I assent.

(L.S.)

CENSU TABONE
President

1st March, 1994

ACT No. VII of 1994

AN ACT for the Promotion of Occupational Health and Safety.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. (1) This Act may be cited as the Occupational Health and Safety (Promotion) Act, 1994.

(2) The following provisions of this Act shall come into force on such date as the Minister may appoint by notice in the Gazette, and different dates may be appointed for different provisions.

Declaration of principles and duties.

2. (1) The protection of occupational health and safety is to be considered of public interest.

(2) (a) It is the duty of an employer of any person to ensure that the work place is free from unnecessary hazards to health and from avoidable dangers to the physical and psychological integrity of workers.

(b) It is also the duty of an employer to ensure that any work process carried out on his order is free from unnecessary hazards to health and from avoidable dangers to the physical and psychological integrity of the workers employed by him and of any workers employed by a self-employed person, contractor or sub-contractor to whom the employer shall have assigned any work:

Provided that in the case of work assigned to a self-employed person, contractor or sub-contractor as aforesaid, the employer shall only be liable if he has provided facilities, including tools, equipment, knowhow, plans, or place of work, or the use of such facilities, and he is aware that such facilities, or the use

thereof, would ordinarily present a hazard or danger to health or safety.

(c) It is the duty of every worker in a place of work to safeguard the health and safety of other workers as well as his own.

(d) It is the duty of the Government to see that the levels of occupational health and safety protection established by regulations made under this Act are maintained.

(3) In assessing the hazards and dangers referred to in the foregoing subsection due regard shall be given to the inevitable necessity of exposure thereto of the persons employed to control and combat such hazards and dangers.

Commission for the Promotion of Occupational Health and Safety.

3. (1) There shall be a Commission for the Promotion of Occupational Health and Safety which shall consist of:—

(a) a president, appointed by the President of Malta;

(b) the Director of Labour and the Chief Government Medical Officer, as vice-presidents;

(c) a representative of the Employment and Training Corporation appointed by the said Corporation;

(d) a representative of the Commissioner of Police appointed by the said Commissioner;

(e) two persons appointed by the Minister to repersent the interest of workers from amongst persons indicated by Trade Unions or organisations of Trade Unions; and

(f) two persons appointed by the Minister to represent the interest of employers from amongst persons indicated by organisations of employers.

(2) Five members shall consistute a quorum, provided that at least either the president or one of the two vice-presidents, and one of the persons mentioned in paragraph (e) and one of the persons mentioned in paragraph (f) of the foregoing subsection are present.

(3) The Minister shall appoint a person to act as Secretary of the Commission.

(4) The President of the Commission shall hold office for a term of three years while the other members of the Commission shall hold office for a term of one year, and the President and members of the Commission may be reappointed at the end of their respective term of office.

(5) The Commission shall meet at least once a month.

(6) The Commission shall send, in the month of January of every year, its report for the preceding year to the Ministers responsible for Labour and Health and this report is to be laid on the table of the House of Representatives by the Minister responsible for Labour within one month.

Functions of the Commission.

4. (1) The Commission shall have consultative, informative and quasi-judicial functions.

(2) The Commission shall formulate and publish Codes of Practice, aimed at promoting a high level of safeguard of health and safety according to the different categories of work places.

(3) The Commission shall propose to the Minister those regulations which it deems should be in force so as to protect occupational health and safety, and different regulations may be proposed for different categories of work places.

(4) The Commission shall take the necessary measures so that all possible information be given at work places, also during apprenticeship or training, and to the public in general with regard to matters of occupational health and safety.

(5) The Commission shall promote scientific research aimed at better methods of prevention of occupational disease, injury or death.

(6) The Commission, through its Judicial Committee set up in terms of section 5, shall hear and decide upon appeals lodged in terms of section 13 against orders issued by inspectors appointed under this Act.

(7) The Commission shall have the duty to advise the Ministers responsible for Labour and for Health with regard to all matters of accupational health and safety.

(8) The Commission may be entrusted by the Ministers responsible for Labour or for Health with other functions concerning occupational health and safety.

(9) In the exercise of its functions under this Act, the Commission may set up sub-committees to deal with particular areas of competence and it may co-opt on such sub-committees from outside its membership competent persons who, in the opinion of the Commission, have a professional or expert knowledge on any matter dealt with under this Act, provided that when in a sub-committee a decision is taken by vote the co-opted members shall not vote.

The Judicial Committee.

