



LAWS OF MALAYSIA

ACT 139

FACTORIES AND MACHINERY ACT 1967 (REVISED - 1974)

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Long Title

An Act to provide for the control of factories with respect to matters relating to the safety, health and welfare of person therein, the registration and inspection of machinery and for matters connected therewith.

[1 February 1970, P.U. (B) 5/1970]

PART I PRELIMINARY

1. Short title.

(1) This Act may be cited as the **Factories and Machinery Act 1967**.

(2) *(Omitted)*.

(3) The Minister may by order suspend* the operation of the whole or any of the provisions of this Act in any State and may at any time thereafter remove the suspension.

* *Operation of Act in Sabah and Sarawak suspended - see P. U (B)6/70.*

Suspension removed in respect of Sabah and Sarawak w.e.f. 1 July 1980- see P.U. (B) 321/80

2. Interpretation of "factory".

(1) In this Act, unless the context otherwise requires, "factory" means any premises or part of a premises where—

(a) within the close or curtilage or precincts of the premises or part thereof persons are employed in manual labour in any process for or connected with or incidental to the making, altering, repairing, ornamenting, sorting, finishing, cleaning, washing, breaking, demolishing, constructing, reconstructing, fitting, refitting, adjusting or adapting of any article or part thereof; and

(b) the said work is carried on by way of trade for the purposes of gain or incidentally to any business so carried on,

and (whether or not they are factories by reason of the foregoing definition) the expression factory also includes the following premises in which persons are employed in manual labour:

(i) any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, refitted, finished or broken up;

(ii) any premises in which the business of washing or filling bottles or containers or packing articles is carried on incidentally to the purposes of any factory;

(iii) any premises in which the business of hooking, plaiting, lapping, making-up or packing of yarn or cloth is carried on;

(iv) any laundry carried on as ancillary to another business or incidentally to the purposes of any public institution;

(v) any premises in which the construction, reconstruction, or repair of locomotives, vehicles or other plant for use for transport purposes is carried on ancillary to a transport undertaking or other industrial or commercial undertaking;

(vi) any premises in which printing by letter press, lithography, photogravure, or other similar process, or bookbinding is carried on by way of trade or for purposes of gain or incidentally to another business so carried on;

(vii) any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain;

(viii) any premises in which manual labour is employed and mechanical power is used in connection with the making or repair of any article of metal or wood incidentally to any business carried on by way of trade or for purposes of gain;

(ix) any premises used for the storage of gas in a gas-holder having a storage capacity of not less than one hundred and forty cubic metres;

[Am. Act A1268:s.2]

(x) any premises, place or space where any building operations or works of engineering construction are carried out; and

(xi) any premises belonging to or in the occupation of the Federal Government or the Government of any State or of any local authority or other public authority which would be a factory within the meaning of this Act but for paragraph (b),

but does not include—

(i) any premises used for the purposes of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out; or

(ii) any premises where five or less persons carry on any work in which machinery is not used notwithstanding that the premises by virtue of would constitute a factory within the meaning of this section.

(2) Any line or siding which is used in connection with and for the purposes of a factory, shall be deemed to be part of the factory.

(3) Any pipeline used for transporting dangerous substances which may cause fire, explosion or adverse health effects to any person (other than petroleum or petroleum products) which is used in connection with and for the purposes of a factory, shall be deemed to be part of the factory.

(4) For the purpose of subsection (3), "pipelines" means the physical facilities or any part of the physical facilities through which dangerous substances which may cause fire, explosion or adverse health effects to any person (other than petroleum or petroleum products) in the form of liquid or vapour or any combination of liquid or vapour are transported, and includes pipes, pumps, compressors, meters, regulators and fabricated assemblies.

[(3) & (4) Ins. Act A1268:s.2]

*NOTE—Operation of this Act in Sabah and Sarawak suspended—see [P.U. (B) 6/1970].
Suspension removed in respect of Sabah and Sarawak w.e.f. 1 July 1980—see [P.U. (B) 321/1980].

3. Interpretation: general.

In this Act unless the context otherwise requires—

"amusement device" means any contrivance or a combination of contrivances, or rides, equipment or plant or any other similar device which are designed or intended to entertain or amuse people and which can be installed repeatedly without loss of substance, whether temporarily or permanently, at fairs, amusement parks or other locations;

[Ins. Act A1268:s.3]

"amusement park" means a tract or area used principally as a location for amusement devices and structures;

[Ins. Act A1268:s.3]

"article" means any solid, liquid or gas or any combination thereof, and also includes electricity;

"bodily injury" includes injury to health;

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

"certificate of competency" means a certificate granted under this Act by the Chief Inspector certifying that the holder is duly qualified to be in charge of machinery to which the certificate of competency relates;

"certificate of fitness" means a certificate granted under this Act certifying that the machinery described therein has been inspected, and at the time of the inspection has satisfied the requirements of this Act and that it may be worked or operated;

"Chief Inspector", "Deputy Chief Inspector", "Senior Inspector" and "Inspector" mean respectively the Chief Inspector of Factories and Machinery, a Deputy Chief Inspector of Factories and Machinery, a Senior Inspector of Factories and Machinery and an Inspector of Factories and Machinery appointed under section 4;

"dangerous occurrence" means any occurrence in any of the classes listed in the First Schedule;

"dredge" means any floating structure used for the winning of tin ore, for the dredging of rivers and waterways or for purposes of land reclamation, and includes the bucket type dredge and the cutter-suction type dredge,

"dredgemaster" means a person who holds a dredgemaster's certificate of competency issued under section 30;

"driven machinery" includes any machine or appliance where motion is received from transmission machinery;

"driver" means a person who holds an engine driver's certificate of competency issued under section 30;

"engineer" means a person who holds an engineer's certificate of competency issued under section 30;

"fair" means an enterprise principally devoted to the exhibition of products of agriculture or industry and at or in connection with which amusement devices and temporary structures are provided;

[Ins. Act A1268:s.3]

"fence" means any form of protective device designed to prevent serious bodily injury or bodily injury to any person and includes a guard and a guard rail;

"fired pressure vessel" means an enclosed vessel under pressure greater than atmospheric pressure which is subjected to direct firing, but does not include a steam boiler;

[Ins. Act A1268:s.3]

"fume" includes gas or vapour;

"gas cylinder" means a steel cylinder or bottle used for the storage and transport of compressed, dissolved or liquefied gases;

"gas holder" means any bell-shaped structure floating in a tank of water, in which gas is collected for distribution;

"guard" means a suitably supported substantially constructed solid or mesh enclosure (either complete or partial) of metal or other material;

"guard rail" means a railing of metal or wood, supported by stanchions, of strength and good construction;

"hoist" means a lifting machine other than a lift whether worked by mechanical power or not with a carriage, platform or cage the direction of movement of which is restricted by a guide or guides;

[Am. Act A1268:s.3]

"hoisting machine" means any equipment for lifting, raising or lowering load such as a lift, escalator, hoist, crane, winch, dragline, piling machine, aerial cableway, funicular railway, access platform, dumbwaiter, vertical conveyor lifter and mechanical loading ramp, and includes transporter, walkalator and other similar equipment, but does not include manual hoist and materials handling equipment;

[Subs. Act A1268:s.3]

"hoisting tackle" includes a chain or rope sling, ring, link, hook, shackle, swivel, eyebolt, chain, rope, pulley block and chain block;

"Inspector" includes the Chief Inspector, Deputy Chief Inspector and a Senior Inspector appointed under section 4;

"licensed person" means any person licensed under section 7D of the Act;

[Ins. Act A1268:s.3]

"lift" means an appliance designed to transport passengers or goods or both between two or more levels in a vertical direction by means of a guided lift car or platform in which the motion of the lift car or platform is obtained through an electric motor coupled to the lifting element, and includes the machinery, suspension ropes, hydraulic rams, supports and enclosures required in connection therewith, and includes electric or hydraulic lifts and paternoster or continuous lift, but does not include mine cages as used in underground mines;

"machinery" includes steam boilers, unfired pressure vessels, fired pressure vessels, pipelines, prime movers, gas cylinders, gas holders, hoisting machines and tackle, transmission machinery, driven machinery, materials handling equipment, amusement device or any other similar machinery and any equipment for the casting, cutting, welding or electro-deposition of materials and for the spraying by means of compressed gas or air of materials or other materials, but does not include—

[Am. Act A1268:s.3]

(a) any machinery used for the propulsion of vehicles other than steam boilers or steam engines;

(b) any machinery driven by manual power other than hoisting machines;

