



THE HEALTH AND SAFETY AT WORK ETC. ACT 1977

THE HEALTH AND SAFETY AT WORK ORDER 1998

Approved by Tynwald

16th June 1998

Coming into operation

1st October 1998

In exercise of the powers conferred on the Department of Local Government and the Environment by section 1 of the Health and Safety at Work Etc. Act 1977(a), and of all other enabling powers, and after the consultations required by subsection (4) of that section, the following Order is hereby made:—

Citation, commencement, application and interpretation

1. (1) This Order may be cited as the Health and Safety at Work Order 1998 and, subject to section 1(5) of the Health and Safety at Work Etc. Act 1977, shall come into operation on the 1st October 1998.

(2) This Order applies to all places within the Island.

(3) In this Order "the 1974 Act" means the Health and Safety at Work etc. Act 1974 (an Act of Parliament)(b).

Application of Parts I and IV of the 1974 Act

2. The following provisions of Parts I and IV of the 1974 Act, namely —

sections 1 to 10;
sections 13 to 28;
sections 33 to 38;
sections 40 to 42;
section 44;
sections 46 to 49;

(a) 1977 c.1 (b) 1974 c.37

sections 51 to 53;
section 78;
section 80;
section 82;
section 83;
section 85;
Schedule 1;
Schedule 3;
Schedules 8, 9 and 10;

shall apply to the Island subject to the modifications and adaptations specified in the Schedule.

Revocation

3. (1) Subject to paragraph (2), the Health and Safety at Work Order 1995(c) is revoked.

(2) The revocation of the said Order does not affect any amendment the effect of which was saved by article 3(2) of that Order, and any such amendment shall to that extent continue to have effect, subject to any subsequent repeal or amendment of the enactment in question.

time being he employs fewer than 5 persons, or such number of persons as may be prescribed".

In subsection (4), for the words from "appointment" to "regulations)" substitute "election or appointment, in prescribed cases and in the prescribed manner,".

Omit subsection (5).

In subsection (7), for "subsections (4) and (5)" substitute "subsection (4)".

10. Commission and Executive

Substitute -

"Health and Safety Tribunal

10. (1) A Health and Safety Tribunal (in this Act referred to as "the Tribunal") shall be constituted for the purposes of this Act.

(2) Subject to subsection (5)(e), the Tribunal shall consist of -

(a) a chairman, who shall be an advocate of not less than 10 years' standing, appointed by the Department;

(b) 2 other members, one drawn by the Governor in Council from each of the panels referred to in paragraph 1(1)(b) of Schedule 4 to the Employment Act 1991 (an Act of Tynwald)(d).

(3) An appeal shall lie to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.

(4) The Department may make rules as to the institution and conduct of proceedings before the Tribunal.

(5) Rules under subsection (4) may (without prejudice to the generality of that subsection) include provision -

(a) for prescribing the procedure to be followed on any appeal, application, reference or complaint or other proceedings before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties thereto;

- (b) for treating the Department (either generally or in such circumstances as may be specified in the rules) as a party to any proceedings before the Tribunal where it would not otherwise be a party, and entitling it to appear and be heard accordingly;
- (c) for requiring persons to attend to give evidence and produce relevant documents, and for authorising oaths to be administered to witnesses;
- (d) for enabling a party to proceedings before the Tribunal to obtain an order for discovery and inspection of relevant documents, or for further and better particulars, as might be granted by the High Court;
- (e) for making a person who without reasonable excuse fails to comply with any requirement imposed under paragraph (c), or any requirement as to discovery and inspection of documents imposed under paragraph (d), guilty of an offence and liable on summary conviction to a fine not exceeding £500;
- (f) for enabling the Tribunal to review its decisions and to revoke or vary its orders and awards in such circumstances as may be determined in accordance with the rules;
- (g) for the appointment of one or more assessors as additional members of the Tribunal for the purposes of any proceedings before it, where the proceedings are under a statutory provisions enabling one or more assessors to be appointed;
- (h) for the award of fees, costs and expenses (other than allowances payable to members of the Tribunal), and for taxing or otherwise settling any such fees, costs or expenses (and in particular for enabling such costs to be taxed in the High Court);
- (i) for the registration and proof of decisions, orders and awards of the Tribunal.

(6) Rules under subsection (4) may enable the Tribunal to sit in private for the purpose of hearing evidence which in its opinion relates to matters of such a

nature that it would be against the interests of national security to allow the evidence to be given in public, or hearing evidence from any person which in its opinion is likely to consist of -

- (a) information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another persons; or
- (c) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works."

13. Powers of Commission

In subsection (1) -

- (a) in paragraph (a), for the words from "functions" onwards substitute "functions of the Department under this Act or any relevant statutory provisions";
- (b) omit paragraphs (b) and (c).

Omit subsection (2).

14. Investigations etc.

In subsection (2) -

- (a) in paragraph (a), for "direct the Executive or authorise any other person" substitute "direct one or more of its inspectors or authorise any other person who in the opinion of the Department is suitably qualified";
- (b) in paragraph (b), omit "with the consent of the Secretary of State".
- (c) omit the words from "but shall onwards.

In subsection (4)(c), for "a Minister of the Crown" substitute "any such person".

Omit subsection (7).

15. Regulations

In subsection (1) -

- (a) for "50" substitute "82(3) to (5)";
- (b) omit "except as regards matters relating exclusively to agricultural operations".

Omit subsection (9).

16. Codes of practice

In subsection (1), omit "and except as regards matters relating exclusively to agricultural operations".

For subsection (2) substitute -

"(2) The Department shall not approve a code of practice under this section unless it has had consultations with such organisations as it considers represent interests which will be affected by the code."

In subsection (5), omit "with the consent of the Secretary of State", and for the words from "seeking" to "departments and other" substitute "doing so shall consult such".

18. Enforcing authorities

In subsection (1), omit "or by regulations under subsection (2) below".

Omit subsections (2) to (4).

In subsection (5) -

- (a) for the words from "the appropriate" to "local authority" substitute "the Department";
- (b) omit "or by regulations under subsection (2) above".

Omit subsection (6).

In subsection (7) -

- (a) in paragraph (a) omit "or by regulations under subsection (2) above";
- (b) , omit "or the Executive" (in each place).

19. Inspectors

For subsections (1) and (2) substitute -

"(1) There shall be appointed as inspectors (under whatever title the Department may from time to time determine) -

- (a) by the Civil Service Commission in accordance with section 3 of the Civil Service Act 1990 (an Act of Tynwald)(e), or
- (b) by the Department, on such terms and conditions as the Department thinks fit,

persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility.

(1A) Every other enforcing authority may appoint inspectors (under whatever title it may from time to time determine) persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this subsection.

(2) An enforcing authority shall by an instrument in writing specify, in relation to each of its inspectors, which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by that inspector; and an inspector shall be entitled to exercise only such of those powers as are so specified, and only within the field of responsibility of the authority concerned.

(2A) An instrument made under subsection (2) shall not be valid unless it carries the photograph and signature of the inspector, and is signed by a person authorised to do so by the enforcing authority; and an instrument purporting to be so made in relation to any person and complying with this subsection shall be evidence that he has been duly appointed an inspector by that authority and is entitled to exercise the powers specified therein within the authority's field of responsibility."

20 Powers of inspectors

In subsection (2) -

- (a) in paragraph (m), for "which is" substitute "appears to the enforcing authority on a report of the inspector to be";
- (b) at the end insert "but before exercising any powers by virtue of paragraph (j) above an inspector shall inform the person concerned of the requirements of that paragraph; and an inspector may not exercise any powers by virtue of paragraph (k) above in respect of any books referred to in paragraph (k)(ii) which relate to the trading or profit and loss accounts of any undertaking unless he is authorised for the purpose by an order of the High Court."

After subsection (2) insert -

"(2A) Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing, that admission to premises specified in the information is reasonably required by an inspector for any purpose specified in subsection (1), the justice may by warrant under his hand authorise the inspector to enter the premises, by force if need be.

(2B) A warrant under subsection (2A) -

- (a) may not be granted unless the justice is satisfied that the inspector has

reasonable cause to apprehend a serious obstruction in the execution of his duty; and

- (b) shall continue in force until the purpose for which the entry is required has been satisfied.

(2C) A person who in the exercise of a right of entry conferred by this section enters any premises from which the occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

(2D) A person who in the exercise of a right conferred by this section causes damage while effecting entry to any premises or any part thereof shall make good that damage without charge to the owner or occupier of the premises."

In subsection (8), omit the words from "or, as" onwards.

After subsection (8) insert -

"(9) An inspector shall inform any person who on reasonable grounds requests him to do so of his powers under this section."

23. Supplementary to ss.21-22

In subsection (4), for the words from "the fire authority" onwards substitute "the Department of Home Affairs".

Omit subsection (6).

24. Appeal against notices

In subsection (4), after "one or more" insert "suitably qualified".

27. Obtaining information

In subsection (1) -

- (a) omit "with the consent of the Secretary of State";
- (b) for the words from "In this subsection" onwards substitute -

"In this subsection "functions" means functions under this Act."

Omit subsections (2) to (4).

28. Restrictions on disclosure

In subsection (3) -

- (a) in paragraph (a), for "the Executive, a government department" substitute "any other Department";
- (b) in paragraph (c), in sub-paragraph (i), at the end insert "or", omit sub-paragraphs (ii) and (iii), and for "a chief officer of police" substitute "the Chief Constable".

In subsection (4) -

- (a) for "the Executive, a government department" substitute "any other Department";
- (b) omit the words from "and also" onwards.

In subsection (5) -

- (a) in paragraph (a), for "or of the Executive or of the government department" substitute "or of the other Department";
- (b) omit "or of a water authority or of a river purification board or water development board" and "or board".

Omit subsection (6).