5. (1) The Commission shall appoint a Judicial Committee to hear and decide upon appeals from decisions of inspectors appointed under this Act.

(2) The Judicial Committee shall be composed of the President of the Commission who shall be *ex-officio* President of the Judicial Committee and four other members of the Commission:

Provided that one member shall be appointed from the members appointed in terms of paragraph (e) of subsection (1) of section 3 and another member from the members appointed in terms of paragraph (f) of subsection (1) of the said section:

Provided also that when the President of the Judicial Committee abstains from the hearing of any appeal, the Commission shall appoint one of its vice-presidents to preside over the Judicial Committee for the hearing of that appeal:

Provided further that when a member of the Judicial Committee abstains from the hearing of any appeal, the Commission shall appoint another member for the hearing of that appeal.

(3) The members appointed on the Judicial Committee shall continue to hold this office until the termination of their period of office on the Commission.

(4) The Minister shall appoint an Advocate or a Legal Procurator to act as Secretary of the Judicial Committee for a period of three years, which period may be renewed.

(5) (a) Saving the provisions of sub-section (3) of section 15, the Judicial Committee shall hold its sittings in public and, subject to any regulations made under section 16, shall conduct matters according to the general rules of procedure.

(b) The Judicial Committee shall have the right to seek expert advice as it may deem fit.

(c) The President of the Judicial Committee shall have the right to administer the oath and examine witnesses.

(d) The decisions of the Judicial Committee shall be in writing and shall be read out in public, be deemed final and conclusive and shall not be subject to review by the ordinary courts except on points of law or of natural justice.

Duty of Minister to consult the Commission.

6. (1) The Minister is bound to consult formally the Commission before making regulations as provided in section 16:

Provided that the Minister may set a reasonable time which shall not be less than five days for the receipt of advice on proposed regulations, and if the Commission does not give its advice within that time he may proceed to publish those regulations:

Provided further that the Minister may, when he deems the matter urgent, give notice thereof to the Commission, and in default of the giving of advice within two days, he may proceed to publish those regulations.

(2) When the Minister receives expert advice on matters of occupational health and safety from outside the Department of Labour, he shall pass that advice to the Commission for consideration.

Duty of the Minister when Commission's advice is not accepted.

7. (1) Without prejudice to the provisions of the preceding section, the Minister shall, when making regulations, exercise his own discretion with regard to the best way to safeguard occupational health and safety, but when there exists substantial divergence from the opinion of the Commission, he shall state in writing to the Commission the reasons for his decision within three weeks from the publication of the regulations.

(2) When a Code of Practice does not conform with regulations made under this Act, the regulations shall prevail.

Duty of the employer.

8. (1) It shall be the duty in general of an employer to ensure that all reasonable measures and precautions have been taken:—

(a) to render every place of work under his control, free from all dangers to health and safety, so far as reasonably practical;

(b) so that the work environment in work places under his control is reasonably favourable to health and free from avoidable physical or psychological stress;

(c) to prevent industrial accidents, injuries and disease;

(d) to provide facilities at the place of work for first aid in case of accident or injury; and

(e) inform every worker therein about the dangers to health and safety in the workplace and about the best methods of prevention.

(2) It shall also be the duty of an employer:—

(a) to inform, in such mode or manner as may be prescribed, the Director of Labour or any person mentioned in this Act or in regulations or orders made under this Act of any industrial accident or injury, or of any work-connected disease, at a place of work under his control; and

(b) to keep a record, in such manner as may be prescribed, of all industrial accidents occurring at such place of work.

Responsibilities of the Director of Labour.

9. Unless otherwise prescribed, it shall be the responsibility of the Director of Labour:—

(a) to apply the provisions of this Act and of any regulations or orders made thereunder;

(b) to carry out, directly or through others, any investigations as he may deem fit:—

(i) on levels of health or safety actually being observed or expected to be observed or on the precautions taken or expected to be taken for preventing any accident, injury or disease at any particular place of work or at any category of places of work or at places of work in general;

(ii) on any other matter connected with health or safety at any place of work or places of work in general;

(iii) in order to establish the cause of any industrial accident, injury or disease; and

(iv) on any matter connected with the implementation and enforcement of the provisions of this Act or of any regulations or any orders made thereunder.

Inspectors.

10. (1) The Minister shall appoint inspectors for the general implementation and enforcement of this Act or of any regulations made thereunder, as well as for performing such work or assuming such responsibilities as may be prescribed.