(c) any machinery used solely for private and domestic purposes; or

(d) office machines;

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

"manufacturing or commercial secret" means highly sensitive information relating to—

(a) any manufacturing process;

(b) any product, raw material, by-product formulation;

(c) any idea of duplication or cloning of product; or

(d) any technical information on operating system,

and that the information has been declared as manufacturing or commercial secret in writing by the occupier or owner;

[Ins. Act A1268:s.3]

"materials handling equipment" means any powerdriven equipment for handling materials, and includes forklift, conveyor, stacker, excavator, tractor, dumper or bulldozer but does not include hoisting machine;

[Ins. Act A1268:s.3]

"nuisance" means any act, omission or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing, or which is or is likely to be injurious or dangerous to health or property;

"occupier" in relation to a factory means a person who occupies or uses any premises as a factory;

"office machines" means machines commonly used in the exercise of clerical and associated functions and includes electrical typewriters, calculating and accounting machines and computers;

"operator" includes any person employed on any service involving the management or operation of, or attendance on, any machinery;

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

"Panel" means the Panel of Examiners appointed under section 30;

"petroleum" means any mineral oil or relative hydrocarbon and natural gas existing in its natural condition and casinghead petroleum spirit, and includes—

(a) bituminous shales and other stratified deposits from which oil can be extracted; and

(b) petroleum products;

[Ins. Act A1268:s.3]

"petroleum products" means material derived from petroleum, natural gas or asphalt deposits, and includes gasoline, kerosene, diesel fuel, fuel oil, lubricating oil, liquefied petroleum gas, wax, grease, butane, benzene, propane and any like flammable and combustible liquids;

[Ins. Act A1268:s.3]

"premises" includes any building, place, or floating structure;

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

"prescribed" means prescribed by the Minister by regulation made under this Act;

"sanitary conveniences" includes urinals, water-closets, earthclosets, ashpits and any similar convenience;

"serious bodily injury" means any injury listed in the Second Schedule;

"special scheme of inspection" means an inspection system approved by the Chief Inspector pertaining to periodical inspections for certain classes of machinery and its auxiliary;

[Ins. Act A1268:s.3]

"steam boiler" means any closed vessel in which for any purpose steam is generated under pressure greater than atmospheric pressure, and includes any economiser used to heat water being fed to the vessel, and any superheater used for heating steam, and any pipes and fittings connected thereto;

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

"underground room" means any room which, or any part of which is so situate that at least half its height measured from the floor to the ceiling, is below the surface of the ground adjoining the room;

"unfired pressure vessel" means any enclosed vessel under pressure greater than atmospheric pressure by any gas or mixture or combination of gases and includes any vessel under pressure of steam external to the steam boiler and any vessel which is under pressure of a liquid or gas or both, and any vessel subject internally to a pressure less than atmospheric pressure but does not include gas cylinders;

"work of engineering construction" means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of—

(a) any erection, edifice, structure, caisson, mast, tower, pylon, wall, fence or chimney, whether constructed wholly or partly above or below ground level;

(b) any road works, dock, harbour works, railway, siding, cableway, tramway line, inland navigation, air field or aerodrome;

(c) any drainage, sewer, sewage works, irrigation, river control works, sea defence work or earth retaining structure;

(d) any electrical, mechanical, water, gas, petrochemical or telecommunication works; or

(e) any bridge, viaduct, dam, reservoir, lagoon, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works,

and includes—

(aa) any formwork, falsework, scaffold or any works which form an integral part of, or are preparatory to or temporary to, the works described in paragraphs (a) to (e);

(bb) site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping; and

(cc) such other works as may be specified by the Minister.

[Subs. Act A1268:s.3]

"working floor area" means the area covered by the premises and all the precincts, curtilage and yard of the factory as derived from the plan or sketch submitted at the time of notification, including all floor areas above and below ground level:

Provided that catwalks, ladders, and other such means of access to machinery shall not be considered when calculating working floor area;

"young person" means any person who has not completed his sixteenth year of age.

4. Appointment of officers.

(1) There shall be appointed an officer to be styled the Chief Inspector of Factories and Machinery and such number of Deputy Chief Inspectors of Factories and Machinery, Senior Inspectors of Factories and Machinery and Inspectors of Factories and Machinery as may be necessary for the purposes of this Act.

(2) There shall be appointed such other officers as may be expedient for the performance of such duties as may be prescribed under this Act.

5. Supervision of officers.

(1) All Deputy Chief Inspectors, Senior Inspectors and Inspectors and all officers appointed under subsection 4 (2) shall be subject to the direction and supervision of the Chief Inspector.

(2) A Senior Inspector shall have and may exercise all powers vested by this Act in an Inspector and the Chief Inspector and a Deputy Chief Inspector shall have and may exercise all such powers vested in a Senior Inspector or an Inspector.

(3) The Chief Inspector may in writing delegate any of the functions, powers or duties assigned to him under this Act to any Deputy Chief Inspector, Senior Inspector or Inspector, subject to such terms and conditions as he thinks fit.

(4) A delegation under this section shall not preclude the Chief Inspector himself from performing or exercising at any time any of the functions, powers or duties so delegated.

[(3) & (4) Ins. Act A1268:s.4].

6. Officers are public servants.

(1) All officers appointed under section 4 shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*].

[Am. Act A1268:s.5]

(2) A licensed person, all his servants and agents and other persons employed by him shall, while discharging their duties as a licensed person and such servants, agents and employees, be deemed to be public servants within the meaning of the Penal Code.

[Ins. Act A1268:s.5]

7. Powers of an Inspector.

(1) An Inspector shall, for carrying the purposes of this Act into effect, have powers to do all or any of the following:

(a) to enter, inspect and examine, by day or by night any factory, and every part thereof when he has reasonable cause to believe that any work or process is being carried on therein, and to enter, inspect and examine by day, any place which he has reasonable cause to believe to be a factory and any part of any building of which a factory forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used and to exercise such powers as may be necessary to inspect and examine any machinery, plant, appliance or fitting therein;

(b) to require the production of factory records, certificates, notices and documents kept in pursuance of this Act and to inspect, examine and copy any of them;

(c) to make such examination and enquiry as may be necessary to ascertain whether the provisions of this Act are complied with, so far as regards a factory or any persons employed therein;

(d) to require any person whom he finds in a factory to give such information as it is in his power to give as to who is the owner of the factory;

(e) in the case of an Inspector who is a registered medical practitioner, to carry out such medical examination as may be necessary for the purpose of his duties under this Act;

(f) to take samples of any material whether solid, liquid, gaseous or vaporous being discharged in or from a factory; and

(g) to render inoperative in accordance with this Act, any machinery which does not comply with this Act, by affixing a seal or by any other means which he may deem best suited to the purpose.

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

(3) An Inspector seeking to enter any premises under the powers conferred upon him by subsection (1) shall produce on demand, an official identification card in such form as may be prescribed, and no person shall be obliged to admit to his premises any person purporting to be an Inspector except on production of such an identification card.

7A. Entry into premises with a search warrant and the power of seizure.

Where information is given on oath to a magistrate that there is reasonable cause for suspecting that there is in a factory or premises any article, thing, book, document, plant, substance, installation or part thereof which has been used to commit or is intended to be used to commit an offence under this Act or regulation made thereunder, he shall issue a warrant under his hand by virtue of which an Inspector named or referred to in the warrant may enter the factory or premises at any reasonable time by day or night, and search for and seize or seal the article, thing, book, document, plant, substance, installation or part thereof.

[Ins. Act A1268:s.6].

7B. Entry into premises without a search warrant and the power of seizure.

Where an Inspector is satisfied upon information received that he has reasonable grounds for believing that, by reason of delay in obtaining a search warrant, any article, thing, book, document, plant, substance, installation or part thereof in a factory or premises which has been used to commit or is intended to be used to commit an offence under this Act or any regulation made thereunder is likely to be removed or destroyed, he may enter the factory or premises without a warrant and seize or seal the article, thing, book, document, plant, substance, installation or part thereof found therein.

[Ins. Act A1268:s.6].

7C. Service of list of things seized.

The Inspector seizing any article, thing, book, document, plant, substance, installation or part thereof under section 7A or 7B shall prepare a list of things seized and forthwith, deliver a copy of the list signed by him to the occupier, or his agent or servant present in the premises, and if the premises are unoccupied or if the occupier, or his agent or servant is absent the Inspector shall, wherever possible, post a list of the things seized on the premises and make a police report thereafter.

[Ins. Act A1268:s.6].