After subsection (8) insert -

"(9) Notwithstanding anything in subsection (7), a person who has obtained such information as is referred to in that subsection may furnish to a person who appears to him to be, or to be likely to be, a party to any civil proceedings, or to the advocate of such a person, a written statement of any fact observed by him and appearing to him to be relevant to such proceedings, on payment of such fee as may be prescribed under the Fees and Duties Act 1989 (an Act of Tynwald)(f)."

33. Offences

In subsection (1) -

- (a) in paragraph (c), omit "or agricultural health and safety regulations";
- (b) in paragraph (j), omit "27(4) or".

In subsection (2), for "£400" substitute "£5,000".

In subsection (3) -

- (a) for paragraph (a) substitute -
 - "(a) on summary conviction -
 - (i) if the offence is one to which this sub-paragraph applies, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both;
 - (ii) if the offence is not one to which this sub-paragraph applies, to a fine not exceeding £20,000;";

(f) 1989 c.12

(b) in paragraph (b), for "indictment" substitute "information".

In subsection (4) -

(a) for "(3)(b)(i)" substitute "(3)(a)(i) and (b)(i)";

(b) in paragraph (a) omit "or the appropriate Agricultural Minister".

In subsection (6), for the words from "for England" onwards substitute "the same meaning as in the Forgery Act 1952 (an Act of Tynwald)(g)".

34. Extension of time for summary proceedings

In subsection (1) -

(a) in paragraph (c) omit "or" (at the end);

(b) omit paragraph (d);

(c) omit "or (d)" (in each place);

(d) omit "or inquiry" (in each place);

(e) for "report, inquest" substitute "report or inquest".

In subsection (3), after "that offence" insert "or within the period of 4 years after the commission of the offence, whichever period first expires".

Omit subsection (5).

38. Restriction on proceedings

Omit ", in England and Wales,", and for "Director of Public Prosecutions" substitute "Attorney General for the Isle of Man".

41. Evidence

Omit "or in Scotland sufficient evidence" (in each place).

42. Forfeiture

In subsection (4), for "the following subsection" substitute "subsection (5)".

After subsection (4) insert -

"(4A) Subject to subsection (5), the court by or before which a person is convicted of an offence under any of the relevant statutory provisions in respect of any radioactive substance or any machine or apparatus intended to produce ionising radiations may order that the substance, machine or apparatus be forfeited."

In subsection (5), for "the preceding subsection" substitute "subsection (4) or (4A)".

44. Appeals

In subsection (1) -

- (a) after "authority" insert "or inspector";
- (b) omit "(other than agricultural licences and nuclear site licences)";
- (c) for "Secretary of State" substitute "Tribunal".

Omit subsections (2) to (6).

In subsection (7), omit the words from "other than" onwards.

After subsection (7) insert -

"(7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of any proceedings before the Tribunal under this section."

Omit subsection (8).

46. Service of notices

In subsection (3), omit "or, in Scotland, the firm".

In subsection (4), omit the words from "and of section" to "this section".

In subsection (5), omit "and section 26 of the Interpretation Act 1889".

47. Civil liability

In subsection (2), omit "or agricultural health and safety regulations".

In subsections (3) and (5), omit "or, as the case may be, agricultural health and safety regulations".

At the end insert -

"Avoidance of certain contract terms

47A. A contract shall be void and of no effect in so far as it purports to preclude any person from doing such acts as may be necessary to comply with any requirement of the relevant statutory provisions or to render him liable to any penalty or forfeiture for so doing."

48. Application to Crown

In subsection (4), for "Secretary of State" substitute "Council of Ministers", and for "him" substitute "it".

For subsection (5) substitute -

"(5) An order under this section shall not have effect unless it is approved" .".

Omit subsection (6).

49. Metrication

In subsections (1), (2) and (3), for "appropriate Minister" substitute "Department".

- Omit subsection (4).
52. Meaning of "work" etc. In subsection (3), for paragraphs (a) and (b) substitute "by the Department."
- Omit subsection (4).
53. Interpretation In subsection (1)
- (a) omit the definitions of "agriculture", "the Agriculture Ministers", omit "agricultural health and safety regulations", "agricultural licence", "agricultural operation" and "the appropriate Agricultural Minister", "the Commission", "the Executive", "forestry", "livestock", "local authority" and "the relevant agricultural purposes";
 - (b) after the definition of "credit-sale agreement" insert -
 ""the Department" means the Department of Local Government and the Environment;";
 - (c) in the definition of "the existing statutory provisions", for the words from "the provisions" to "and of" substitute "the enactments specified in Schedule 1 and";
 - (d) in the definition of "hire-purchase agreement" omit "or (in Scotland) hired" and "or hired".
 - (e) after the definition of "inspector" insert -
 ""ionising radiations" has the meaning given by section 7 of the Ionising Radiations (Protection of Workers) Act 1968 (an Act of Tynwald)(h);";
 - (f) after the definition of "prohibition notice" insert -
 ""radioactive substance" means any substance which consist of or contains any radioactive element (whether natural or artificial) and whose specific activity exceeds 0.002 microcurie of parent radioactive element per gram of substance;";
 - (g) in the definition of "relevant statutory provisions", omit "and agricultural health and safety regulations";
 - (h) at the end insert -
 ""the Tribunal" means the Health and Safety Tribunal constituted by section 10;".

After subsection (1) insert -

"(1A) In this Act "advocate", "Chief Constable", "constable", "Governor in Council", "the High Court", "local authority", "summary conviction" and "statutory provision" have the meanings given by the Interpretation Act 1976 (an Act of Tynwald)(i).".

Omit subsections (2) to (6).

78. Fire precautions

Omit subsections (1) to (9).

In subsection (10), for "Factories Act 1961 or the Offices, Shops and Railway Premises Act 1963" substitute "Factories and Workshops Act 1909 (an Act of Tynwald)(j)".

80. Power to repeal etc.

In subsection (1) -

- (a) after "made" insert "by the Department";
- (b) for "authority making the regulations" substitute "Department".

In subsection (2) -

- (a) for paragraph (a) substitute -
 - "(a) is contained in any Act of Tynwald passed before the 31st July 1980; or";
- (b) in paragraph (b), for "passing of this Act" substitute "31st July 1980";
- (c) in paragraph (c), after "Act" (in each place) insert "of Tynwald".

Omit subsections (4) and (5).

For subsection (6) substitute -

"(6) In this section "the relevant statutory provisions" has the same meaning as in Part I."

82. Interpretation etc.

In subsection (1)(a), for "a provisional order confirmed by an Act" substitute "an Act of Tynwald".

In subsection (3) -

- (a) omit "or II";
- (b) in paragraph (a), at the end omit "and";
- (c) omit paragraph (b).

(i) 1976 c.20 (j) VIII p.297

After subsection (3) insert -

"(4) Before the Department makes any order, rules or regulations under this Act it shall consult such organisations as it considers represent interests affected by the order, rules or regulations.

(5) An order, rules or regulations under this Act shall not have effect unless approved by Tynwald."

85. Short title etc.

Omit subsections (2) and (3).

Sch.1 Relevant statutory provisions

Substitute -

"SCHEDULE 1
EXISTING ENACTMENTS OF TYNWALD WHICH
ARE RELEVANT STATUTORY PROVISIONS

The Factories and Workshops Act 1909 (VI p.297)

The White Phosphorus Matches Prohibition Act 1909
(VIII p.363)

The Dangerous Goods Act 1928 (XII p.476)

The Employment of Women, Young Persons and
Children Act 1930 (XIII p.114)

The Factories and Workshops (Amendment) Act 1931
(XIII p.201)

The Boiler Act 1934 (XIV p.331)

The Factories and Workshops Amendment Act 1936
(XIV p.331)

The Factories and Workshops Amendment Act 1939
(XV p.381)

The Mines and Quarries Regulation Act 1950 (XVII
p.864)

The Dangerous Goods Act 1954 (XVIII p.349)

The Agriculture (Poisonous Substances) Act 1961 (XIX
p.201)

The Ionising Radiations (Protection of Workers) Act
1969 (XX p.449)

The Agriculture (Safety, Health and Welfare Provisions)
Act 1974 (c.29)

Schedules 6 (inspection of railways) and 7 (railway
accidents) to the Isle of Man Passenger Transport Act
1982 (c.3)"

Sch.3 Subject matter of regulations

In paragraph 2(2), for "Customs and Excise Act 1952" substitute "Customs and Excise Acts 1986 (within the meaning of the Customs and Excise Management Act 1986 (an Act of Tynwald)(k))".

After paragraph 22 insert -

"22A. Removing discrimination between the sexes in legislation relating to health and safety at work."

Sch.8 Transitional provisions as to fire certificates

For paragraph 1 substitute -

"1. In this Schedule -

"the 1975 Act" means the Fire Precautions Act 1975 (an Act of Tynwald)(l);

"1975 Act certificate" means a fire certificate within the meaning of the 1975 Act;

"Factories Act certificate" means a certificate under rule 2 of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald)(m)."

In paragraph 2 -

- (a) in sub-paragraph (1), for "1971" (in each place) substitute "1975", and omit "or an Offices Act certificate";
- (b) in sub-paragraph (2), for "1971" (in each place) substitute "1975";
- (c) in sub-paragraph (3), for the words from "the following" onwards onwards substitute "rule 2(d) to (g) of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald)."

Omit paragraph 3.

Sch.9 Amendments

Substitute -

"SCHEDULE 9
MINOR AND CONSEQUENTIAL AMENDMENTS"

*The Agriculture (Poisonous Substances) Act 1961
(XIX p.201)*

- 1. (1) In section 2(1), for "as mentioned in subsection (1) of section 1 of this Act" substitute "in connection with the use in agriculture of substances to which this Act applies, or on land on which such substances are being or have been used in agriculture,".