(2) Inspectors shall have the following powers:—

(a) to enter freely and without previous notice, at all reasonable times, any work place;

(b) to question, alone or in the presence of witnesses, including the person, if such is the case, putting forward the complaint, any employer or worker, including any person acting on behalf of any employer or carrying out work for him, on any of the matters falling under this Act or under any regulations made thereunder;

(c) to inspect any document the keeping of which is prescribed by this Act or by any regulations made thereunder, or any document which may throw light with regard to occupational health and safety at any particular place of work;

(d) to take possession, upon receipt therefor, of any object required for tests or evidence of any occupational accident, injury or disease;

(e) to examine or see to the examination of places of work and of any object therein, and to take samples of materials for examination, for the purpose of protecting occupational health and safety;

(f) to order that nothing be disturbed at a place of work for any period which is reasonably required for the purpose of any examination, investigation or inspection referred to in the foregoing paragraphs;

(g) to require the operation or the setting in motion of any equipment, machine, device, thing or process as well as the operation of any system or procedure which in their opinion may be relevant to any examination, investigation or inspection referred to in paragraphs (a) to (e); and

(h) to require any employer to provide at his expense:—

(i) a certificate signed by an architect and civil engineer, relating to the safety of any building or structure, inculding any temporary structures;

(ii) a certificate signed by a mechanical or electrical engineer having a warrant to practise his profession regarding the safety of any mechanical or electrical installation as the case may be, including any temporary installation;

(iii) a medical certificate relating to the occupational health of any worker or any class of workers;

(iv) any information relative to occupational health and safety, including information which refers to protective measures.

(3) An inspector shall be issued with an identification document signed by the Director of Labour and such document shall be produced at the time of any examination, investigation or inspection.

(4) Notwithstanding the provisions of this section, an employer may not be required to produce any medical certificate or record of a medical nature relating to any person unless:

(i) that person gives his consent to the production of such document; or

(ii) the document is produced to a medical officer.

(5) An inspector shall not enter a place of work which is at the time used as a dwelling house without the consent of the occupier, or unless he is accompanied by a police officer not below the rank of Inspector.

Orders issued by inspectors.

11. An inspector may give an order, verbally or in writing, to safeguard occupational health or safety, and every person shall obey such order forthwith:

Provided that the person who receives the order, whether worker or employer, may defend himself from the charge of having disobeyed the order if he proves that compliance with the order would have been of immediate detriment to occupational health and safety:

Provided further that any order given verbally shall be confirmed in writing and served upon the person to whom it was given within three days.

Barred areas.

12. (1) An inspector may order that a place of work or part of a place of work be barred.

(2) When a place of work or part thereof is barred, no person shall enter the barred area without the inspector's permission.

(3) Provided that an inspector may also order that a place of work or part thereof so barred, be re-opened for access.

Appeals from orders given by an inspector.

13. (1) Any person, whether worker, employer or third person, who deems himself aggrieved by an order given by an inspector, may appeal therefrom to the Commission.

(a) Appeals by workers or employers shall be lodged within three working days from the day of service of the order in writing.

(b) Appeals by third persons shall be lodged within three working days from the day when the relative order comes to the notice of the third person.

(2) The appeal is to be lodged in writing and served upon the Secretary of the Commission.

(3) The Commission shall forthwith refer all appeals received to the Judicial Committee.

(4) The Judicial Committee shall hear the appellant, the inspector and any witnesses produced. The Director of Labour may intervene in any appeal and make his own submissions and produce witnesses.

(5) The Judicial Committee may allow or reject the appeal and may also amend in part or alter completely an order given by an inspector.

Protection of inspectors.

14. (1) Inspectors shall be deemed to be public officers.

(2) No person shall molest or disturb inspectors in the performance of their duties or break or tamper with any seal made, or with any monitoring equipment installed, put up or left by them in a place of work.

Secrecy obligation.

15. (1) All information which is passed to or received by an inspector or an official of the Commission in the performance of their duties and functions under this Act shall be deemed to have been given and received under the obligation of secrecy and to be disclosed only to the Commission:

Provided that what is referred to third persons for purposes of investigation or scientific testing, as well as for official statistical purposes, shall not be deemed to breach the obligation of secrecy.

(2) The Commission, in the fulfilment of its function shall strive to safeguard the rights to intellectual property and business secrecy, and it shall ensure, as far as compatible with its primary function, that information which may infringe these rights is not divulged.