7D. Appointment, powers and duties of a licensed person.

(1) Notwithstanding any other provisions of this Act, the Minister shall have the power to grant a licence on such conditions as he may think fit to any person to perform any of the functions specified in this Act as the functions of a licensed person as it appears to him to be necessary.

(2) The Minister may, make an order for the purpose of subsection (1) and in particular but without prejudice to the generality of the foregoing, such order may—

(a) prescribe the qualification and standards of competency of persons to be employed by a licensed person;

(b) prescribe the powers of a person employed by a licensed person to carry out the functions of a licensed person;

(c) prescribe the records to be kept by a licensed person;

(d) prescribe the returns to be submitted by a licensed person to the Chief Inspector at certain intervals;

(e) regulate the inspection by the Chief Inspector of the premises of a licensed person and the records kept thereat;

(f) prescribe inspection standards for a licensed person to comply with; and

(g) prescribe the functions or duties to be carried out by a licensed person.

(3) The Minister may, by order published in the *Gazette*, authorize a licensed person to demand, prescribe, collect and retain charges, fees and levy in respect of the services provided by the licensed person.

(4) An order made under subsection (3) shall specify—

(a) the type of services in respect of which charges, fees or levy may be demanded, collected and retained; and

(b) the duration of the authorization to demand, collect and retain the charges, fees or levy.

(5) A licensed person authorized under subsection (3) shall—

(a) maintain such account, books and records in respect of the payment and collection of charges, fees or levy as the Chief Inspector may require;

(b) furnish to the Chief Inspector such information, returns and accounts in respect of the payment and collection of charges, fees or levy as the Chief Inspector may require; and

(c) permit the Chief Inspector or any other person authorized in writing by the Chief Inspector to have access to or examine or inspect any document, machinery or equipment maintained or used for the payment or collection of charges, fees or levy.

(6) The authorization of a licensed person under subsection (3) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the licensed person to carry out his obligations under this Act in respect of which charges, fees or levy are demanded, collected and retained.

(7) If a licensed person contravenes any condition of the licence or any of the provisions of any order made under this section or any of the provisions of subsection (5) with which he is required to comply he shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(8) Notwithstanding the licensing of a person under this section, the Minister may give directions to the Chief Inspector to exercise any of the functions which under the terms of the licence are to be carried out by such person.

[Ins. Act A1268:s.6].

7E. Revocation of licence.

(1) If the Chief Inspector is satisfied that a licensed person has breached any condition of the licence, the Chief Inspector may give a notice in writing to the licensed person requiring him to comply with the condition which he has breached and take all measures stipulated therein within the period stated in the notice.

(2) If by the time the period stipulated in the notice expires the licensed person has failed to comply with the notice, the Chief Inspector shall present a report to the Minister on such failure.

(3) If, after considering the report from the Chief Inspector, the Minister is satisfied that the breach is serious in nature or affects or may affect the safety and health of workers or members of the public and that the licensed person has failed or refused to take or has not taken all measures stipulated in the notice for the purpose of ensuring compliance with the condition which the licensed person has

breached, the Minister may give the licensed person a notice stating that he proposes to revoke the licence given to such person and the notice shall also state—

(a) the breach alleged against the licensed person and the actions or omissions that constitute the breach; and

(b) the period (which must not be less than thirty days from the date of the notice) within which the licensed person may make representations pertaining to the revocation.

(4) After the expiry of the period stated in the notice and after considering any representations made by the licensed person, the Minister may decide whether to continue with the proposed revocation or take no further action.

(5) Notice shall be given to the licensed person by the Minister informing him of the decision where the Minister decides to revoke the licence or take no further action, and the decision shall come into force on the date the notice is delivered to the licensed person.

(6) The decision of the Minister under this section is final.

(7) Notwithstanding the revocation of the licence, the validity of any certificate of fitness issued by the licensed person shall continue to be valid until the expiry date thereof and the licensed person shall continue to assume any obligation, duty and responsibility imposed by or in connection with the issuance of the certificate of fitness.

[Ins. Act A1268:s.6].

7F. Granting of new licence upon revocation.

(1) Upon the revocation under section 7E of a licence granted to the licensed person, the Minister may, after consulting the Chief Inspector, appoint another person to carry out, discharge, assume or perform any of the functions, obligations, duties, responsibilities and conditions conferred or imposed by the revoked licence, and to receive any payments, benefits or privileges which the person whose licence is revoked is entitled to receive or enjoy under the terms and conditions of the licence.

(2) The person whose licence is revoked and his agents or employees shall render all necessary assistance and cooperation to the person appointed by the Minister under subsection (1).

[Ins. Act A1268:s.6].

8. Obstruction an offence.

Any person who—

(a) refuses to allow or wilfully delays or obstructs an Inspector or a licensed person from entering a factory in the exercise of any power under this Act;

(b) fails to comply with any notice, other than a notice given under subsection 39(3) or 40(4), lawfully given by a licensed person in the exercise of any power under this Act;

(c) wilfully withholds any information as to who is the occupier or owner of any factory or machinery or conceals or prevents a person from appearing before or being examined by an Inspector or a licensed person, or in any manner obstructs an Inspector or licensed person;

(d) conceals the location or existence of any other person or any plant or substance from an Inspector or a licensed person;

(e) prevents or attempts to prevent any person from assisting an Inspector or a licensed person;

(f) in any other way, hinders, impedes or opposes an Inspector or a licensed person in the exercise of his power under the Act or any regulations made thereunder; or

(g) fails to comply with any order lawfully given by an Inspector or a licensed person in the exercise of any power under this Act,

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

[Subs. Act A1268:s.7].

9. Confidentiality of information.

(1) Except for the purpose of this Act or for the purpose of any civil or criminal proceedings under this Act or any other written law, no person appointed under section 4 or licensed person and employees of the licensed person shall disclose any manufacturing or commercial secret which may at any time come to his knowledge or has been obtained by him in the course of his duties under this Act.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

[Am. Act A1268:s.8]

PART II SAFETY, HEALTH AND WELFARE

10. Provisions relating to safety, etc

Without prejudice to any law with respect to local authorities, in respect of any factory, the following provisions relating to safety shall apply:

(a) foundations and floors shall be of sufficient strength to sustain the loads for which they are designed; and no foundation or floor shall be overloaded;

(b) roofs shall be of sufficient strength to carry where necessary suspended loads;

(c) all floors, working levels, platforms, decks, stairways, passages, gangways, ladders and steps shall be of safe construction so as to prevent a risk of persons falling, and structurally sound so as to prevent a risk of collapse, and shall be properly maintained and kept, as far as reasonably practicable, free from any loose material and in a non-slippery condition;

(d) such means as are reasonably practicable shall be provided, maintained, and used so as to ensure safe access to any place at which any person has at any time to work;

(e) every opening, sump, pit or fixed vessel in a floor, or working level shall be securely covered or securely fenced so as to prevent risk of persons falling; and

(f) all goods, articles and substances which are stored or stacked shall be so placed or stacked—

(a) in such manner as will best ensure stability and prevent any collapse of the goods, articles or substances or their supports; and

(b) in such a manner as not to interfere with the adequate distribution of light, adequate ventilation, proper operation of machinery, the unobstructed use of passageways or gangways and the efficient functioning or use of fire-fighting equipment.

11. Persons exposed to explosive, inflammable, etc., substances.

In every factory in which persons are exposed to risk of bodily injury from explosive, inflammable, poisonous or corrosive substances or ionising radiations, such measures as may be prescribed shall be taken as will eliminate the risk.

12. Lifting of weights.

No person shall be employed to lift, carry or move any load so heavy as to be likely to cause bodily injury to him.

13. Provisions against fire.

Without prejudice to any law with respect to local authorities, in every factory there shall be taken such precautions against fire, and there shall be provided and maintained, such means of escape in case of fire other than means of exit in ordinary use, and such means of extinguishing fire as may be prescribed.

14. Construction of machinery.

All machinery and every part thereof including all fittings and attachments shall be of sound construction and sound material free from defect and suitable for the purpose and shall be properly maintained.

15. Dangerous parts of machinery.

Every dangerous part of any machinery shall be securely fenced unless it is in such a position or of such construction as to be as safe to every person employed or working on or entering into the premises as it would be if securely fenced:

Provided that so far as the safety of a dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard the requirements of this section shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming or being brought into contact with that part.

16. Projecting material.

In respect of such machinery as may be prescribed, any part of any material carried by that machinery while it is working thereon which projects beyond any part of the machinery shall be effectively fenced unless it is in such a position as to be safe to any person employed or working on or entering into the premises.

