitted into any factory, or other premises, shall without the written permission of the occupier or owner disclose to any other person the details of any manufacturing, commercial or trade process which may come to his knowledge in the course of his duties:  
  
Provided that this subsection shall not apply to the use of such information for the purpose of securing due compliance with this Act or in connection with any criminal prosecution under this Act or any other law.
- (2) Unless authorized by a complainant no inspector or other person carrying out duties under this Act shall divulge the source of any information or complaint regarding any alleged breach of this Act.



## Part II – Registration and regulation of factories

### 11. Premises not to be used as a factory unless registered

- (1) No person shall occupy any factory unless he is the holder of—
  - (a) a registration certificate issued in respect of such factory under [section 13\(4\)](#); or
  - (b) a current provisional factory permit issued in respect of such factory under [section 13\(5\)](#):

Provided that for a period to be fixed by the Minister generally or in respect of any factory, being not less than three months but not more than twelve months after the commencement of this Act, this section shall not apply in respect of any premises which are at the date of such commencement being occupied as a factory.

- (2) The occupier of a registered factory shall not carry on therein any activity referred to in [section 3\(1\)](#) other than that specified in the registration certificate and shall comply with the conditions laid down in such certificate.
- (3) Any person contravening subsection (1) or (2) shall be guilty of an offence and, liable on conviction to a fine of one hundred emalangeneni or in default of payment thereof imprisonment for six months or both.

### 12. Submission and approval of plans for buildings or building alterations

- (1) Any person intending to erect or cause to be erected, or to make or cause to be made any structural alterations or additions to, any building with the intention of using such building or a portion thereof as a factory or to make or cause to be made any structural alterations or additions to any premises registered as a factory under this Act shall submit to the commissioner, in the prescribed form, plans in triplicate of the site in question and of the building or of the proposed building, alterations or additions, as the case may be, together with the prescribed particulars.
- (2) The commissioner shall immediately on receipt of the plans submit them to an inspector for his consideration.
- (3) If such inspector is satisfied that the proposed building or, as the case may be, the building or premises if altered or added to in the manner proposed, would be suitable for use or, as the case may be, the continued use as a factory of the nature in question, he shall approve the plans and in writing advise the person who submitted the plans to him of such approval and, if in terms of any law such plans require the approval of a local authority, or any other authority established by law, likewise advise such authority thereof, and transmit two copies of such plans to such local authority or other authority.
- (4) If such local authority or other authority approves such plans in terms of such law such authority shall return one copy thereof to the person who submitted such plans to the inspector.
- (5) If an inspector does not in terms of subsection (3) approve any plans submitted to him in terms of subsection (1) he shall in writing advise the person who submitted such plans to him of such disapproval and his reasons therefor:

Provided that any person aggrieved thereby may appeal in writing to the Minister within 14 days after receipt of such advice.

- (6) If any person is in terms of this section required to submit any plans to an inspector, no local authority or other authority shall approve such plans unless they have been approved by an inspector in terms of this section.

- (7) No person shall erect, or make any structural alterations or additions to, or permit any other person to erect, or to make any such alterations or additions to—
- (a) any building which or part of which is intended to be used as a factory; or
  - (b) any premises registered as a factory under this Act,
- unless plans of such building, alterations or additions have been approved by an inspector in terms of this section, or otherwise than in accordance with plans thereof so approved.
- (8) This section shall *mutatis mutandis* apply to the making of structural alterations in terms of [section 14](#).
- (9) Any person contravening subsection (6) or (7) shall be guilty of an offence and liable on conviction to a fine of fifty emalangen.