(2) In section 11(1), after the definition of "Department" insert —

"inspector" means an inspector within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Isle of Man;".

The Agriculture (Safety, Health and Welfare Provisions) Act 1974 (c.29)

2. In section 27(1) —

(a) for the definition of "Department" substitute —

"the Department" means the Department of Local Government and the Environment;".

(b) in the definition of "inspector", for "appointed under this Act" substitute "within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Island;";

(c) in the definition of "magistrates' court", for "three" substitute "two".

Sch.10 Repeals

Substitute —

"SCHEDULE 10
ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal</i>
XIX p.201	The Agriculture (Poisonous Substances) Act 1961.	Section 1. Section 2(2). Section 3. Section 4(1)(c) and (d), (2), (3) and (4). Section 5. In section 6(1), the words "appointed under this Act". Sections 7 and 10.
1974 c.29	The Agriculture (Safety, Health and Welfare Provisions) Act 1974.	Section 1(1) to (5). Section 2(2). Section 4. Section 6(2) and (3). Section 7(1) and (2). Section 8. Sections 10 and 11. Sections 12 to 14. Sections 16 and 17. Sections 19 to 24. Section 26."

MADE

7th April

1998



Minister for Local Government and the Environment

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order replaces the Health and Safety at Work Order 1995 (SD 476/95), which applies Parts I and IV of the Health and Safety at Work etc. Act 1974 of Parliament to the Isle of Man. The following changes in the law are made:

- (a) work in agriculture is brought within the scope of the Act, the existing enactments relating to such work continuing in force as "existing statutory provisions";
- (b) the Order does not cover work on offshore installations, which is now regulated by legislation having effect under the Petroleum Act 1986.



THE HEALTH AND SAFETY AT WORK ETC. ACT 1977

THE HEALTH AND SAFETY AT WORK ORDER 1998

Approved by Tynwald

16th June 1998

Coming into operation

1st October 1998

In exercise of the powers conferred on the Department of Local Government and the Environment by section 1 of the Health and Safety at Work Etc. Act 1977(a), and of all other enabling powers, and after the consultations required by subsection (4) of that section, the following Order is hereby made:—

Citation, commencement, application and interpretation

1. (1) This Order may be cited as the Health and Safety at Work Order 1998 and, subject to section 1(5) of the Health and Safety at Work Etc. Act 1977, shall come into operation on the 1st October 1998.

(2) This Order applies to all places within the Island.

(3) In this Order "the 1974 Act" means the Health and Safety at Work etc. Act 1974 (an Act of Parliament)(b).

Application of Parts I and IV of the 1974 Act

2. The following provisions of Parts I and IV of the 1974 Act, namely —

sections 1 to 10;
sections 13 to 28;
sections 33 to 38;
sections 40 to 42;
section 44;
sections 46 to 49;

(a) 1977 c.1 (b) 1974 c.37

sections 51 to 53;
section 78;
section 80;
section 82;
section 83;
section 85;
Schedule 1;
Schedule 3;
Schedules 8, 9 and 10;

shall apply to the Island subject to the modifications and adaptations specified in the Schedule.

Revocation

3. (1) Subject to paragraph (2), the Health and Safety at Work Order 1995(c) is revoked.

(2) The revocation of the said Order does not affect any amendment the effect of which was saved by article 3(2) of that Order, and any such amendment shall to that extent continue to have effect, subject to any subsequent repeal or amendment of the enactment in question.

MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH PROVISIONS
OF PARTS I AND IV OF THE 1974 ACT APPLY TO THE ISLAND

PART 1

GENERAL MODIFICATIONS AND ADAPTATIONS

For any reference to a matter specified in column 1 of the following table substitute a reference to the matter specified in column 2 of the table:

<i>Matter referred to</i>	<i>To be read as</i>
the 1974 Act, or any provision of the 1974 Act	The 1974 Act or provision as it has effect in the Island
the Health and Safety Commission, the Health and Safety Executive, the Secretary of State or a Minister of the Crown	the Department (see s.53(1) below)
the Minister for the Civil Service	the Treasury
the United Kingdom	the Island
an industrial tribunal	the Tribunal (see s.10 below)
any provision of any regulations or order made under any provision of the 1974 Act	the provision as it has effect in the Island

PART 2

SPECIFIC MODIFICATIONS

<i>Section</i>	<i>Subject matter</i>	<i>Modification</i>
1. Preliminary	In subsection (2) omit "and agricultural health and safety regulations" and "the third column of".	After subsection (4) insert - (5) Nothing in this Part shall prejudice any powers conferred on any officer of customs and excise by any statutory provision."
2. General duties of employers	In subsection (2)(c), after "necessary" insert "(taking into account the degree of risk)".	In subsection (3), for "in such cases as may be prescribed" substitute "where he carries on an undertaking in which for the

time being he employs fewer than 5 persons, or such number of persons as may be prescribed".

In subsection (4), for the words from "appointment" to "regulations)" substitute "election or appointment, in prescribed cases and in the prescribed manner,".

Omit subsection (5).

In subsection (7), for "subsections (4) and (5)" substitute "subsection (4)".

10. Commission and Executive

Substitute -

"Health and Safety Tribunal

10. (1) A Health and Safety Tribunal (in this Act referred to as "the Tribunal") shall be constituted for the purposes of this Act.

(2) Subject to subsection (5)(e), the Tribunal shall consist of -

- (a) a chairman, who shall be an advocate of not less than 10 years' standing, appointed by the Department;
- (b) 2 other members, one drawn by the Governor in Council from each of the panels referred to in paragraph 1(1)(b) of Schedule 4 to the Employment Act 1991 (an Act of Tynwald)(d).

(3) An appeal shall lie to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.

(4) The Department may make rules as to the institution and conduct of proceedings before the Tribunal.

(5) Rules under subsection (4) may (without prejudice to the generality of that subsection) include provision -

- (a) for prescribing the procedure to be followed on any appeal, application, reference or complaint or other proceedings before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties thereto;

- (b) for treating the Department (either generally or in such circumstances as may be specified in the rules) as a party to any proceedings before the Tribunal where it would not otherwise be a party, and entitling it to appear and be heard accordingly;
- (c) for requiring persons to attend to give evidence and produce relevant documents, and for authorising oaths to be administered to witnesses;
- (d) for enabling a party to proceedings before the Tribunal to obtain an order for discovery and inspection of relevant documents, or for further and better particulars, as might be granted by the High Court;
- (e) for making a person who without reasonable excuse fails to comply with any requirement imposed under paragraph (c), or any requirement as to discovery and inspection of documents imposed under paragraph (d), guilty of an offence and liable on summary conviction to a fine not exceeding £500;
- (f) for enabling the Tribunal to review its decisions and to revoke or vary its orders and awards in such circumstances as may be determined in accordance with the rules;
- (g) for the appointment of one or more assessors as additional members of the Tribunal for the purposes of any proceedings before it, where the proceedings are under a statutory provisions enabling one or more assessors to be appointed;
- (h) for the award of fees, costs and expenses (other than allowances payable to members of the Tribunal), and for taxing or otherwise settling any such fees, costs or expenses (and in particular for enabling such costs to be taxed in the High Court);
- (i) for the registration and proof of decisions, orders and awards of the Tribunal.

(6) Rules under subsection (4) may enable the Tribunal to sit in private for the purpose of hearing evidence which in its opinion relates to matters of such a

nature that it would be against the interests of national security to allow the evidence to be given in public, or hearing evidence from any person which in its opinion is likely to consist of -

- (a) information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another persons; or
- (c) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works."

13. Powers of Commission

In subsection (1) -

- (a) in paragraph (a), for the words from "functions" onwards substitute "functions of the Department under this Act or any relevant statutory provisions";
- (b) omit paragraphs (b) and (c).

Omit subsection (2).

14. Investigations etc.

In subsection (2) -

- (a) in paragraph (a), for "direct the Executive or authorise any other person" substitute "direct one or more of its inspectors or authorise any other person who in the opinion of the Department is suitably qualified";
- (b) in paragraph (b), omit "with the consent of the Secretary of State".
- (c) omit the words from "but shall onwards.

In subsection (4)(c), for "a Minister of the Crown" substitute "any such person".

Omit subsection (7).

15. Regulations

In subsection (1) -

- (a) for "50" substitute "82(3) to (5)";
- (b) omit "except as regards matters relating exclusively to agricultural operations".

Omit subsection (9).

16. Codes of practice

In subsection (1), omit "and except as regards matters relating exclusively to agricultural operations".

For subsection (2) substitute -

"(2) The Department shall not approve a code of practice under this section unless it has had consultations with such organisations as it considers represent interests which will be affected by the code."

In subsection (5), omit "with the consent of the Secretary of State", and for the words from "seeking" to "departments and other" substitute "doing so shall consult such".

18. Enforcing authorities

In subsection (1), omit "or by regulations under subsection (2) below".

Omit subsections (2) to (4).

In subsection (5) -

(a) for the words from "the appropriate" to "local authority" substitute "the Department";

(b) omit "or by regulations under subsection (2) above".

Omit subsection (6).

In subsection (7) -

(a) in paragraph (a) omit "or by regulations under subsection (2) above";

(b) , omit "or the Executive" (in each place).

19. Inspectors

For subsections (1) and (2) substitute -

"(1) There shall be appointed as inspectors (under whatever title the Department may from time to time determine) -

(a) by the Civil Service Commission in accordance with section 3 of the Civil Service Act 1990 (an Act of Tynwald)(e), or

(b) by the Department, on such terms and conditions as the Department thinks fit,

persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility.

(1A) Every other enforcing authority may appoint inspectors (under whatever title it may from time to time determine) persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this subsection.