17. Machinery for hire or sale must comply with regulations.

No person shall sell or let on hire any machinery other than transmission machinery which does not comply with any regulations made under this Act applicable to the machinery.

18. Machinery manufactured or repaired must comply with regulations.

(1) No person shall manufacture, repair or instal machinery in such a manner that it does not comply with the provisions of this Act and any regulations made thereunder applicable to such machinery.

(2) No person shall import any machinery other than transmission machinery which does not comply with any regulations made under this Act applicable to such machinery.

19. Certificate of fitness.

(1) No person shall operate or cause or permit to be operated any machinery in respect of which a certificate of fitness is prescribed, unless there is in force in relation to the operation of the machinery a valid certificate of fitness issued under this Act.

(2) In the case of any contravention of subsection (1) an Inspector shall forthwith serve upon the person aforesaid a notice in writing prohibiting the operation of the machinery or may render the machinery inoperative until such time as a valid certificate of fitness is issued.

(3) Certificates of fitness issued under this Act shall be in the forms respectively prescribed, and shall be valid subject to this Act, for such period as may be prescribed.

(4) A certificate of fitness in respect of any machinery which is being dismantled or repaired or is damaged for any reason shall terminate upon such dismantlement, repair or damage, but the Chief Inspector may exempt any machinery from the application of this subsection if in his opinion the machinery will not cause any danger to any person or property.

(5) For the purpose of subsection (4)—

"damage" means any physical defect caused to any machinery during operation or otherwise which may affect the strength and integrity of the machinery during subsequent operation;

"dismantle" means to undo any part of any machinery which may affect the strength, integrity or functional capability of that machinery;

"repair" means any work done to make good any part of any machinery which has been damaged.

(6) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.

[(4),(5),(6) Ins. Act A1268:s.9].

19A. Power to revoke certificate of fitness obtained by way of fraud or misrepresentation.

(1) The Chief Inspector shall revoke or terminate a certificate of fitness if he is satisfied that the certificate of fitness has been obtained by way of fraud or misrepresentation.

(2) Any person who is aggrieved by the decision of the Chief Inspector under subsection (1) may, within fourteen days from the date of such decision being notified to him, appeal to the Minister by way of writing.

(3) The decision of the Minister under this subsection shall be final.

[Ins. Act A1268:s.10].

20. Duties of persons employed.

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

(2) No person employed in any factory or in any place where any machinery is installed shall wilfully and without reasonable cause act in any manner so as to cause or to be likely to cause bodily injury to himself or other persons or damage to any machinery or other property.

21. Duties of occupier.

The occupier shall at all times maintain all safety appliances and machinery.

22. Provisions relating to health.

(1) Without prejudice to any law relating to public health, in respect of any factory the following provisions relating to health of persons shall apply:

(a) every factory shall be kept in a clean state and free from offensive effluvia arising from any drain, sanitary convenience or other source and shall be cleaned at such times and by such methods as may be prescribed and these methods may include lime-washing or colour washing, painting, varnishing, disinfecting or deodorising;

(b) the maximum number of persons employed at any one time in any workroom in any factory shall be such that the amount of cubic metre of space and the superficial metre of floor area allowed in the workroom for each such person are not less than the amount of cubic metre of space and the superficial metre of floor area prescribed either generally or for the particular class of work carried on in the workroom;

[Am. Act A1268:s.11].

(c) (i) effective and suitable provision shall be made for securing and maintaining adequate ventilation by the circulation of fresh air in every part of a factory and for rendering harmless, so far as practicable, all gases, fumes, dust and other impurities that may be injurious to health arising in the course of any process or work carried on in a factory;

(ii) the Minister may prescribe a standard of adequate ventilation and the means by which the standard may be achieved, for factories or for any class or description of factory or parts thereof;

(d) (i) effective and suitable provision shall be made for securing and maintaining such temperature as will ensure to any person employed in a factory reasonable conditions of comfort and prevention from bodily injury;

(ii) the Minister may for factories or for any class of factory or parts thereof prescribe a standard of reasonable temperature and prohibit the use of any methods of maintaining a reasonable temperature which in his opinion are likely to be injurious to the persons employed and direct that thermometers shall be provided and maintained in such places and positions as may be specified;

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

(ii) the Minister may prescribe a standard of sufficient and suitable lighting for factories or for any class or description of factory or parts thereof or for any process; and

(f) sufficient and suitable sanitary conveniences as may be prescribed, shall be provided and maintained for the use of persons in a factory.

(2) (a) Whenever it appears to an Inspector that any process in any factory is likely to affect adversely the health of any person employed therein or the public he shall report the circumstances in writing to the Chief Inspector who may thereupon carry out such investigations as he may consider necessary.

(b) Where the Chief Inspector is satisfied—

(i) that such a process is likely to affect adversely the health of any person employed in the factory or the public; and

(ii) that the process can be modified or means provided to reduce the possibility of injury to the health of such person or the public as aforesaid,

he shall, after considering any representations made by the occupier of the factory, order that the process be modified in such manner or that such means be provided as he may direct to reduce the possibility of injury to the health of that person or the public.

(c) Any person aggrieved by an order made under paragraph (b) may within twenty-one days of the receipt thereof appeal to the Minister who shall make such order thereon as he deems fit.

(d) Where the Chief Inspector is satisfied—

(i) that such a process is likely to affect adversely the health of any person employed in the factory or the public; and

(ii) that the process cannot be modified or means provided to reduce the possibility of injury to the health of such person or the public as aforesaid,

he shall report the circumstances in writing to the Minister.

(e) The Minister may upon receipt of the report either—

(i) make such regulations controlling or prohibiting the use of the process as he may consider reasonable; or

(ii) after considering any representations made by any person likely to be affected thereby by writing under his hand prohibit the carrying out of the process either

absolutely or conditionally or the use of any material or substance in connection therewith.

(f) For the purpose of enabling any occupier of a factory or other person to make representations in respect of a proposed order or prohibition under paragraph (b) or (e) the Chief Inspector or the Minister as the case may be, shall cause to be served on the occupier or other person a notice specifying the period within which such representations may be made and containing such particulars as the Chief Inspector or the Minister as the case may be considers adequate in the circumstances.

(3) An Inspector may require any person employed in any factory in which any of the diseases named in the Third Schedule has occurred, or is likely to occur, to be medically examined.

23. Exposure to elements.

Effective provision shall be made for securing and maintaining sufficient and suitable means to protect any person employed from exposure to the elements, and such means may include roof shelters and wind breaks for protection against rain and wind respectively.

24. Personal protective clothing and appliances.

Where in any factory persons are exposed to a wet or dusty process, to noise, to heat or to any poisonous, corrosive or other injurious substance which is liable to cause bodily injury to those persons the Minister may prescribe the provision and maintenance for use of those persons suitable and adequate personal protective clothing and appliances including where necessary goggles, gloves, leggings, caps, foot-wear and protective ointment or lotion.

25. Provisions relating to welfare.

(1) In respect of any factory, the following provisions relating to welfare of persons shall apply:

(a) there shall be provided and maintained for the use of persons employed therein—

(i) adequate and suitable accommodation for clothing not worn during working hours; and

(ii) such arrangements as are reasonably practicable for drying that clothing.

(b) there shall be provided and maintained at suitable places reasonably accessible to all persons employed therein—

(i) an adequate supply of safe and wholesome drinking water; and

(ii) adequate and suitable facilities for washing which shall be kept in a clean condition; and

(c) there shall be provided and maintained so as to be readily accessible a first-aid box or cupboard of the prescribed standard and when more than one hundred and fifty persons are employed at any one time a suitable first-aid room of the prescribed standard shall also be provided and maintained.

(2) The Minister may for factories or for any class of factory or parts thereof prescribe standards for compliance in respect of all the provisions in the foregoing subsection relating to welfare of persons employed.

PART III
PERSON IN CHARGE AND CERTIFICATES OF COMPETENCY

26. Training and supervision of inexperienced workers.

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

(a) has received sufficient instruction in work at the machine or process; or

(b) is under adequate supervision by a person who has knowledge and experience of the machine or process.

27. Chief Inspector may make orders in circumstances.

(1) The Chief Inspector may make special orders for the conduct and guidance of persons employed in any service involving the management or operation of, or attendance on, or proximity to, any machinery or process carried on in any factory as appear to him necessary to ensure their safety and health.

(2) The occupier shall ensure by all reasonable means that the persons exposed to danger are aware of any such special orders made under subsection (1) and those persons shall observe the said special orders.