(3) Where the Commission or any of its subcommittees, or the Judicial Committee, is of the opinion that the holding of any sitting in public would prejudice the rights of any person to intellectual property or business secrecy, the Commission or subcommittee or Judicial Committee, as the case may be, shall hold the sitting with closed doors.

Power to make regulations.

16. Without prejudice to the powers conferred by the foregoing provisions of this Act, and subject to the provisions of section 6, the

Minister may make regulations for safeguarding occupational health and safety, for determining the precautions to be taken for this purpose and generally for the purpose of carrying into operation any of the provisions of this Act, and in particular but without prejudice to the generality of the foregoing, the Minister may make regulations:—

(a) establishing the procedure to be followed by the Commission, its subcommittees and the Judicial Committee;

(b) prescribing anything that is required or authorised by this Act to be prescribed.

Offences.

17. (1) Any person who acts in contravention of the provisions of sections 8, 11, 12 and 14 or in contravention of any of the provisions of any regulations made under this Act, and any person who conspires or attempts, or aids, abets, counsels or procures any other person, to contravene the provisions aforementioned shall be guilty of an offence against this Act.

(2) Any person who commits an offence against this Act shall, on conviction, be liable to imprisonment for a period of not more than two years or to a fine (*multa*) of not more than two thousand Maltese liri, or to both such fine and imprisonment; and moreover the court may, at the request of the prosecution, cancel all or specific licences, warrants or permits issued to or in the name of the person found guilty in connection with the place of work where the offence was committed.

(3) Notwithstanding the provisions of section 370 of the Criminal Code, proceedings for an offence against this Act shall be taken before the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal judicature.

(4) In any proceedings referred to in the foregoing subsection it shall be lawful for the Director of Labour, or for any officer of his Department or any inspector deputed by the said Director, to examine or cross-examine witnesses, produce evidence, make submissions in support of the charge and generally conduct the prosecution on behalf of the police, and the sworn statement of the officer or inspector that he has been deputed by the Director of Labour for that purpose shall be conclusive evidence of that fact.

(5) Notwithstanding the provisions of the foregoing subsection the Director of Labour and the officer or inspector deputed by him may be produced as witnesses but should their evidence be required as part of the case for the prosecution they shall be heard before they commence to act as provided in subsection (4) unless the necessity of their evidence arises subsequently.

(6) Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgement given by the Court of Magistrates (Malta) or the Court of Magistrates (Gozo) in respect of proceedings for any offence against this Act.

Repeal and Saving.

18. (1) The Factories Ordinance is hereby repealed.

Cap. 107.

(2) Any regulations made under the Factories Ordinance shall, until other provison is made under or by virtue of this Act, continue in force and have effect as if made under this Act and, notwithstanding anything contained in those regulations and in the Factories Ordinance with regard to offences, punishments and criminal proceedings, the provisions of subsections (2) to (6) of section 17 of this Act shall, *mutatis mutandis,* apply to those regulations.

Interpretation.

19. In this Act, unless the context otherwise requires:—

"Commission" means the Commission established by section 3;

"employer" means the person for whom work or service is performed by a worker and

(a) in relation to a commercial, industrial, agricultural or other enterprise, includes the directors, managers, partners, owners or any other person responsible for the management and direction thereof as well as the persons actually possessing, occupying or *de facto* in charge of such entities;

(b) in relation to all other organisations including voluntary ones or any other form of employment under a contract of service includes any of the persons in overall direction and day to day management;

(c) in relation to work performed under a contract for services means the contractor or subcontractor but shall not include the directors, managers, partners or owners, occupiers or possessors or the person or persons *de facto* in charge, except to such extent as regards any tools, materials or equipment provided by them with regard to any defects thereof or therein known and not declared and could have been known;

"inspector" means an inspector appointed under section 10;

"Judicial Committee" means the Committee established by section 5;

"Minister" means the Minister responsible for labour;

"prescribed" means prescribed by regulations made under this Act;

"worker" means any person who performs physical or intellectual work for, or provides service to, another person under a contract of service, and includes an outworker, a self-employed person, an apprentice and a trainee;

"work place" and "place of work" mean any place in Malta wherein a worker performs or provides service for an employer, and without prejudice to the generality of the foregoing, include a factory, shop, office, yard, quarry, mine, building site, structure, road, field, farm, dock, vehicle, aircraft or vessel and include any aircraft or vessel registered in Malta or licensed to operate from Malta.

Passed by the House of Representatives at Sitting No. 234 of 23rd February, 1994.

LAWRENCE GONZI
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives.

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