### 13. Registration of factories

- (1) An application for the registration of any premises as a factory under this Act shall be made to the commissioner in the prescribed form by or on behalf of the person occupying or intending to occupy such premises as a factory.
- (2) The applicant shall furnish all particulars in the prescribed form referred to in subsection (1) together with any additional information which may be required by the inspector.
- (3) The commissioner shall immediately on receipt of such application refer it to an inspector for his consideration.
- (4) As soon as practicable after receipt of an application and of any additional information required in terms of subsection (2), such inspector shall—
- (a) register the premises in respect of which the application is made by issuing a registration certificate in the prescribed form, specifying the activity in respect of which the factory is registered, the name of the occupier and any conditions to be observed by the occupier or an employer who at any time employs any person in the factory, and any other prescribed particulars; or
  - (b) refuse to register the premises on the ground of unsuitability; or
  - (c) register a portion of the premises in the manner described in paragraph (a) and, on the ground of unsuitability, refuse to register the remaining portion.
- (5) If an inspector has refused to register the whole or any portion of the premises in respect of which application has been made, he may issue in the prescribed form a provisional factory permit in respect of the whole or any specified portion of the premises which he has refused to register, to be valid for a period to be stated in the permit, and subject to such conditions as the inspector may specify.
- (6) The commissioner may on the advice of an inspector to whom he has referred the matter at any time by notice in writing to the occupier of a factory vary any period, particulars or conditions specified in a registration certificate or provisional factory permit or cancel any such permit.
- (7) If after the registration of any premises as a factory under this Act any person makes, or permits to be made—
- (a) any structural alterations or additions to such premises in contravention of [section 12](#); or
  - (b) any other alterations to such premises without the prior approval of an inspector, except when required to do so in terms of [section 14](#) or [15](#);
- the commissioner may on the advice of an inspector to whom he has referred the matter, by notice in writing to the occupier, cancel the registration certificate issued in respect of such premises, which shall thereupon cease to be registered as a factory under this Act.

- (8) Any person who fails to comply with any condition specified by an inspector under subsection (4) or (5), or with any such condition as varied under subsection (6), shall be guilty of an offence and liable on conviction to a fine of fifty emalangen.

#### **14. Premises becoming unsuitable for use as a factory**

- (1) If, in the opinion of an inspector, the whole or a part of premises constituting a registered factory is no longer suitable for use as a factory, the commissioner may—
- (a) by notice in writing, setting forth in what respect the premises are in his opinion no longer suitable for use as a factory, require the occupier to take the steps and make the structural alterations mentioned in such notice; or
  - (b) by similar notice require such occupier to submit to him a statement setting forth the steps which such occupier proposes to take and, if structural alterations are proposed, also the prescribed plans, showing the structural alterations which such occupier proposes to make in order to render the premises suitable for use as a factory; and
  - (c) by further notice in writing require such occupier to take the steps and make the structural alterations so proposed, without modification or with such modification as the inspector may determine,
- within a period specified in such notice, not being less than fourteen days.
- (2) The period within which the requirements of any notice under subsection (1) are to be complied with may, at the request of the occupier concerned, from time to time be extended by the inspector.
- (3) Should the occupier upon whom the commissioner has, in terms of this section, served notice, fail within the time specified to comply with the requirements contained in such notice, the commissioner may by further notice in writing to such occupier cancel the registration certificate in respect of such factory whereupon the premises shall cease to be registered as a factory under this Act.
- (4) If in the opinion of an inspector the whole or part of any premises constituting a registered factory are no longer suitable for use as a factory, and cannot be rendered suitable, the commissioner may by notice in writing to the occupier cancel the registration certificate in respect of that factory, as from a date at least six months after the date of such notice, and the premises shall thereafter cease to be registered as a factory under this Act, and a commissioner may vary or withdraw any such notice.

#### **15. Factors determining unsuitability**

In considering the suitability of any premises for use as a factory under section 12, 13 or 14, the commissioner or an inspector, as the case may be, shall have regard to any factor which in his opinion is relevant, including the requirements of the Act and all matters relating to the site of the factory, the adjacent or surrounding premises, and the manner in which the factory is or is likely to be equipped or in which the business is or is likely to be conducted.

#### **16. Interdict against use of dangerous premises, etc.**

- (1) If an inspector is of opinion that any premises used or intended to be used as a factory or any machinery, plant, equipment or appliance in use or intended to be used at a factory, or any process or work carried on in a factory is or is likely to cause risk of injury to property or person, he may apply to a magistrate for an order calling upon the occupier of the factory to show cause why he should not be prevented from using such premises or machinery, plant, equipment or appliance and from carrying on such process or work.

- (2) Upon receipt of an application referred to in subsection (1) and on being satisfied that the inspector's opinion is based on good cause, the magistrate may make such order as he deems fit, including an order to operate as a temporary interdict against such occupier:

Provided that the magistrate shall not make any final order against such occupier without having heard such occupier or his representative.