(3) For the purpose of subsection (2) a copy of the Chief Inspector's special orders printed or written in the appropriate languages and posted in conspicuous places in the vicinity of the machinery or process to which the said special orders refer, so that all persons referred to shall have free access and opportunity to read the same, shall be deemed to constitute reasonable means.

28. Young persons.

(1) No young person shall carry out work involving the management of, or attendance on, or proximity to, any machinery.

(2) It shall be the duty of the owner or occupier to ensure that subsection (1) is observed.

(3) Subsection (1) shall not apply to a young person not being under the age of fourteen years receiving a course of instruction at a Government technical school or other educational institution or not being under the age of fifteen years if serving a recognised apprenticeship.

(4) An Inspector may require an owner or occupier to make suitable and effective arrangements to prevent the ingress of young persons into premises or any part thereof in which machinery is installed:

Provided that this subsection shall not apply to organised visits to factories for educational purposes in which case all possible precautions shall be taken to ensure the safety of young persons.

29. Certain machinery not to be operated without certificated staff.

(1) Every occupier shall ensure that machinery which is prescribed to be under the charge of a certificated engineer, dredgemaster or driver shall not be operated except under the charge of such engineer, dredgemaster or driver, as the case may be.

(2) No person shall take charge of any machinery which is prescribed to be under the charge of a certificated engineer, dredgemaster or driver, as the case may be, unless—

(a) he holds a certificate of competency as an engineer, dredgemaster or driver; or

(b) he has a written authority issued by the Chief Inspector.

(3) Every person holding a certificate of competency issued under this Act shall produce and permit inspection of the same whenever called upon to do so by an Inspector.

29A Machinery not to be manufactured, etc., without written authority.

No person shall manufacture, fabricate, test, install, maintain, dismantle or repair any machinery which is prescribed unless he has a written authority issued by the Chief Inspector.

[Ins. Act A1268:s.12].

30. Panel of Examiners and Board of Appeal.

(1) For the purpose of this Part there shall be appointed a Panel of Examiners consisting of a Chairman and such persons as may be prescribed.

(2) The Panel shall hold such examinations as may be prescribed and recommend to the Chief Inspector the grant to successful candidates at such examinations, the certificates of competency in the prescribed form.

(3) Examinations shall be conducted in accordance with the directions of the Chief Inspector as regards the times and places at which they shall be held, their form and content and the manner in which they shall be conducted.

(4) Every matter referred to the Panel shall be considered and decided by the Chairman and at least one member thereof:

Provided that the Chairman may permit the examination of engine drivers by one member.

(5) Any person dissatisfied with the decision of the Panel may appeal to the Chief Inspector who will convene an Appeal Board consisting of such persons as may be prescribed.

PART IV NOTIFICATION OF ACCIDENT, DANGEROUS OCCURENCE AND DANGEROUS DISEASES

31. Accidents and dangerous occurrence to be reported.

Whenever any accident which —

[Am. Act A1268:s.13]

(a) causes loss of life to any person;

(aa) causes serious bodily injury to any person;

[Ins. Act A1268:s.13]

(b) causes bodily injury to any person so that the person is prevented from following his normal occupation for more than three clear days excluding the day of the accident; or

[Am. Act A1268:s.13]

(c) causes serious damage to machinery or other property,

or any dangerous occurrence takes place in any factory or in connection with any machinery, the occupier shall report the accident or dangerous occurrence to the Inspector having jurisdiction for the area in which the accident or dangerous occurrence has taken place by the quickest means available and subsequently with the least possible delay, report in writing to the Inspector in the prescribed form the facts of the matter so far as they are known to him.

[Am. Act A1268:s.13]

32. Notification of occupational diseases.

(1) Every registered medical practitioner attending on, or called in to visit, a patient whom he believes to be suffering from any of the diseases named in the Third Schedule and contracted in a factory shall, unless such notice has been previously sent—

(a) forthwith sent to the Chief Inspector a notice stating the name and location of the factory in which the patient states he is or was last employed, the name and full postal address of the patient and the disease from which, in the opinion of the registered medical practitioner, the patient is suffering; and

(b) at the same time send a copy of the notice to the occupier of the factory in which the patient states he is or was last employed.

33. Investigation and enquiries.

1) An Inspector shall make a preliminary investigation of the circumstances of any accident or dangerous occurrence referred to in paragraphs 31(a), (aa) and (c) and may make a preliminary investigation of the circumstances of any accident that causes bodily injury as described in paragraph 31(b), or industrial disease referred to in section 32, reported to him, and shall forward in writing to the Chief Inspector a report on the investigation and if there has been any loss of life or there is reason to believe that any person has been fatally injured the Chief Inspector shall send a copy of the aforementioned report to the nearest Magistrate together with such further report as he may consider necessary and shall inform the Magistrate whether or not it is proposed to hold an enquiry under subsection (2).

[Am. Act A1268:s.15]

(2) (a) If upon consideration of the report referred to in subsection (1) it appears to the Chief Inspector that an enquiry ought to be held into the nature and cause of the accident or dangerous occurrence or occupational disease, he may cause such an enquiry to be held by a Senior Inspector.

[Am. Act A1268:s.15]

(b) Upon the conclusion of the enquiry the Senior Inspector shall forward to the Chief Inspector a copy of the evidence taken thereat, together with his finding thereon and such further report as the Senior Inspector may consider necessary.

(c) Where the Chief Inspector is of the opinion that criminal proceedings ought to be instituted against any person in connection with the accident or dangerous occurrence or occupational disease, he shall forward to the Deputy Public Prosecutor a copy of the evidence, finding and report, submitted in accordance with paragraph (b).

[Am. Act A1268:s.15]

(3) Where the accident or dangerous occurrence referred to in section 31 causes the death of any person or serious bodily injury to any person or serious damage to machinery or other property, no alterations or additions shall, without the consent of an Inspector in writing, be made to any machinery which may have caused such accident or dangerous occurrence nor shall any alterations be made without such consent to the site of the accident or dangerous occurrence until an Inspector has completed his investigation:

Provided that nothing herein contained shall operate to interfere with rescue work or work necessary for the general safety of life or property.

(4) (a) The Chief Inspector may appoint one or more persons of engineering, medical or other appropriate special skill to assist as assessors in any enquiry held under subsection (2).

(b) Every person not being a public officer serving as an assessor in any such enquiry shall be entitled to receive from the public funds such remuneration as the Minister may determine.

[Am. Act A1268:s.15]

(5) Nothing in this section shall—

(a) be deemed to require an enquiry to be held before prosecuting any person for any contravention of this Act or for failure to comply with any lawful order given by an Inspector; or

(b) affect any law relating to the enquiry into the death of any person.

PART V

NOTICE OF OCCUPATION OF FACTORY, AND REGISTRATION AND USE OF MACHINERY

34. Operation of factory.

(1) Every person who at the commencement of this Act occupies or uses any premises as a factory shall—

(a) within three months of the date submit to the Chief Inspector such particulars as may be prescribed; and thereafter

(b) within six months of being required so to do by the Chief Inspector submit such further particulars as may be prescribed.

(2) (a) No person shall except with the written permission of the Inspector begin to use any premises as a factory until one month after he has served on the Inspector a written notice in the prescribed form.

(b) This subsection shall not apply to any person who takes over a factory from another person if there is no change in the nature of the work carried on in the factory provided that

the first person shall within one month of such taking over have served on the Inspector written notice in the prescribed form.

(3) This section shall not apply to building operations and works of engineering construction.

35. Building operations or works of engineering construction.

(1) Every person who undertakes any building operations or works of engineering construction shall not later than seven days from the commencement of those operations serve on the Inspector written notice in the prescribed form.

(2) Subsection (1) shall not apply to—

(a) building operations or works of engineering construction the carrying out of which does not involve the use of machinery and which the person undertaking them has grounds for believing will be completed in a period of less than six weeks; and

(b) a person undertaking any operations in a place in which building operations or works of engineering construction are being carried out in respect of which notice has been given under subsection (1).

36. Installation of machinery etc.

(1) No person shall install or caused to be installed—

(a) any machinery in any factory; or

(b) any machinery in respect of which a certificate of fitness is prescribed,

except with the written approval of the Inspector.

(2) For the purpose of obtaining the approval referred to in subsection (1) there shall be submitted to the Inspector such particulars as may be prescribed.