(2) An enforcing authority shall by an instrument in writing specify, in relation to each of its inspectors, which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by that inspector; and an inspector shall be entitled to exercise only such of those powers as are so specified, and only within the field of responsibility of the authority concerned.

(2A) An instrument made under subsection (2) shall not be valid unless it carries the photograph and signature of the inspector, and is signed by a person authorised to do so by the enforcing authority; and an instrument purporting to be so made in relation to any person and complying with this subsection shall be evidence that he has been duly appointed an inspector by that authority and is entitled to exercise the powers specified therein within the authority's field of responsibility."

20 Powers of inspectors

In subsection (2) -

- (a) in paragraph (m), for "which is" substitute "appears to the enforcing authority on a report of the inspector to be";
- (b) at the end insert "but before exercising any powers by virtue of paragraph (j) above an inspector shall inform the person concerned of the requirements of that paragraph; and an inspector may not exercise any powers by virtue of paragraph (k) above in respect of any books referred to in paragraph (k)(ii) which relate to the trading or profit and loss accounts of any undertaking unless he is authorised for the purpose by an order of the High Court."

After subsection (2) insert -

"(2A) Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing, that admission to premises specified in the information is reasonably required by an inspector for any purpose specified in subsection (1), the justice may by warrant under his hand authorise the inspector to enter the premises, by force if need be.

(2B) A warrant under subsection (2A) -

- (a) may not be granted unless the justice is satisfied that the inspector has

reasonable cause to apprehend a serious obstruction in the execution of his duty; and

- (b) shall continue in force until the purpose for which the entry is required has been satisfied.

(2C) A person who in the exercise of a right of entry conferred by this section enters any premises from which the occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

(2D) A person who in the exercise of a right conferred by this section causes damage while effecting entry to any premises or any part thereof shall make good that damage without charge to the owner or occupier of the premises."

In subsection (8), omit the words from "or, as" onwards.

After subsection (8) insert -

"(9) An inspector shall inform any person who on reasonable grounds requests him to do so of his powers under this section."

23. Supplementary to ss.21-22

In subsection (4), for the words from "the fire authority" onwards substitute "the Department of Home Affairs".

Omit subsection (6).

24. Appeal against notices

In subsection (4), after "one or more" insert "suitably qualified".

27. Obtaining information

In subsection (1) -

- (a) omit "with the consent of the Secretary of State";
- (b) for the words from "In this subsection" onwards substitute -

"In this subsection "functions" means functions under this Act."

Omit subsections (2) to (4).

28. Restrictions on disclosure

In subsection (3) -

- (a) in paragraph (a), for "the Executive, a government department" substitute "any other Department";
- (b) in paragraph (c), in sub-paragraph (i), at the end insert "or", omit sub-paragraphs (ii) and (iii), and for "a chief officer of police" substitute "the Chief Constable".

In subsection (4) -

- (a) for "the Executive, a government department" substitute "any other Department";
- (b) omit the words from "and also" onwards.

In subsection (5) -

- (a) in paragraph (a), for "or of the Executive or of the government department" substitute "or of the other Department";
- (b) omit "or of a water authority or of a river purification board or water development board" and "or board".

Omit subsection (6).

After subsection (8) insert -

"(9) Notwithstanding anything in subsection (7), a person who has obtained such information as is referred to in that subsection may furnish to a person who appears to him to be, or to be likely to be, a party to any civil proceedings, or to the advocate of such a person, a written statement of any fact observed by him and appearing to him to be relevant to such proceedings, on payment of such fee as may be prescribed under the Fees and Duties Act 1989 (an Act of Tynwald)(f)."

33. Offences

In subsection (1) -

- (a) in paragraph (c), omit "or agricultural health and safety regulations";
- (b) in paragraph (j), omit "27(4) or".

In subsection (2), for "£400" substitute "£5,000".

In subsection (3) -

- (a) for paragraph (a) substitute -
 - "(a) on summary conviction -
 - (i) if the offence is one to which this sub-paragraph applies, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both;
 - (ii) if the offence is not one to which this sub-paragraph applies, to a fine not exceeding £20,000;"

(f) 1989 c.12

(b) in paragraph (b), for "indictment" substitute "information".

In subsection (4) -

(a) for "(3)(b)(i)" substitute "(3)(a)(i) and (b)(i)";

(b) in paragraph (a) omit "or the appropriate Agricultural Minister".

In subsection (6), for the words from "for England" onwards substitute "the same meaning as in the Forgery Act 1952 (an Act of Tynwald)(g)".

34. Extension of time for summary proceedings

In subsection (1) -

(a) in paragraph (c) omit "or" (at the end);

(b) omit paragraph (d);

(c) omit "or (d)" (in each place);

(d) omit "or inquiry" (in each place);

(e) for "report, inquest" substitute "report or inquest".

In subsection (3), after "that offence" insert "or within the period of 4 years after the commission of the offence, whichever period first expires".

Omit subsection (5).

38. Restriction on proceedings

Omit ", in England and Wales,", and for "Director of Public Prosecutions" substitute "Attorney General for the Isle of Man".

41. Evidence

Omit "or in Scotland sufficient evidence" (in each place).

42. Forfeiture

In subsection (4), for "the following subsection" substitute "subsection (5)".

After subsection (4) insert -

"(4A) Subject to subsection (5), the court by or before which a person is convicted of an offence under any of the relevant statutory provisions in respect of any radioactive substance or any machine or apparatus intended to produce ionising radiations may order that the substance, machine or apparatus be forfeited."

In subsection (5), for "the preceding subsection" substitute "subsection (4) or (4A)".

44. Appeals

In subsection (1) -

- (a) after "authority" insert "or inspector";
- (b) omit "(other than agricultural licences and nuclear site licences)";
- (c) for "Secretary of State" substitute "Tribunal".

Omit subsections (2) to (6).

In subsection (7), omit the words from "other than" onwards.

After subsection (7) insert -

"(7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of any proceedings before the Tribunal under this section."

Omit subsection (8).

46. Service of notices

In subsection (3), omit "or, in Scotland, the firm".

In subsection (4), omit the words from "and of section" to "this section".

In subsection (5), omit "and section 26 of the Interpretation Act 1889".

47. Civil liability

In subsection (2), omit "or agricultural health and safety regulations".

In subsections (3) and (5), omit "or, as the case may be, agricultural health and safety regulations".

At the end insert -

"Avoidance of certain contract terms

47A. A contract shall be void and of no effect in so far as it purports to preclude any person from doing such acts as may be necessary to comply with any requirement of the relevant statutory provisions or to render him liable to any penalty or forfeiture for so doing."

48. Application to Crown

In subsection (4), for "Secretary of State" substitute "Council of Ministers", and for "him" substitute "it".

For subsection (5) substitute -

"(5) An order under this section shall not have effect unless it is approved by Tynwald".

Omit subsection (6).

49. Metrication

In subsections (1), (2) and (3), for "appropriate Minister" substitute "Department".

- Omit subsection (4).
52. Meaning of "work" etc. In subsection (3), for paragraphs (a) and (b) substitute "by the Department."
- Omit subsection (4).
53. Interpretation In subsection (1) -
- (a) omit the definitions of "agriculture", "the Agriculture Ministers", omit "agricultural health and safety regulations", "agricultural licence", "agricultural operation" and "the appropriate Agricultural Minister", the Commission", "the Executive", "forestry", "livestock", "local authority" and "the relevant agricultural purposes";
 - (b) after the definition of "credit-sale agreement" insert -
 "the Department" means the Department of Local Government and the Environment;";
 - (c) in the definition of "the existing statutory provisions", for the words from "the provisions" to "and of" substitute "the enactments specified in Schedule 1 and";
 - (d) in the definition of "hire-purchase agreement" omit "or (in Scotland) hired" and "or hired".
 - (e) after the definition of "inspector" insert -
 "ionising radiations" has the meaning given by section 7 of the Ionising Radiations (Protection of Workers) Act 1968 (an Act of Tynwald)(h);";
 - (f) after the definition of "prohibition notice" insert -
 "radioactive substance" means any substance which consist of or contains any radioactive element (whether natural or artificial) and whose specific activity exceeds 0.002 microcurie of parent radioactive element per gram of substance;";
 - (g) in the definition of "relevant statutory provisions", omit "and agricultural health and safety regulations";
 - (h) at the end insert -
 "the Tribunal" means the Health and Safety Tribunal constituted by section 10;".

After subsection (1) insert -

"(1A) In this Act "advocate", "Chief Constable", "constable", "Governor in Council", "the High Court", "local authority", "summary conviction" and "statutory provision" have the meanings given by the Interpretation Act 1976 (an Act of Tynwald)(i).".

Omit subsections (2) to (6).

78. Fire precautions

Omit subsections (1) to (9).

In subsection (10), for "Factories Act 1961 or the Offices, Shops and Railway Premises Act 1963" substitute "Factories and Workshops Act 1909 (an Act of Tynwald)(j)".

80. Power to repeal etc.

In subsection (1) -

(a) after "made" insert "by the Department";

(b) for "authority making the regulations" substitute "Department".

In subsection (2) -

(a) for paragraph (a) substitute -

"(a) is contained in any Act of Tynwald passed before the 31st July 1980; or";

(b) in paragraph (b), for "passing of this Act" substitute "31st July 1980";

(c) in paragraph (c), after "Act" (in each place) insert "of Tynwald".

Omit subsections (4) and (5).

For subsection (6) substitute -

"(6) In this section "the relevant statutory provisions" has the same meaning as in Part I."

82. Interpretation etc.

In subsection (1)(a), for "a provisional order confirmed by an Act" substitute "an Act of Tynwald".

In subsection (3) -

(a) omit "or II";

(b) in paragraph (a), at the end omit "and";

(c) omit paragraph (b).

After subsection (3) insert -

"(4) Before the Department makes any order, rules or regulations under this Act it shall consult such organisations as it considers represent interests affected by the order, rules or regulations.