- (3) The magistrate's court rules relating to applications shall *mutatis mutandis* apply to such application.
- (4) This section shall *mutatis mutandis* apply to construction works and other premises subject to this Act.

## 17. Removal of nuisance near a factory

- (1) If upon any premises near a factory there exists any nuisance or sanitary defect which in the opinion of an inspector is likely to render the factory insanitary or to affect injuriously the health of persons employed therein, he may subject to the instructions of the Minister in writing require the author of the nuisance or the owner or person in occupation of such premises effectually and within a specified period to abate the nuisance or remedy the defect.
- (2) If within the period so specified the person so required fails to comply with the requirement in all respects he shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni, and the court may, subject to such conditions as it may deem fit, order the accused to remove such nuisance within a time stipulated by it.

## 18. Transfer and surrender of certificate of registration

- (1) A registration certificate issued under [section 13\(4\)](#) may with the approval of an inspector be transferred by the occupier of the factory concerned to another person intending to be the occupier.
- (2) Should the occupier of any premises registered as a factory cease to conduct a factory therein, the premises shall, unless the registration certificate has in terms of subsection (1) been transferred to another occupier, forthwith cease to be a registered factory, and the occupier shall, within, seven days of his ceasing to conduct such factory, notify an inspector in writing thereof and return any factory register and the registration certificate to him:  
  
Provided that in the event of the death of any person who is an occupier of a factory, his executor, heir or legatee may continue to occupy such factory for a period not exceeding three months after the death of such person and for any additional period authorized in writing by an inspector.
- (3) Any person contravening subsection (2) shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni.
- (4) In any proceedings in connection with a charge under this section the person concerned shall be presumed not to have given notice unless the contrary is proved.

## Part III – Notification and investigation of accidents and industrial diseases

### 19. Notification of accidents

If any accident in a factory or at a construction work or other premises subject to this Act causes loss of life or prevents any person from continuing his normal activity for three days or more, or causes any injury likely to cause a permanent defect, the occupier or employer or contractor, as the case may be, shall within the prescribed time and manner notify the inspector thereof and of the prescribed particulars:

Provided that this section shall not apply if the accident has been or is being notified under the Workmen's Compensation Act, [No. 4 of 1963](#).

## 20. Machinery or equipment not to be removed or altered

In the case of an accident causing immediate death or serious permanent injury, no machinery or equipment involved or any other contributory causes shall be removed or altered without the permission of an inspector.

## 21. Inquiries by inspectors into accidents

- (1) If in or about a factory, or in connection with the activities of a factory, or in connection with machinery or construction work—
  - (a) any person is killed or injured as a result of an accident; or
  - (b) any other occurrence takes place which in the opinion of the inspector might have led to any person being killed or injured,an inspector may investigate and if he deems it expedient hold an inquiry into such accident or occurrence.
- (2) Any evidence given at such inquiry shall be taken down in writing and be transmitted by the inspector with his report to the Minister, and in the case of an accident causing loss of life or serious bodily injury, the inspector shall send a copy of such evidence and report to the Attorney-General.
- (3) Nothing in this section shall affect any law requiring and regulating inquests or other inquiries in case of death from other than natural causes, and in every case of death caused by such an accident as is referred to in subsection (1) there shall be held, in addition to any inquiry in terms of this section, such inquest or other inquiry as is required by any such law.

## 22. Witnesses at inquiry

- (1) For the purpose of an inquiry such as is referred to in [section 21](#) an inspector may summon any person who in his opinion may be able to give material information concerning the subject of the inquiry or who he suspects or believes has in his possession or custody or under his control any book, document or thing which has any bearing upon, or which he deems requisite for the proper conduct of the inquiry, to appear before him at a time and place specified in the summons to be interrogated or to produce such book, document or thing.
- (2) The inspector may call and administer an oath to any person present at the inquiry who was or might have been summoned in terms of subsection (1) and may interrogate him and require him to produce any book, document or thing in his possession or custody or under his control.
- (3) If at any inquiry evidence has been given from which it may reasonably be inferred that any person has committed any offence in connection with any occurrence falling within the scope of the inquiry or is responsible in any manner for such occurrence, such person may cross-examine any witness giving evidence at such inquiry and may require the inspector to summon any witness on his behalf either to give evidence or to produce any book, document or thing in his possession or custody or under his control and which has any bearing on the inquiry.
- (4) Every such person may appoint any other person to represent him at the inquiry.
- (5) Upon receiving any request under subsection (3) for the summoning of any person, the inspector shall, if he considers that the evidence of such person is necessary or desirable, issue a summons accordingly, but if he does not consider the evidence necessary or desirable, he shall not issue a summons unless the party making the request deposits with the inspector a sum sufficient to cover the necessary expenses to be incurred by the witness, together with the costs of service of the summons.