(3) When any machinery in respect of which a certificate of fitness is prescribed has been installed, a written notice shall be served by the occupier or owner of the factory on—

(a) the Inspector, who may as soon as conveniently may be, make an inspection of the machinery; or

(b) a licensed person where applicable, who shall within one month from the date of receipt of the written notice make an inspection of the machinery.

(4) If, upon inspection, the Inspector or the licensed person finds that the machinery—

(a) complies with the requirements under this Act, the Inspector or the licensed person shall issue upon payment of the prescribed fee a certificate of fitness in the prescribed form specifying that the machinery has passed the inspection on the date of the inspection; or

(b) does not comply with the requirements, the occupier or owner of the factory shall pay to the Government or the licensed person such payments as may be prescribed for the services rendered despite the non-issuance of a certificate of fitness.

(5) Where a certificate of fitness is refused, the Inspector or the licensed person shall specify the grounds for such refusal.

(6) A person aggrieved by the refusal of the Inspector or the licensed person to issue a certificate of fitness may appeal to the Chief Inspector, and on such appeal, the Chief Inspector shall cause a re-inspection to be carried out at the expense of the aggrieved person and after the re-inspection may cause to be issued or refuse to issue a certificate of fitness.

(7) The decision of the Chief Inspector under subsection (6) shall be final.

(8) The licensed person shall employ only a person with the prescribed qualification and competency to carry out the inspection and to issue a certificate of fitness under this section.

[Subs. Act A1268:s.16].

37. Application for registration.

(1) Every person who comes into possession of any machinery in respect of which a certificate of fitness is prescribed, shall send to the Inspector and licensed person such particulars in such manner as may be prescribed.

[Am. Act A1268:s.17]

(2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

[Ins. Act A1268:s.17]

38. Register.

(1) There shall be kept in every factory a register in the prescribed form to be called the general register and there shall be entered in or attached to that register all such particulars as may be prescribed.

(2) The occupier of every factory shall send to an Inspector or licensed person such extracts from the general register as the Inspector or licensed person may from time to time require for the purpose of the execution of his duties under this Act.

[Am. Act A1268:s.18]

(3) The general register and every other register or record or certificate kept in pursuance of this Act shall be preserved and shall be kept available for inspection by any Inspector for at least two years or such other period as may be prescribed for any class or description of register or record, after the date of the last entry in the register or record.

(4) The licensed person shall only have access to information in the general register and any other register or record or certificate kept in pursuance of this Act pertaining to machinery in respect of which a certificate of fitness is prescribed.

[Ins. Act A1268:s.18]

39. Moving or alteration of or addition to machinery to be approved.

(1) No person shall move, alter or add to or cause to be moved, altered or added to, any machinery which is installed for use if the effectiveness of any fencing or any safety appliance is affected by the moving, alteration or addition, unless he has received in writing the approval of the Inspector thereto.

For the purpose of such approval there shall be submitted to the Inspector details of the proposed moving, alteration or addition and of the proposed modifications to the fencing and safety appliances together with the name and address of the person who is to carry out the said moving, alteration or addition and a sketch showing the details of the modifications.

(2) The occupier of the factory shall notify the Inspector in writing as soon as the moving, alteration or addition referred to in subsection (1) has been completed.

(3) If the machinery does not comply with the requirements of this Act, the Inspector shall by notice in writing served on the occupier or where this is not practicable, posted on the premises where the machinery to which it relates is installed, require such defects as he may specify to be made good or removed within such period as he shall specify in the notice and the machinery shall not be operated after the expiry of that period unless the defects have been made good or removed to the satisfaction of the Inspector who shall thereupon, on payment of the prescribed fee, permit its use and where applicable endorse the certificate of fitness:

Provided that if the Inspector is of the opinion the defect is likely to cause immediate danger to life or property, he shall by notice served or posted as aforesaid prohibit the operation of the machinery until the defect is made good or removed, and in that case the machinery shall not be operated so long as the prohibition remains unrevoked:

And provided further that the Inspector may in such case render the machinery inoperative by any means he may deem best suited for the purpose.

40. Periodical inspections.

(1) All factories and machinery in respect of which a certificate of fitness is not prescribed shall be inspected by an Inspector at such periods and in such manner as may be prescribed;

[Subs. Act A1268:s.19]

(1A) All machinery in respect of which a certificate of fitness is prescribed shall be inspected by an Inspector or a licensed person at such periods and in such manner as may be prescribed;

[Ins. Act A1268:s.19]

(2) The occupier of every factory and the owner or person having possession of any machinery shall afford to an Inspector all reasonable facilities for inspection and all information as may reasonably be required in connection therewith.

[Am. Act A1268:s.19]

(2A) For the purpose of subsection (1A), the occupier of every factory and the owner or person having possession of any machinery in respect of which a certificate of fitness is prescribed shall afford to an Inspector or a licensed person all reasonable facilities for inspection and testing and all information as may reasonably be required in connection with the inspection;

[Ins. Act A1268:s.19]

(3) Every engineer and dredgemaster in charge of any machinery and every occupier of a factory, shall as soon as he becomes aware of any defect therein which is likely to cause bodily injury to any person or damage to any property, make good or remove the said defect, and if the engineer, dredgemaster or occupier is unable to make good or remove the said defect he shall cease to operate such machinery or use such part or parts of the factory and forthwith make a report thereon to an Inspector.

(4) If in the opinion of an Inspector the use of any part of the ways or works in a factory, or machinery, whether a certificate of fitness is or is not prescribed in respect of the machinery, is likely to cause bodily injury to any person or damage to any property, he shall by notice in writing served on the occupier or where this is not practicable, posted at the premises where the machinery to which it relates is installed, require the defect to be made good or removed within such period as he shall therein specify and in every such case that part of the ways or works in that factory shall not be used or the machinery shall not be operated after the expiry of that period unless the defect has been made good or removed to the satisfaction of the Inspector expressed in writing:

Provided that if the Inspector is of the opinion that the defect is likely to cause immediate danger to life or property, he shall by notice served or posted as aforesaid forthwith prohibit the operation and use of the said machinery until the defect is made good or removed to the satisfaction of the Inspector expressed in writing:

And provided further that the Inspector may in such case render the machinery inoperative by any means he may deem best suited for the purpose.

(5) Any factory owner or occupier may apply to the Chief Inspector for approval for a special scheme of inspection.

(6) The Chief Inspector may approve the application under subsection (5) if he is satisfied that the prescribed requirements in respect of the machinery in question in relation to the special scheme of inspection have been fulfilled.

(7) Upon the approval under subsection (6), the inspection of the machinery shall be conducted according to the special scheme of inspection.

(8) Any person who contravenes subsection 40(3) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

[(5) to (8) Ins. Act A1268:s.19]

41. Questions for decision by an Inspector and appeals from such decision

(1) Any person aggrieved by any order made by an Inspector or any decision made by a licensed person under this Act may within twenty-one days from the date of such order or decision appeal to a Senior Inspector who may after considering any representations made by that person by order in writing confirm, annul or vary the order or decision.

[Am. Act A1268:s.20]

(2) Any person aggrieved by any order made by a Senior Inspector under subsection (1) or otherwise under this Act may within twenty-one days from the date of the order appeal to the chief Inspector who shall refer it to a Board of Appeal constituted under this section.

(3) A Board of Appeal may after hearing such evidence as it may consider necessary and considering any representations made confirm, annul or vary the order made by the Senior Inspector.

(4) (a) The Minister shall appoint a Board of Appeal for the purpose of considering any appeal made under this section.

[Subs. Act A1268:s.20]

(b) A Board of Appeal shall consist of the Chief Inspector or a Deputy Chief Inspector as the Chairman and two members nominated by the Minister, who in his opinion, have wide experience and knowledge in matters relating to the subject matter of the appeal.;

[Am. Act A1268:s.20]

(c) All questions requiring decision by a Board of Appeal shall be decided by a majority of the Board.

(d) A copy of the decision of a Board of Appeal, on an appeal referred to it, certified by the Chairman, shall be served without delay on the person by whom the appeal was preferred.

(da) The decision of the Board of Appeal shall be final and shall not be questioned in any court.

[Ins. Act A1268:s.20]

(e) Every member of the Board of Appeal may be paid an allowance at such rates as the Minister may determine.

[Subs. Act A1268:s.20]

(5) The Senior Inspector in the case of an appeal under subsection (1) or the Chief Inspector in the case of an appeal under subsection (2) may direct that the order appealed from shall be suspended pending determination of the appeal.

42. Report of changes, etc.

It shall be the duty of the occupier of any factory to report to the Inspector any structural change in the factory or any change in the name of the factory or the nature of work carried on therein.