(5) An order, rules or regulations under this Act shall not have effect unless approved by Tynwald."

85. Short title etc.

Omit subsections (2) and (3).

Sch.1 Relevant statutory provisions

Substitute -

"SCHEDULE 1
EXISTING ENACTMENTS OF TYNWALD WHICH
ARE RELEVANT STATUTORY PROVISIONS

The Factories and Workshops Act 1909 (VII p.297)

The White Phosphorus Matches Prohibition Act 1909
(VIII p.363)

The Dangerous Goods Act 1928 (XII p.476)

The Employment of Women, Young Persons and
Children Act 1930 (XIII p.114)

The Factories and Workshops (Amendment) Act 1931
(XIII p.201)

The Boiler Act 1934 (XIV p.331)

The Factories and Workshops Amendment Act 1936
(XIV p.331)

The Factories and Workshops Amendment Act 1939
(XV p.381)

The Mines and Quarries Regulation Act 1950 (XVII
p.864)

The Dangerous Goods Act 1954 (XVIII p.349)

The Agriculture (Poisonous Substances) Act 1961 (XIX
p.201)

The Ionising Radiations (Protection of Workers) Act
1969 (XX p.449)

The Agriculture (Safety, Health and Welfare Provisions)
Act 1974 (c.29)

Schedules 6 (inspection of railways) and 7 (railway
accidents) to the Isle of Man Passenger Transport Act
1982 (c.3)"

Sch.3 Subject matter of regulations

In paragraph 2(2), for "Customs and Excise Act 1952" substitute "Customs and Excise Acts 1986 (within the meaning of the Customs and Excise Management Act 1986 (an Act of Tynwald)(k))".

After paragraph 22 insert -

"22A. Removing discrimination between the sexes in legislation relating to health and safety at work."

Sch.8 Transitional provisions as to fire certificates

For paragraph 1 substitute -

"1. In this Schedule -

"the 1975 Act" means the Fire Precautions Act 1975 (an Act of Tynwald)(l);

"1975 Act certificate" means a fire certificate within the meaning of the 1975 Act;

"Factories Act certificate" means a certificate under rule 2 of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald)(m)."

In paragraph 2 -

- (a) in sub-paragraph (1), for "1971" (in each place) substitute "1975", and omit "or an Offices Act certificate";
- (b) in sub-paragraph (2), for "1971" (in each place) substitute "1975";
- (c) in sub-paragraph (3), for the words from "the following" onwards onwards substitute "rule 2(d) to (g) of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald)".

Omit paragraph 3.

Sch.9 Amendments

Substitute -

"SCHEDULE 9
MINOR AND CONSEQUENTIAL AMENDMENTS

*The Agriculture (Poisonous Substances) Act 1961
(XIX p.201)*

1. (1) In section 2(1), for "as mentioned in subsection (1) of section 1 of this Act" substitute "in connection with the use in agriculture of substances to which this Act applies, or on land on which such substances are being or have been used in agriculture,".

(2) In section 11(1), after the definition of "Department" insert —

"inspector" means an inspector within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Isle of Man;".

The Agriculture (Safety, Health and Welfare Provisions) Act 1974 (c.29)

2. In section 27(1) —

(a) for the definition of "Department" substitute —

"the Department" means the Department of Local Government and the Environment;".

(b) in the definition of "inspector", for "appointed under this Act" substitute "within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Island;";

(c) in the definition of "magistrates' court", for "three" substitute "two".

Sch.10 Repeals

Substitute —

"SCHEDULE 10
ENACTMENTS REPEALED

<i>Reference</i>	<i>Short title</i>	<i>Extent of repeal</i>
XIX p.201	The Agriculture (Poisonous Substances) Act 1961.	Section 1. Section 2(2). Section 3. Section 4(1)(c) and (d), (2), (3) and (4). Section 5. In section 6(1), the words "appointed under this Act". Sections 9 and 10.
1974 c.29	The Agriculture (Safety, Health and Welfare Provisions) Act 1974.	Section 1(1) to (5). Section 2(2). Section 4. Section 6(2) and (3). Section 7(1) and (2). Section 8. Sections 10 and 11. Sections 12 to 14. Sections 16 and 17. Sections 19 to 24. Section 26."

MADE

7th April

1998



Minister for Local Government and the Environment

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order replaces the Health and Safety at Work Order 1995 (SD 476/95), which applies Parts I and IV of the Health and Safety at Work etc. Act 1974 of Parliament to the Isle of Man. The following changes in the law are made:

- (a) work in agriculture is brought within the scope of the Act, the existing enactments relating to such work continuing in force as "existing statutory provisions";
- (b) the Order does not cover work on offshore installations, which is now regulated by legislation having effect under the Petroleum Act 1986.

**THE HEALTH AND SAFETY AT WORK ETC. ACT 1974
(OF PARLIAMENT)**

UK LAW

THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 (OF PARLIAMENT)

as applied to the Isle of Man by
the Health and Safety at Work Order 1998 (SD155/98)

PART I HEALTH, SAFETY AND WELFARE IN CONNECTION WITH WORK

Preliminary

1 Preliminary

(1) The provisions of this Part shall have effect with a view to-

- (a) securing the health, safety and welfare of persons at work;
- (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work;
- (c) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances; and
- (d) controlling the emission into the atmosphere of noxious or offensive substances from premises of any class prescribed for the purposes of this paragraph.

(2) The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the enactments specified in Schedule 1 and the regulations, orders and other instruments in force under those enactments to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under those enactments.

(3) For the purposes of this Part risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

(4) References in this Part to the general purposes of this Part are references to the purposes mentioned in subsection (1) above.

(5) Nothing in this Part shall prejudice any powers conferred on any officer of customs and excise by any statutory provision.

2 General duties of employers to their employees

(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable,

the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular-

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary (taking into account the degree of risk) to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
- (d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

(3) Except where he carries on an undertaking in which for the time being he employs fewer than 5 persons, or such number of persons as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.

(4) Regulations made by the Department may provide for the election or appointment, in prescribed cases and in the prescribed manner, of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.

(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in subsection (4) above, to establish, in accordance with regulations made by the Department, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

3 General duties of employers and self-employed to persons other than their employees

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to

ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

4 General duties of persons concerned with premises to persons other than their employees

(1) This section has effect for imposing on persons duties in relation to those who-

- (a) are not their employees; but
- (b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises, and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to-

- (a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or
- (b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which his obligation extends.

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

5 General duty of persons in control of certain premises in relation to harmful emissions into atmosphere

(1) It shall be the duty of the person having control of any premises of a class prescribed for the purposes of section 1(1)(d) to use the best practicable means for preventing the emission into the atmosphere from the premises of noxious or offensive substances and for rendering harmless and inoffensive such substances as may be so emitted.

(2) The reference in subsection (1) above to the means to be used for the purposes there mentioned includes a reference to the manner in which the plant provided for those purposes is used and to the supervision of any operation involving the emission of the substances to which that subsection applies.

(3) Any substance or a substance of any description prescribed for the purposes of subsection (1) above as noxious or offensive shall be a noxious or, as the case may be, an offensive substance for those purposes whether or not it would be so apart from this subsection.

(4) Any reference in this section to a person having control of any premises is a reference to a person having control of the premises in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not) and any duty imposed on any such person by this section shall extend only to matters within his control.

6 General duties of manufacturers etc. as regards articles and substances for use at work

(1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work-

- (a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when properly used;
- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by the preceding paragraph;
- (c) to take such steps as are necessary to secure that there will be available in connection with the used of the article adequate information about the use for which it is designed or has been tested, and about any conditions necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) It shall be the duty of any person who undertakes the design or manufacture of any article for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the design or article may give rise.

(3) It shall be the duty of any person who erects or installs any article for use at work in any premises where that article is to be used by persons at work to ensure, so far as is reasonably practicable, that nothing about the way in which it is erected or installed makes it unsafe or a risk to health when properly used.

(4) It shall be the duty of any person who manufactures, imports or supplies any substance for use at work-

- (a) to ensure, so far as is reasonably practicable, that the substance will be safe and

without risks to health when properly used;

- (b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by the preceding paragraph;
- (c) to take such steps as are necessary to secure that there will be available in connection with the use of the substance at work adequate information about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that it will be safe and without risks to health when properly used.

(5) It shall be the duty of any person who undertakes the manufacture of any substance for use at work to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any risks to health or safety to which the substance may give rise.

(6) Nothing in the preceding provisions of this section shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance, in so far as it is reasonable for him to rely on the results thereof for the purposes of those provisions.

(7) Any duty imposed on any person by any of the preceding provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.

(8) Where a person designs, manufactures, imports or supplies an article for or to another on the basis of a written undertaking by that other to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by subsection (1)(a) above to such extent as is reasonable having regard to the terms of the undertaking.

(9) Where a person ('the ostensible supplier') supplies any article for use at work or substance for use at work to another ('the customer') under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier-

- (a) carries on the business of financing the acquisition of goods by others by means of such agreements; and
- (b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person ('the effective supplier'),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section as supplying the article or substance to the customer, and any duty imposed by the preceding provisions of this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(10) For the purposes of this section an article of substance is not to be regarded as properly used where it is used without regard to any relevant information or advice relating to its use which has been made available to a person by whom it was designed,

manufactured, imported or supplied.

7 General duties of employees at work

It shall be the duty of every employee while at work-

- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

8 Duty not to interfere with or misuse things provided pursuant to certain provisions

No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

9 Duty not to charge employees for things done or provided pursuant to certain specific requirements

No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

10 Health and Safety Tribunal

(1) A Health and Safety Tribunal (in this Act referred to as 'the Tribunal') shall be constituted for the purposes of this Act.