- (6) If any person, having been duly summoned under subsection (1) or (5), fails without sufficient cause to attend at the time and place specified in the summons he shall be guilty of an offence and liable on conviction to a fine of twenty-five emalangeni.
- (7) If any person referred to in subsection (6) or any person called by an inspector in terms of subsection (1) fails to remain in attendance until excused by the inspector from further attendance or refuses to be sworn as a witness or fails to answer fully and satisfactorily to the best of his knowledge and belief all questions lawfully put to him, or to produce any book, document or thing in his possession or custody or under his control when required to do so, he shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni:
- Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing before the inspector, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law, shall apply.
- (8) Any witness who, after having been sworn, gives a false answer to any question put to him by the inspector or makes a false statement on any matter, knowing such answer or statement to be false, shall be deemed to be guilty of perjury.
- (9) The interrogation of any witness by an inspector shall be conducted in public unless the inspector otherwise decides.
- (10) Any person summoned to appear before an inspector may, if the inspector is satisfied that he has by reason of his appearance in obedience to the summons suffered any pecuniary loss or been put to any expense, be paid out of public moneys any prescribed allowances, or the amount of such loss and such expense, whichever is the less.
- (11) Any person who wilfully hinders or insults an inspector in the exercise of any of the powers conferred upon him by this section shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni, and if such person is a witness, the inspector may order that no payment or only a reduced payment shall be made to him under subsection (10).

## 23. Notification of industrial diseases

If any person who works or has worked in a factory is certified by a medical practitioner to be suffering from an industrial disease which appears to be due to the nature of his employment or activity, the employer concerned shall notify an inspector thereof and of the prescribed particulars within the time and in the prescribed manner unless the industrial disease has been or is being notified under the Workmen's Compensation Act [No. 4 of 1963](#).

## 24. Investigation of industrial diseases

- (1) An inspector may investigate any industrial disease at a factory whether reportable under any law or not, and for such purpose he may require any person working or who has at any time worked at the factory to be examined by a duly registered medical practitioner.
- (2) Sections [21](#) and [22](#) shall *mutatis mutandis* apply to such investigation.

## Part IV – Procedure and miscellaneous

## 25. Acts or omissions by managers, agents or employees

- (1) If any manager, agent or employee of any occupier of a factory, employer or user of machinery does or omits to do any act which it would be an offence under this Act for the occupier, employer or user to do or omit to do, then unless it is proved that—
- (a) such act or omission occurred without the connivance or permission of the occupier, employer or user; and

- (b) all reasonable steps were taken by the occupier, employer or user to prevent any act or omission of the kind in question; and
- (c) it was not in any circumstances within the scope or authority or in the course of the employment of the manager, agent or employee to do or to omit to do acts whether lawful or unlawful of the character of the act or omission charged,

the occupier, employer, or user, as the case may be, shall be presumed to have done or omitted to do such act and be liable to be convicted and sentenced in respect thereof; and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as conclusive proof that he took all reasonable steps to prevent the act or omission.

- (2) If any manager, agent or employee of any occupier, employer or user does or omits to do any act which it would be an offence for the occupier, employer or user to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the occupier, employer or user.
- (3) Any such manager, agent or employee may be so convicted and sentenced in addition to the occupier, employer or user.