43. Machinery or factory no longer in use.

It shall be the duty of any occupier who ceases to use any premises as a factory or any machinery to notify an Inspector of the cessation within thirty days thereof.

44. Notice of sale, hire or transfer.

(1) Any owner who shall sell, hire out or transfer permanently or temporarily to any person any machinery for which a certificate of fitness has been issued shall, within ten days of the sale, hiring out or transfer, give notice thereof in writing to an Inspector and a licensed person.

[Am. Act A1268:s.21]

(2) Any person, being a person who purchases for resale used machinery for which a certificate of fitness is prescribed, shall within ten days of reselling any such machinery, give notice thereof in writing to an Inspector and a licensed person in such manner as may be prescribed.

[Am. Act A1268:s.21]

45. Copy of report of enquiry may be supplied.

Any person concerned in any enquiry held under this Act shall be entitled, upon payment of the prescribed fee, to receive a copy of the evidence taken at, and the decision of, the enquiry.

46. Powers of the Chief Inspector and Senior Inspectors at enquiries.

For the purpose of holding enquiries under this Act the Chief Inspector and a Senior Inspector shall have the power to administer oaths and affirmations and shall be vested with the powers of a First Class Magistrate for compelling the attendance of witnesses, production of documents, maintaining order and otherwise duly conducting the said enquiries, and all persons summoned to attend any such enquiries shall be legally bound so to attend.

PART VI GENERAL

47. Criminal or civil liability unaffected.

Nothing in this Act shall operate to relieve any owner, occupier, engineer, dredgemaster, driver or other person from any civil or criminal liability.

47A. Protection against personal liability.

Subject to the provisions of this Act and any regulations made under this Act, no Inspector or licensed person shall be personally liable for any loss or damage caused by his act or omission in carrying out the duties under this Act or any regulations made under this Act, unless the loss or damage was caused intentionally or through recklessness or negligence on the part of the Inspector or licensed person.

[Ins. Act A1268:s.22]

48. Fees.

(1) All fees payable under this Act shall be paid in such manner and within such period as may be prescribed.

[Am. Act A1268:s.23]

(2) Any fees payable and due to the Government under this Act shall be a debt due to and recoverable by the Government.

[Ins. Act A1268:s.23]

(3) Any fees payable and due to a licensed person under this Act shall be a debt due to and recoverable by the licensed person.

[Ins. Act A1268:s.23]

49. Chief Inspector's powers.

Where the Chief Inspector is satisfied in respect of any particular factory or part thereof or any particular process that any requirement of any regulations made under this Act need not, having regard to all the circumstances, be complied with or compliance with such requirement is not reasonably practicable, he may by certificate in writing, which he may after such notice as he may consider reasonable in the circumstances revoke, exempt the factory or part or process from complying with the requirement subject to such conditions as he may specify in the said certificate.

50. Offences.

(1) Subject to subsections (2) to (4) where the occupier of a factory contravenes this Act he shall be guilty of an offence.

(2) Where the contravention as aforesaid is one in respect of which the owner is by or under this Act made responsible the owner shall be guilty of an offence.

(3) Notwithstanding subsections (1) and (2) whenever it is proved to the satisfaction of a court that a contravention of this Act, has been committed by any person other than the occupier or owner of the factory or machinery in respect of which the contravention has been committed, the owner or occupier as the case may be shall also be held to be liable for that contravention, and to the penalty provided therefor, unless he shall prove to the satisfaction of the court that the same was committed without his knowledge or consent and that he had taken all reasonable means to prevent the same and to ensure the observance of this Act:

Provided that nothing contained in this section shall be deemed to exempt such first mentioned person from liability in respect of any penalty provided by this Act for any contravention proved to have been committed by him.

(4) If the occupier or owner of a factory or machinery avails himself of any exception allowed by or under this Act and fails to comply with any of the conditions attached to the exception, he shall be guilty of an offence.

51. Penalties.

(1) Any person who contravenes section 31, subsections 34(1), 36(1), 38(1) and 39(1), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding two years or to both.

[Subs. Act A1268:s.24]

(2) Any person who contravenes any other provision of this Act or any regulation made under this Act for which contravention no penalty is expressly provided shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

[Am. Act A1268:s.24]

(3) Where the offence of which any person is convicted is a continuing offence, such person shall, in addition to the punishment inflicted in respect of that offence, be further liable to a fine not exceeding two thousand ringgit for each day or part of a day during which the offence continues after the first day in respect of which the conviction is recorded.

[Am. Act A1268:s.24]

(4) Any person who without reasonable excuse fails to comply with any written order or notice issued under subsection 39(3) or 40(4) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both and to a further fine not exceeding two thousand ringgit for each day or part of a day during which the offence continues after the first day in respect of which the conviction is recorded.

[Ins. A1268:s.24]

51A. Jurisdiction to try offences.

Notwithstanding any written law to the contrary, a Court of a First Class Magistrate shall have jurisdiction to try any offence under this Act and to impose the full punishment for any such offence.

[Ins. Act A1268:s.25]

52. Institution of prosecution.

No prosecution in respect of any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

[Subs. Act A1268:s.26]

52A. Power to compound offences.

(1) The Chief Inspector or any Deputy Chief Inspector or any Senior Inspector appointed under subsection 4(1) may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person which is punishable under this Act or any regulations made under this Act.

(2) The Chief Inspector or any Deputy Chief Inspector or any Senior Inspector may, in a case where he deems it fit and proper so to do, compound an offence by making a written offer to the person who has committed the offence to compound the offence on the payment to the Chief Inspector or the Deputy Chief Inspector or the Senior Inspector, as the case may be, within such time as may be specified in the offer, of such sum of money as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which the person would have been liable if he had been convicted of the offence.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution is instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Chief Inspector or the Deputy Chief Inspector or the Senior Inspector may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2) no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made.

(5) Any money paid to the Chief Inspector or a Deputy Chief Inspector or a Senior Inspector under subsection (2) shall be paid into and form part of the Federal Consolidated Fund.

[Subs. Act A1268:s.27]

53. Power to modify agreements.

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

*NOTE—See *Factories and Machinery (Compounding of Offences) Rules 1978 - [P.U. (A) 85/1978]*.

54. Power to apportion expenses.

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

55. Exemptions.

(1) Nothing contained in this Act shall apply to—

(a) any factory or machinery operated—

(i) by the armed forces; or

(ii) by agreement with the Government by any visiting force lawfully present in Malaysia; or

(b) any machinery which is subject to the law relating to merchant shipping.

(2) Any factory and machinery operated by:

(a) the Government of the Federation and the Government of every State shall be exempted from the provisions of—

(i) the whole of sections 34, 35, 38, 48; and

(ii) sections 36, 37, 39, 40, 43, only in respect of machinery other than steam boilers, steam receivers, fired pressure vessels, unfired pressure vessels and lifts; and

[Am. Act A1268:s.28]

(b) *[Deleted Act A1268:s.28]*

(3) The Minister may, by order, exempt either conditionally or absolutely any factory or machinery or class of factories or machinery from all or any of the provisions of this Act or the regulations made thereunder and may in like manner cancel or vary any such exemptions.

56. Regulations.

(1) The Minister may make regulations in respect of any matter which may be prescribed under this Act and in particular—

(a) prescribe the duties of the Chief Inspector and of any of the officers appointed under section 4 and the duties of a licensed person;

[Am. Act A1268:s.29]

(b) prescribe the records to be kept in respect of machinery and factories and of inspections, the certificates and any other matters to which this Act relates and the form thereof and the person by whom the same are to be kept;

(c) prescribe the standard of cleanliness to be observed and the means of removal of injurious and offensive fumes or dust arising from certain processes in factories, or class or description of factory and the special measures to be taken to ensure the health of persons employed therein;

(ca) prescribe the standard of cleanliness and permissible exposure limit to be observed and the means of removal of or controlling injurious and offensive physical, biological or chemical hazards arising from certain processes in factories, or classes or descriptions of factories and the special measures to be taken which may include employee exposure monitoring, to protect the health of persons employed in the factories;

[Ins. Act A1268:s.29]

(d) in respect of any matters which may appear to the Minister expedient for the safety, health and welfare of persons employed at machinery or in factories;

(e) specify the classes of machinery for which certificates of fitness are required and order the prohibition of the use of condemned machinery, and the marking and disposal of the same;

(f) prescribe the manner of calculating the safe working pressure of steam boilers and unfired pressure vessels and gas cylinders, the horse power of prime movers and the safe working load of hoisting machines and tackle;