(2) Subject to subsection (5)(e), the Tribunal shall consist of-

- (a) a chairman, who shall be an advocate of not less than 10 years' standing, appointed by the Department;
- (b) 2 other members, one drawn by the Governor in Council from each of the panels referred to in paragraph 1(1)(b) of Schedule 4 to the Employment Act 1991 (an Act of Tynwald).

(3) An appeal shall lie to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.

(4) The Department may make rules as to the institution and conduct of proceedings before the Tribunal.

(5) Rules under subsection (4) may (without prejudice to the generality of that subsection) include provision-

- (a) for prescribing the procedure to be followed on any appeal, application, reference or complaint or other proceedings before the Tribunal, including provisions as to
-

the persons entitled to appear and to be heard on behalf of parties thereto;

- (b) for treating the Department (either generally or in such circumstances as may be specified in the rules) as a party to any proceedings before the Tribunal where it would not otherwise be a party, and entitling it to appear and be heard accordingly;
- (c) for requiring persons to attend to give evidence and produce relevant documents, and for authorising oaths to be administered to witnesses;
- (d) for enabling a party to proceedings before the Tribunal to obtain an order for discovery and inspection of relevant documents, or for further and better particulars, as might be granted by the High Court;
- (e) for making a person who without reasonable excuse fails to comply with any requirement imposed under paragraph (c), or any requirement as to discovery and inspection of documents imposed under paragraph (d), guilty of an offence and liable on summary conviction to a fine not exceeding £500;
- (f) for enabling the Tribunal to review its decisions and to revoke or vary its orders and awards in such circumstances as may be determined in accordance with the rules;
- (g) for the appointment of one or more assessors as additional members of the Tribunal for the purposes of any proceedings before it, where the proceedings are under a statutory provisions enabling one or more assessors to be appointed;
- (h) for the award of fees, costs and expenses (other than allowances payable to members of the Tribunal), and for taxing or otherwise settling any such fees, costs or expenses (and in particular for enabling such costs to be taxed in the High Court);
- (i) for the registration and proof of decisions, orders and awards of the Tribunal.

(6) Rules under subsection (4) may enable the Tribunal to sit in private for the purpose of hearing evidence which in its opinion relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public, or hearing evidence from any person which in its opinion is likely to consist of

- (a) information which he could not disclose without contravening a prohibition imposed by or under a statutory provision; or
- (b) information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another persons; or
- (c) information the disclosure of which would cause substantial injury to any undertaking of his or in which he works.

13 Other powers of the Department

(1) The Department shall have power-

- (a) to make agreements with any government department or other person for that department or person to perform on behalf of the Department (with or without payment) any of the functions of the Department under this Act or any relevant

statutory provisions;

- (d) to appoint persons or committees of persons to provide the Department with advice in connection with any of its functions and (without prejudice to the generality of the following paragraph) to pay to persons so appointed such remuneration as the Department may with the approval of the Treasury determine;
- (e) in connection with any of the functions of the Department, to pay to any person such travelling and subsistence allowances and such compensation for loss of remunerative time as the Department may with the approval of the Treasury determine;
- (f) to carry out or arrange for or make payments in respect of research into any matter connected with any of the Department's functions, and to disseminate or arrange for or make payments in respect of the dissemination of information derived from such research;
- (g) to include, in any arrangements made by the Department for the provision of facilities or services by it or on its behalf, provision for the making of payments to the Department or any person acting on its behalf by other parties to the arrangements and by persons who use those facilities or services.

14 Power of the Department to direct investigations and inquiries

(1) This section applies to the following matters, that is to say any accident, occurrence, situation or other matter whatsoever which the Department thinks it necessary or expedient to investigate for any of the general purposes of this Part or with a view to the making of regulations for those purposes; and for the purposes of this subsection it is immaterial whether the Department is or is not responsible for securing the enforcement of such (if any) of the relevant statutory provisions as relate to the matter in question.

(2) The Department may at any time-

- (a) direct one or more of its inspectors or authorise any other person who in the opinion of the Department is suitably qualified to investigate and make a special report on any matter to which this section applies; or
- (b) direct an inquiry to be held into any such matter.

(3) Any inquiry held by virtue of subsection (2)(b) above shall be held in accordance with regulations made for the purposes of this subsection by the Department, and shall be held in public except where or to the extent that the regulations provide otherwise.

(4) Regulations made for the purposes of subsection (3) above may in particular include provision-

- (a) conferring on the person holding any such inquiry, and any person assisting him in the inquiry, powers of entry and inspection;
 - (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents and power to take evidence on oath and administer oaths or require the making of declarations;
 - (c) requiring any such inquiry to be held otherwise than in public where or to the extent
-

that any such person so directs.

(5) In the case of a special report made by virtue of subsection (2)(a) above or a report made by the person holding an inquiry held by virtue of subsection (2)(b) above, the Department may cause the report, or so much of it as the Department thinks fit, to be made public at such time and in such manner as the Department thinks fit.

(6) The Department-

- (a) in the case of an investigation and special report made by virtue of subsection (2)(a) above (otherwise than by an officer or servant of the Department), may pay to the person making it such remuneration and expenses as the Department may, with the approval of the Treasury, determine;
- (b) in the case of an inquiry held by virtue of subsection (2)(b) above, may pay to the person holding it and to any assessor appointed to assist him such remuneration and expenses, and to persons attending the inquiry as witnesses such expenses, as the Department may, with the like approval, determine; and
- (c) may, to such extent as the Department may determine, defray the other costs, if any, of any such investigation and special report or inquiry.

15 Health and safety regulations

(1) Subject to the provisions of section 82(3) to (5), the Department shall have power to make regulations under this section (in this Part referred to as 'health and safety regulations') for any of the general purposes of this Part.

(2) Without prejudice to the generality of the preceding subsection, health and safety regulations may for any of the general purposes of this Part make provision for any of the purposes mentioned in Schedule 3.

(3) Health and safety regulations-

- (a) may repeal or modify any of the existing statutory provisions;
- (b) may exclude or modify in relation to any specified class of case any of the provisions of sections 2 to 9 or any of the existing statutory provisions;
- (c) may make a specified authority or class of authorities responsible, to such extent as may be specified, for the enforcement of any of the relevant statutory provisions.

(4) Health and safety regulations-

- (a) may impose requirements by reference to the approval of the Department or any other specified body or person;
- (b) may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.

(5) Health and safety regulations-

- (a) may provide (either unconditionally or subject to conditions, and with or without limit of time) for exemptions from any requirement or prohibition imposed by or under

any of the relevant statutory provisions;

- (b) may enable exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions to be granted (either unconditionally or subject to conditions, and with or without limit of time) by any specified person or by any person authorised in that behalf by a specified authority.

(6) Health and safety regulations-

- (a) may specify the persons or classes of persons who, in the event of a contravention of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons or classes of persons;
- (b) may provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions either generally or in specified circumstances;
- (c) may exclude proceedings on indictment in relation to offences consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, sections 2 to 9 or health and safety regulations;
- (d) may restrict the punishments [(other than the maximum fine on conviction on indictment)] which can be imposed in respect of any such offence as is mentioned in paragraph (c) above.

(7) Without prejudice to section 35, health and safety regulations may make provision for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of bringing any such offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for any such offence.

(8) Health and safety regulations may take the form of regulations applying to particular circumstances only or to a particular case only (for example, regulations applying to particular premises only).

(10) In this section '**specified**' means specified in health and safety regulations.

16 Approval of codes of practice by the Department

(1) For the purpose of providing practical guidance with respect to the requirements of any provision of sections 2 to 7 or of health and safety regulations or of any of the existing statutory provisions, the Department may, subject to the following subsection-

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose;
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the Department as in its opinion are suitable for that purpose.

(2) The Department shall not approve a code of practice under this section unless it has had consultations with such organisations as it considers represent interests which will be affected by the code.

(3) Where a code of practice is approved by the Department under subsection (1) above, the Department shall issue a notice in writing-

- (a) identifying the code in question and stating the date on which its approval by the Department is to take effect; and
- (b) specifying for which of the provisions mentioned in subsection (1) above the code is approved.

(4) The Department may-

- (a) from time to time revise the whole or any part of any code of practice prepared by it in pursuance of this section;
- (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section;

and the provisions of subsections (2) and (3) above shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1) above.

(5) The Department may at any time withdraw its approval from any code of practice approved under this section, but before doing so shall consult such bodies as it would be required to consult under subsection (2) above if it were proposing to approve the code.

(6) Where under the preceding subsection the Department withdraws its approval from a code of practice approved under this section, the Department shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.

(7) References in this part to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.

(8) The power of the Department under subsection (1) (b) above to approve a code of practice issued or proposed to be issued otherwise than by the Department shall include power to approve a part of such a code of practice; and accordingly in this Part 'code of practice' may be read as including a part of such a code of practice.

17 Use of approved codes of practice in criminal proceedings

(1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as is mentioned in section 16 (1) being a provision for which there was an approved code of practice at the time of the alleged contravention, the following subsection shall have effect with respect to that code in relation to those proceedings.

(2) Any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which appears to the court to be relevant to any matter which it is

necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.

(3) In any criminal proceedings-

- (a) a document purporting to be a notice issued by the Department under section 16 shall be taken to be such a notice unless the contrary is proved; and
- (b) a code of practice which appears to the court to be the subject of such a notice shall be taken to be the subject of that notice unless the contrary is proved.

Enforcement

18 Authorities responsible for enforcement of the relevant statutory provisions

(1) It shall be the duty of the Department to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is by any of those provisions made responsible for their enforcement. (5) Where any authority other than the Department is by any of the relevant statutory provisions made responsible for the enforcement of any of those provisions to any extent, it shall be the duty of that authority-

- (a) to make adequate arrangements for the enforcement of those provisions to that extent; and
- (b) to perform the duty imposed on the authority by the preceding paragraph and any other functions conferred on the authority by any of the relevant statutory provisions in accordance with such guidance as the Department may give to the authority.