## 26. Presumptions and proof by affidavit, etc.

- (1) If in any proceedings under this Act it is proved that any person was present on any premises used as a factory such person shall, until the contrary is proved, be presumed to be an employee.
- (2) In any proceedings under this Act, any statement or entry contained in any book or document kept by the occupier of a factory, an employer or a user of machinery or by his manager, agent or employee or found upon the premises concerned shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by such occupier, employer or user, or by any manager, agent or employee of such occupier, employer or user in the course of his work as manager, or in the course of his agency or employment.
- (3) If in any proceedings under this Act it is proved that any untrue statement or entry is contained in any record kept by any person, he shall be presumed, until the contrary is proved, wilfully to have falsified such record.
- (4) If any person is charged under [section 11](#) with having occupied premises as a factory without being the holder of a registration certificate or provisional factory permit in respect of such premises and it is proved that the accused did occupy such premises as a factory, then unless the contrary is proved, it shall be presumed that the accused did not hold such a registration certificate or provisional factory permit.
- (5) In any proceedings under this Act an affidavit purporting to be made by an inspector in which it is state—
  - (a) that any person is or is not the holder of a registration certificate or provisional factory permit issued in respect of any premises under [section 13](#); or
  - (b) that any person is or was the occupier of a factory or the user of machinery; or
  - (c) that any exemption or authorization to depart from any provision of this Act has or has not been granted to any person in accordance with this Act, or has been withdrawn;
 shall, on its mere production in those proceedings by any person, but subject to subsection (6), be *prima facie* proof of the facts stated therein.
- (6) The officer presiding over the proceedings at which any such affidavit is adduced in evidence may cause the inspector to be summoned to give oral evidence in the proceedings in question or may cause written interrogatories to be submitted to him for reply and such interrogatories and any reply on oath thereto purporting to be a reply from the inspector, shall in like manner be admissible in evidence in such proceedings.



- (7) A certificate signed by the Minister setting out the terms of any decision given by him on appeal in terms of [section 27](#) shall on its mere production by any person be conclusive proof of such decision.

## **27. Appeal from decisions of inspectors**

- (1) Any person who considers himself aggrieved by a requirement or decision of an inspector under sections [12](#), [13](#)(4), (5) or (6), [14](#)(1), (2) or (4), [18](#)(1) or (2) may, within fourteen days after the date of such requirement or decision, appeal in the prescribed manner to the Minister.
- (2) The Minister shall confirm the decision of the inspector or give such other decision as in his opinion the inspector ought to have given and, for the purpose of this Act, the Minister's decision shall be deemed to be the decision of the inspector, given on the date on which the Minister gives such decision.
- (3) A decision given by the Minister in terms of subsection (2) shall be final.

## **28. Service of notice under this Act**

A notice under this Act to any person may be served on him in accordance with section 33 of the Interpretation Act, [No. 21 of 1970](#), but in addition any notice to the occupier of a factory may be served by means of an entry in the factory register, and any notice to the user of machinery may be served by means of an entry in the appropriate boiler or elevator register, if any, prescribed in the regulations.

## **29. Offences in connection with safety appliances, etc.**

- (1) No person shall wilfully interfere with or misuse any means, appliance, convenience or other thing provided in pursuance of this Act for securing the health, safety or welfare of employees in any factory or place where machinery is used or construction work is being performed.
- (2) If any means, appliance or other thing for securing health or safety is provided under the requirements of this Act for the use of a person engaged in any process he shall use such means, appliance or other thing while so engaged.
- (3) No person shall wilfully and without reasonable cause do anything likely to endanger the health, safety or welfare of himself or others.
- (4) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine of one hundred emalangeni or in default of payment thereof imprisonment for six months or both.

## **30. Particulars in a charge**

In any charge of an offence under this Act against the occupier of a factory or an employer or user of machinery it shall not be necessary—

- (a) to set out the names of the persons in respect of whom the offence is alleged to have been committed, provided all other material particulars are properly set out; or
- (b) to state the full names of the accused, provided the name of the ostensible occupier, employer or user, as the case may be, or his usual business name or style is stated.

## **31. Regulations**

- (1) The Minister may make regulations as to—
- (a) the measures to be taken to secure cleanliness, the safety of buildings or structures or part thereof, and the preservation of health, including sanitation, ventilation and lighting, in or about factories and on or about premises where machinery is used, or construction work



is performed; and the duties of occupiers of factories, users of machinery, employers and employees in connection therewith;