(g) prescribe the times at which and the manner in which certain classes of machinery shall be inspected and to empower the Chief Inspector to stipulate the times at which and manner in which factories and machinery shall be inspected, the notice, if any, to be given in relation to such inspections and the preparations to be made for such inspections;

[Subs. Act A1268:s.29]

(ga) prescribe the requirements, procedure and processing fees in respect of the approval of a special scheme of inspection;

[Ins. Act A1268:s.29]

(h) prescribe the qualifications to be possessed by, the procedure for the registration of, the renewal of registration and deregistration of, the duties of and processing fees to be paid by and the register to be maintained by—

(i) any person before they may be placed in charge of or entrusted with the care or management of or operating any specified machinery;

(ii) any person manufacturing, fabricating, installing, testing, inspecting, maintaining, dismantling, or repairing any specified machinery as required under section 29A;

(iii) any person carrying out environmental monitoring including noise monitoring and audiometric testing; and

(iv) any person carrying out inspection, testing and examination of control equipment;

[Subs. Act A1268:s.29]

(i) prescribe the nature of the examinations for certificates of competency as engineers, dredgemasters and drivers, the form of such certificates, the manner and conditions of the issue thereof, and the fees to be paid for examinations and certificates and prescribe the manner and circumstances in which the certificate of competency may be suspended, cancelled or varied;

(j) prescribe the fee and the manner by which it is to be paid in respect of the inspection of factories and machinery and the registration of machinery requiring certificates of fitness for operation, certificates of competency and any other certificates, the forms of such certificates, the manner and conditions of issue, extension, suspension, revocation and cancellation thereof and the period for which any such certificate shall remain in force;

(ja) prescribe the requirement, procedure, and processing fees in respect of approval of any equipment for environment monitoring including noise monitoring, audiometric testing equipment and facilities, personal protective equipment or laboratory for analysis;

[Ins. Act A1268:s.29]

(k) prescribe the manner of holding enquiries under section 33; and

(ka) prescribe the qualification and standard of competency of employees of a licensed person under subsection 36(8); and

(kb) prescribe any terms, conditions or fees for any person to obtain any licence to manufacture, fabricate, install, import, supply, inspect or maintain and dismantle boilers, unfired pressure vessels and hoisting machines from the Chief Inspector.

[Ins. Act A1268:s.29]

(l) in respect of any other matters as to which it may appear to the Minister to be expedient for the better carrying out of this Act.

(2) Where it appears to the Minister that in view of the number and nature of accidents occurring in any factory or class or description of factory, special provisions ought to be made at that factory or factories of that class or description to secure the safety of persons therein, he may make special regulations as may appear to him to be reasonable, requiring the occupier to make such special provision for supervision in regard to safety, investigation of the circumstances and causes of accidents and otherwise as may be specified in the regulations.

(3) Where part of a building is let off as a separate factory, the Minister may make regulations to modify the application of the Act specifying the person, that is to say the owner of the building or the occupier of the factory, on whom any duties are imposed, or rights conferred, by the respective provisions of the Act as far as they are applicable, and the liability for any contravention thereof.

57. Medical supervision.

Where it appears to the Minister that in any factory or class or description of factory—

(a) cases of illness have occurred which he has reason to believe may be due to the nature of the process or other conditions of work;

(b) there may be risk of injury to the health of persons employed in any process; or

(c) persons below the age of eighteen years are, or are about to be, employed in work which may cause risk of injury to health,

he may make regulations requiring arrangements to be made for the medical supervision of or the provision of medical treatment of a preventive character for persons, or any class of persons, employed at the factory or class or description of factory as may be specified in the regulations.

58. Repeal.

The Machinery Ordinance 1953 of the States of Malaya [*F.M. Ord. 18 of 1953*], and the Machinery Ordinance of the State of Sabah [*Cap. 75*] and all the regulations made thereunder are repealed:

Provided that—

(a) any appointments made and any exemptions granted under the aforesaid Ordinances shall, so far as they are consistent with this Act, be deemed to have been made or granted by this Act and where applicable under the provisions of this Act shall remain in force until revoked or superseded by any appointment or exemption made under this Act;

(b) any certificates or written permits to operate any machinery granted under the aforesaid Ordinances shall remain valid as if they have been granted under this Act; and where applicable shall have effect for the period specified therein:

Provided further that, in respect of the State of Sabah this section shall not have effect until the whole of the provisions of this Act are in force in that State.

59. Amendment of Schedule.

The Minister may, at any time by order, amend any of the Schedules.

FIRST SCHEDULE

Dangerous Occurrence.

[Section 3]

1. Bursting of a revolving vessel, wheel, grindstone or grinding wheel moved by mechanical power.
2. Collapse or failure of a crane, derrick, winch, hoist, piling frame or other appliance used in raising or lowering persons or goods, or any part thereof (except breakage of chain or rope slings), or the overturning of a crane.
3. Explosion or fire or failure of structure affecting the safety or strength of any room or place in which persons are employed, or to any machinery or plant contained therein.
4. Explosion or failure of structure affecting the safety or strength of a steam boiler or of an unfired pressure vessel; the loss of boiler water, the melting of a fusible plug and the bursting of a tube.

SECOND SCHEDULE

SERIOUS BODILY INJURY

[Section 3]

1. Emasculation.
2. Permanent privation of the sight of either eye.
3. Permanent privation of the hearing of either ear.
4. Privation of any member or joint.
5. Destruction or permanent impairing of the powers of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone.
8. Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

THIRD SCHEDULE

NOTIFIABLE OCCUPATIONAL DISEASES

[Am. Act A1268:s.30]

[Section 32]

1. Dust diseases of the lung—
 - (a) Silicosis-inhalation of (SiO₂) silica containing dust;
 - (b) Stannosis-inhalation of tin dusts or fumes;

(c) Siderosis or sidero-silicosis-inhalation of dust containing iron and silica, haematite;

(d) Asbestosis-inhalation of asbestos dust or fibres;

(e) Conditions of respiratory allergy of asthma or chronic bronchitis, or byssinosis resulting from inhalation of dusts of plant origin as cotton, wood, flax, jute, rice husks, cork, spices, hemp, sisal, tobacco, tea, flour and the like and mineral dusts as cements, copper, zinc, or animal dusts as bone or hair;

(f) Other pneumoconioses or fibrotic diseases of the lungs resulting from inhalation of aluminium or talc, or coal.

2. Systematic intoxication by any of the following metals or their compounds, lead, mercury, manganese, phosphorous, antimony, chromium, nickel, beryllium.
3. Intoxication resulting from the use of solvents as benzene and other aromatic hydrocarbons, carbon disulphide, chlorinated hydrocarbons, and petroleum and its derivatives.
4. Pulmonary irritation resulting from inhalation of nitrogen oxides, sulphur oxides, chlorine, phosgene, ammonia, *etc.*
5. Intoxication resulting from handling of insecticides, or herbicides or fungicides as organic phosphate compounds, nitrogenous and chlorinated compounds.
6. Conditions of occupational dermatosis resulting from handling of mineral oils, acids, alkalis, dusts, and other irritants.
7. Occupational infections as anthrax, glanders, and leptospirosis, tuberculosis, leprosy (where occupational exposure to the last two is evident).
8. Malignant disease resulting from handling or inhalation or contact with carcinogenic tars, or radioactive dusts.
9. Eye conditions resulting from physical trauma as heat cataract, radiation cataract and from irritants.
10. Toxic jaundice resulting from nitro or amino derivatives of benzene or other substances.
11. Subcutaneous or acute bursitis of knee or hand or wrist resulting from manual labour causing severe or prolonged friction or pressure.
12. Conditions resulting from severe heat exposure such as heat cramps or heat stroke.
13. Hearing loss due to excessive exposure to industrial noise of high sound pressure level.
14. Conditions resulting from exposure to ionizing and non-ionizing radiation.
15. Decompression sickness (caisson disease) and conditions resulting from working under water.

LIST OF AMENDMENTS

<i>Amending law</i>	<i>Short title</i>	<i>In force from</i>
Act A199	Factories and Machinery (Amendment) Act 1973	01-8-1973
Act 160	Malaysian Currency (Ringgit) Act 1975	29-8-1975
Act A424	Factories and Machinery (Amendment) Act 1978	24-2-1978
P.U. (A) 111/2003	Revision of Laws (Rectification of Factories and Machinery Act 1967) Order 2003.	18-04-2003
Act A1268	Factories and Machinery (Amendment) Act 2006	01-01-2007