(7) In this Part-

- (a) '**enforcing authority**' means the Department or any other authority which is by any of the relevant statutory provisions made responsible for the enforcement of any of those provisions to any extent; and
- (b) any reference to an enforcing authority's field of responsibility is a reference to the field over which that authority's responsibility for the enforcement of those provisions extends for the time being;

but where by virtue of paragraph (a) of section 13(1) the performance of any function of the Department is delegated to a government department or person, references to the Department (or to an enforcing authority where that authority is the Department) in any provision of this Part which relates to that function shall, so far as may be necessary to give effect to any agreement under that paragraph, be construed as references to that department or person; and accordingly any reference to the field of responsibility of an enforcing authority shall be construed as a reference to the field over which that department or person for the time being performs such a function.

19 Appointment of inspectors

(1) There shall be appointed as inspectors (under whatever title the Department may from time to time determine)-

- (a) by the Civil Service Commission in accordance with section 3 of the Civil Service Act 1990 (an Act of Tynwald), or
- (b) by the Department, on such terms and conditions as the Department thinks fit,

persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility.

(1A) Every other enforcing authority may appoint inspectors (under whatever title it may from time to time determine) persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this subsection.

(2) An enforcing authority shall by an instrument in writing specify, in relation to each of its inspectors, which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by that inspector; and an inspector shall be entitled to exercise only such of those powers as are so specified, and only within the field of responsibility of the authority concerned.

(2A) An instrument made under subsection (2) shall not be valid unless it carries the photograph and signature of the inspector, and is signed by a person authorised to do so by the enforcing authority; and an instrument purporting to be so made in relation to any person and complying with this subsection shall be evidence that he has been duly appointed an inspector by that authority and is entitled to exercise the powers specified therein within the authority's field of responsibility.

(3) So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof.

20 Powers of inspectors

(1) Subject to the provisions of section 19 and this section, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him, exercise the powers set out in subsection (2) below.

(2) The powers of an inspector referred to in the preceding subsection are the following, namely-

- (a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in subsection (1) above;
- (b) to take with him a constable if he has reasonable cause to apprehend any serious

obstruction in the execution of his duty;

- (c) without prejudice to the preceding paragraph, on entering any premises by virtue of paragraph (a) above to take with him-
 - (i) any other person duly authorised by his (the inspector's) enforcing authority; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in subsection (1) above;
- (e) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d) above;
- (f) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above;
- (g) to take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises;
- (h) in the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in subsection (1) above);
- (i) in the case of any such article or substance as is mentioned in the preceding paragraph, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely-
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under section 21 or 22;
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

- (k) to require the production of, inspect, and take copies of or of any entry in-
 - (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
 - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above;
- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section;
- (m) any other power which appears to the enforcing authority on a report of the inspector to be necessary for the purpose mentioned in subsection (1) above;

but before exercising any powers by virtue of paragraph (j) above an inspector shall inform the person concerned of the requirements of that paragraph; and an inspector may not exercise any powers by virtue of paragraph (k) above in respect of any books referred to in paragraph (k)(ii) which relate to the trading or profit and loss accounts of any undertaking unless he is authorised for the purpose by an order of the High Court.

(2A) Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing, that admission to premises specified in the information is reasonably required by an inspector for any purpose specified in subsection (1), the justice may by warrant under his hand authorise the inspector to enter the premises, by force if need be.

(2B) A warrant under subsection (2A)-

- (a) may not be granted unless the justice is satisfied that the inspector has reasonable cause to apprehend a serious obstruction in the execution of his duty; and
- (b) shall continue in force until the purpose for which the entry is required has been satisfied.

(2C) A person who in the exercise of a right of entry conferred by this section enters any premises from which the occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

(2D) A person who in the exercise of a right conferred by this section causes damage while effecting entry to any premises or any part thereof shall make good that damage without charge to the owner or occupier of the premises.

(3) The Department may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(g) above (including provision as to the way in which samples that have been so taken are to be dealt with).

(4) Where an inspector proposes to exercise the power conferred by subsection (2)(h) above in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.

(5) Before exercising the power conferred by subsection (2)(h) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(6) Where under the power conferred by subsection (2)(i) above an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.

(7) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(8) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court.

(9) An inspector shall inform any person who on reasonable grounds requests him to do so of his powers under this section.

21 Improvement notices

If an inspector is of the opinion that a person-

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Part referred to as 'an improvement notice') stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under section 24) as may be specified in the notice.

22 Prohibition notices

(1) This section applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this section applies an inspector is of the opinion that, as carried on or about to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Part referred to as 'a prohibition notice').

(3) A prohibition notice shall-

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) above and any associated contraventions of provisions so specified in pursuance of paragraph (c) above have been remedied.

(4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) above shall take immediate effect if the inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the notice in any other case.

23 Provisions supplementary to ss.21 and 22

(1) In this section '**a notice**' means an improvement notice or a prohibition notice.

(2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions-

- (a) may be framed to any extent by reference to any approved code of practice; and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(3) Where any of the relevant statutory provisions applies to a building or any matter connected with a building and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.

In this subsection 'the relevant building', in the case of a building, means that building, and, in the case of a matter connected with a building, means the building with which the matter is connected.

(4) Before an inspector serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he

shall consult the Department of Home Affairs.

(5) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served-

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of section 21 or section 22(4) as the case may be; and
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

24 Appeal against improvement or prohibition notice

(1) In this section 'a notice' means an improvement notice or a prohibition notice.

(2) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to the Tribunal; and on such an appeal the Tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, then-

- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(4) One or more suitably qualified assessors may be appointed for the purposes of any proceedings brought before the Tribunal under this section.

25 Power to deal with cause of imminent danger

(1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) Before there is rendered harmless under this section-

- (a) any article that forms part of a batch of similar articles; or
- (b) any substance,

the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him a portion of the sample marked in a manner sufficient to identify it.

(3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving

particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall-

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under the preceding paragraph.

26 Power of enforcing authorities to indemnify their inspectors

Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

Obtaining and disclosure of information

27 Obtaining of information by the Department, enforcing authorities etc.

- (1) For the purpose of obtaining-
 - (a) any information which the Department needs for the discharge of its functions; or
 - (b) any information which an enforcing authority needs for the discharge of the authority's functions,

the Department may serve on any person a notice requiring that person to furnish to the Department or, as the case may be, to the enforcing authority in question such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified.

In this subsection 'functions' means functions under this Act.

28 Restrictions on disclosure of information

- (1) In this and the two following subsections-
 - (a) 'relevant information' means information obtained by a person under section 27(1) or furnished to any person in pursuance of a requirement imposed by any of the relevant statutory provisions; and
 - (b) 'the recipient', in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

(2) Subject to the following subsection, no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) The preceding subsection shall not apply to-

- (a) disclosure of information to the Department, any other Department or any enforcing authority;
- (b) without prejudice to paragraph (a) above, disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions;
- (c) without prejudice to paragraph (a) above, disclosure by the recipient of information to-
 - (i) an officer of a local authority who is authorised by that authority to receive it, or
 - (iv) a constable authorised by the Chief Constable to receive it;
- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case;
- (e) disclosure of information for the purposes of any legal proceedings or any investigation or inquiry held by virtue of section 14(2), or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of section 14(2).

(4) In the preceding subsection any reference to the Department, any other Department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it).

(5) A person to whom information is disclosed in pursuance of subsection (3) above shall not use the information for a purpose other than-

- (a) in a case falling within paragraph (a) of that subsection, a purpose of the Department or of the other Department in question, or the purposes of the enforcing authority in question in connection with the relevant statutory provisions, as the case may be;
- (b) in the case of information given to an officer of a local authority, the purposes of the authority in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the protection of the environment;
- (c) in the case of information given to a constable, the purposes of the police in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the safety of the State.

(7) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by section 14(4)(a) or 20 (including, in particular, any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except-

- (a) for the purposes of his functions; or
- (b) for the purposes of any legal proceedings or any investigation or inquiry held by virtue of section 14(2) or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of section 14(2); or
- (c) with the relevant consent.

In this subsection 'the relevant consent' means, in the case of information furnished in pursuance of a requirement imposed under section 20, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

(8) Notwithstanding anything in the preceding subsection an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare, give to such persons or their representatives the following descriptions of information, that is to say-

- (a) factual information obtained by him as mentioned in that subsection which relates to those premises or anything which was or is therein or was or is being done therein; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions;

and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(9) Notwithstanding anything in subsection (7), a person who has obtained such information as is referred to in that subsection may furnish to a person who appears to him to be, or to be likely to be, a party to any civil proceedings, or to the advocate of such a person, a written statement of any fact observed by him and appearing to him to be relevant to such proceedings, on payment of such fee as may be prescribed under the Fees and Duties Act 1989 (an Act of Tynwald).

33 Offences

- (1) It is an offence for a person-
- (a) to fail to discharge a duty to which he is subject by virtue of sections 2 to 7;
 - (b) to contravene section 8 or 9;
 - (c) to contravene any health and safety regulations or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any licence, approval, exemption or other authority issued, given or granted under the regulations);
 - (d) to contravene any requirement imposed by or under regulations under section 14 or intentionally to obstruct any person in the exercise of his powers under that subsection;

- (e) to contravene any requirement imposed by an inspector under section 20 or 25;
- (f) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of section 20(2) require an answer;
- (g) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as modified on appeal);
- (h) intentionally to obstruct an inspector in the exercise or performance of his powers or duties;
- (i) to contravene any requirement imposed by a notice under section 27(1);
- (j) to use or disclose any information in contravention of section 28;
- (k) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made-
 - (i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or
 - (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person;
- (l) intentionally to make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false;
- (m) with intent to deceive, to forge or use a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be calculated to deceive;
- (n) falsely to pretend to be an inspector;
- (o) to fail to comply with an order made by a court under section 42.