- (b) the accommodation, facilities and conveniences for employees in or at factories;
- (c) the clothing, safety devices and protective articles to be provided by employers, occupiers of factories and users of machinery for employees who handle specified articles in the course of their work or who are employed in specified activities and under specified conditions;
- (d) the first-aid equipment to be provided by occupiers of factories, users of machinery and employers; and the employment of persons who hold specified qualifications in first-aid;
- (e) the steps to be taken by the owners of buildings used or intended for use as factories or places where machinery is used, or by occupiers of factories or by users of machinery in connection with the structure of such buildings or otherwise in order to prevent or extinguish fires, and to ensure the safety, in the event of fire, of persons in such buildings;
- (f) the medical examination of persons where such examination is required under this Act;
- (g) the returns, statistics, information and reports which under this Act shall be furnished in relation to factories, machinery, excavation work, and employees, and the times at which, the manner in which, and the persons to whom they shall be furnished, and the records which shall be kept;
- (h) the manner in which supervision of machinery or of building or excavation work shall be exercised by inspectors;
- (j) the measures to secure the safety of machinery, including the examinations and tests for boilers, pressure vessels, lifts, hoists, and elevators, and the use of electricity and equipment at or in factories, construction works or premises subject to this Act, and the duties and responsibilities of owners, occupiers, employers, users, contractors or employees in connection therewith;

*[Please note: numbering as in original.]*

- (k) appeals from the decisions and instructions of an inspector;
  - (l) the reporting of accidents under [section 19](#), the manner of holding inquiries in connection therewith, and the procedure to be followed at such inquiries;
  - (m) the fees which shall be payable for any registration certificate or for any inspection or for the examination of particulars and plans of buildings and alterations under this Act or the regulations;
  - (n) the measures to be taken to secure safety at construction works in respect of scaffolds, ladders, the use of lifting machines and tackle, excavations, roof work and special safeguards where there is a risk of drowning or electric shock, and the duties of employers, users, contractors and employees in connection therewith;
  - (o) the fees payable to any member of a commission or committee appointed in terms of the regulations;
  - (p) all matters which by this Act are required or permitted to be prescribed; and
  - (q) generally, all matters which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.
- (2) Any regulations made under subsection (1) may prescribe penalties for any contravention thereof or failure to comply therewith.
- (3) The Minister may from time to time determine the areas in which any regulation made under subsection (1) shall apply.

### 32. Jurisdiction of magistrate's courts

Notwithstanding anything in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by, or make any order of court provided for in this Act.

### 33. Exemption by the Minister

- (1) Notwithstanding anything in this Act the Minister may, if in his opinion special circumstances exist which justify exemption, by notice in the *Gazette* exempt any class of employer or other person, either generally or with such limitations as he may deem fit, and subject to any conditions he may impose in such notice, from all or any of the provisions of sections [11](#), [12](#), [13](#), [14](#), [15](#), [18](#) and [19](#), or any regulation.
- (2) For the purposes of this section "class of employer or other person" includes such group, section or type of employer or other person specified by the Minister in the notice and the Minister may, in so specifying, apply any method of differentiation as he may deem advisable.
- (3) The Minister may by further notice in the *Gazette* cancel or amend any notice published in terms of subsection (1).
- (4) The Minister may, if in his opinion special circumstances exist which justify exemption, under licence signed by a prescribed officer, exempt any person, either generally or with such limitations as he may deem fit and subject to any conditions he may impose and for such period as he may specify, from all or any of the provisions of this Act or any regulation, or from any condition prescribed in a notice published in terms of subsection (1).
- (5) The Minister may from time to time by writing under his hand and subject to such conditions as he may deem fit, delegate all or any of the powers conferred upon him by this section to any officer, and withdraw such delegation.
- (6) Any exemption granted in terms of subsection (1) may at any time be withdrawn at the discretion of the Minister or of an officer to whom powers have been delegated under subsection (5).
- (7) Any person who contravenes or fails to comply with any condition imposed under subsection (1) or (4) shall be guilty of an offence and liable on conviction to a fine of fifty emalangeni.

### 34. Repeal and transitional provisions

- (1) The Factories Law, No. 15 of 1965, is hereby repealed.
- (2) The Mines, Works and Machinery Act, [No. 61 of 1960](#), is hereby repealed to the extent that it deals with any matter falling under this Act.
- (3) Notwithstanding subsection (2) any regulations made under the Mines, Works and Machinery Act, [No. 61 of 1960](#), which relates to any matter falling under this Act and which is not inconsistent with this Act shall continue in force as if it was a regulation made under this Act until amended or repealed by any regulations made under this Act.