(2) A person guilty of an offence under paragraph (d), (f), (h) or (n) of subsection (1) above, or of an offence under paragraph (e) of that subsection consisting of contravening a requirement imposed by an inspector under section 20, shall be liable on summary conviction to a fine not exceeding £5,000.

(3) Subject to any provision made by virtue of section 15(6)(d) or by virtue of paragraph 2(2) of Schedule 3, a person guilty of an offence under any paragraph of subsection (1) not mentioned in the preceding subsection, or of an offence under subsection (1)(e) above not falling within the preceding subsection, or of an offence under any of the existing statutory provisions, being an offence for which no other penalty is specified, shall be liable -

- (a) on summary conviction-
 - (i) if the offence is one to which this sub-paragraph applies, to imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both;

- (ii) if the offence is not one to which this sub-paragraph applies, to a fine not exceeding £20,000;
- (b) on conviction on information-
 - (i) if the offence is one to which this sub-paragraph applies, to imprisonment for a term not exceeding two years, or a fine, or both;
 - (ii) if the offence is not one to which the preceding sub-paragraph applies, to a fine.

(4) Subsection (3)(a)(i) and (b)(i) above applies to the following offences-

- (a) an offence consisting of contravening any of the relevant statutory provisions by doing otherwise than under the authority of a licence issued by the Department something for the doing of which such a licence is necessary under the relevant statutory provisions;
- (b) an offence consisting of contravening a term of or a condition or restriction attached to any such licence as is mentioned in the preceding paragraph;
- (c) an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of any of the relevant statutory provisions) in contravention of any of the relevant statutory provisions;
- (d) an offence under subsection (1)(g) above consisting of contravening a requirement or prohibition imposed by a prohibition notice;
- (e) an offence under subsection (1)(j) above.

(5) Where a person is convicted of an offence under subsection (1)(g) or (o) above, then, if the contravention in respect of which he was convicted is continued after the conviction he shall (subject to section 42(3)) be guilty of a further offence and liable in respect thereof to a fine not exceeding £50 for each day on which the contravention is so continued.

(6) In this section 'forge' has the same meaning as in the Forgery Act 1952 (an Act of Tynwald).

34 Extension of time for bringing summary proceedings

(1) Where-

- (a) a special report on any matter to which section 14 of this Act applies is made by virtue of subsection (2)(a) of that section; or
- (b) a report is made by the person holding an inquiry into any such matter by virtue of subsection (2)(b) of that section; or
- (c) a coroner's inquest is held touching the death of any person whose death may have been caused by an accident which happened while he was at work or by a disease which he contracted or probably contracted at work or by any accident, act or omission which occurred in connection with the work of any person whatsoever;

and it appears from the report or, in a case falling within paragraph (c) above, from the proceedings at the inquest, that any of the relevant statutory provisions was contravened at

a time which is material in relation to the subject-matter of the report or inquest, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the making of the report or, in a case falling within paragraph (c) above, within three months of the conclusion of the inquest.

(2) Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence shall be deemed to continue until that thing is done.

(3) Summary proceedings for an offence to which this subsection applies may be commenced at any time within six months from the date on which there comes to the knowledge of a responsible enforcing authority evidence sufficient in the opinion of that authority to justify a prosecution for that offence or within the period of 4 years after the commission of the offence, whichever period first expires; and for the purposes of this subsection-

- (a) a certificate of an enforcing authority stating that such evidence came to its knowledge on a specified date shall be conclusive evidence of that fact; and
- (b) a document purporting to be such a certificate and to be signed by or on behalf of the enforcing authority in question shall be presumed to be such a certificate unless the contrary is proved.

(4) The preceding subsection applies to any offence under any of the relevant statutory provisions which a person commits by virtue of any provision or requirement to which he is subject as the designer, manufacturer, importer or supplier of any thing; and in that subsection 'responsible enforcing authority' means an enforcing authority within whose field of responsibility the offence in question lies, whether by virtue of section 35 or otherwise.

35 Venue

An offence under any of the relevant statutory provisions committed in connection with any plant or substance may, if necessary for the purpose of bringing the offence within the field of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for the offence, be treated as having been committed at the place where that plant or substance is for the time being.

36 Offences due to fault of other person

(1) Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(2) Where there would be or have been the commission of an offence under section 33 by the Crown but for the circumstance that that section does not bind the Crown, and that fact is due to the act or default of a person other than the Crown, that person shall be guilty of the offence which, but for that circumstance, the Crown would be committing or would have committed, and may be charged with and convicted of that offence accordingly.

(3) The preceding provisions of this section are subject to any provision made by virtue of

section 15 (6).

37 Offences by bodies corporate

(1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

38 Restriction on institution of proceedings

Proceedings for an offence under any of the relevant statutory provisions shall not be instituted except by an inspector or by or with the consent of the Attorney General for the Isle of Man.

40 Onus of proving limits of what is practicable etc.

In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best means to do something, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

41 Evidence

(1) Where an entry is required by any of the relevant statutory provisions to be made in any register or other record, the entry, if made, shall, as against the person by or on whose behalf it was made, be admissible as evidence of the facts stated therein.

(2) Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact shall be admissible as evidence that that provision has not been observed.

42 Power of court to order cause of offence to be remedied or, in certain cases, forfeiture

(1) Where a person is convicted of an offence under any of the relevant statutory provisions in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of that time as

originally fixed or as extended under this subsection, as the case may be.

(3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

(4) Subject to subsection (5), the court by or before which a person is convicted of an offence such as is mentioned in section 33(4)(c) in respect of any such explosive article or substance as is there mentioned may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order.

(4A) Subject to subsection (5), the court by or before which a person is convicted of an offence under any of the relevant statutory provisions in respect of any radioactive substance or any machine or apparatus intended to produce ionising radiations may order that the substance, machine or apparatus be forfeited.

(5) The court shall not order anything to be forfeited under subsection (4) or (4A) where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Miscellaneous and supplementary

44 Appeals in connection with licensing provisions in the relevant statutory provisions

(1) Any person who is aggrieved by a decision of an authority or inspector having power to issue licences under any of the relevant statutory provisions-

- (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
- (b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;
- (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
- (d) revoking a licence held by him,

may appeal to the Tribunal.

(7) In this section 'licence' means a licence under any of the relevant statutory provisions.

(7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of any proceedings before the Tribunal under this section.

46 Service of notices

(1) Any notice required or authorised by any of the relevant statutory provisions to be served on or given to an inspector may be served or given by delivering it to him or by

leaving it at, or sending it by post to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such notice may-

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
- (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.

(4) For the purposes of this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that-

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the Isle of Man or of a partnership carrying on business outside the Isle of Man shall be their principal office within the Isle of Man.

(5) If the person to be served with or given any such notice has specified an address within the Isle of Man other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section as his proper address.

(6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on or given to the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises.

(7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of 'owner' or 'occupier' of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

47 Civil liability

(1) Nothing in this Part shall be construed-

- (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by sections 2 to 7 or any contravention of section 8; or
- (b) as affecting the extent (if any) to which breach of a duty imposed by any of the existing statutory provisions is actionable; or
- (c) as affecting the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

(2) Breach of a duty imposed by health and safety regulations shall, so far as it causes damage, be actionable except in so far as the regulations provide otherwise.

(3) No provision made by virtue of section 15(6)(b) shall afford a defence in any civil proceedings, whether brought by virtue of subsection (2) above or not; but as regards any duty imposed as mentioned in subsection (2) above health and safety regulations may provide for any defence specified in the regulations to be available in any action for breach of that duty.

(4) Subsections (1)(a) and (2) above are without prejudice to any right of action which exists apart from the provisions of this Act, and subsection (3) above is without prejudice to any defence which may be available apart from the provisions of the regulations there mentioned.

(5) Any term of an agreement which purports to exclude or restrict the operation of subsection (2) above, or any liability arising by virtue of that subsection, shall be void, except in so far as health and safety regulations provide otherwise.

(6) In this section 'damage' includes the death of, or injury to, any person (including any disease and any impairment of a person's physical or mental condition).

47A Avoidance of certain contract terms

A contract shall be void and of no effect in so far as it purports to preclude any person from doing such acts as may be necessary to comply with any requirement of the relevant statutory provisions or to render him liable to any penalty or forfeiture for so doing.

48 Application to Crown

(1) Subject to the provisions of this section, the provisions of this Part, except sections 21 to 25 and 33 to 42, and of regulations made under this Part shall bind the Crown.

(2) Although they do not bind the Crown, sections 33 to 42 shall apply to persons in the public service of the Crown as they apply to other persons.

(3) For the purposes of this Part and regulations made thereunder persons in the service of the Crown shall be treated as employees of the Crown whether or not they would be so treated apart from this subsection.

(4) Without prejudice to section 15(5), the Council of Ministers may, to the extent that it appears to it requisite or expedient to do so in the interests of the safety of the State or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in

particular respects from all or any of the provisions of this Part which would, by virtue of subsection (1) above, bind the Crown.

(5) An order under this section shall not have effect unless it is approved by Tynwald.

49 Adaptation of enactments to metric units or appropriate metric units

(1) The Department may by regulations amend-

- (a) any of the relevant statutory provisions; or
- (b) any provision of an enactment which relates to any matter relevant to any of the general purposes of this Part but is not among the relevant statutory provisions; or
- (c) any provision of an instrument made or having effect under any such enactment as is mentioned in the preceding paragraph,

by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the regulations for an amount or quantity expressed in metric units of a different description.

(2) The amendments shall be such as to preserve the effect of the provisions mentioned except to such extent as in the opinion of the Department is necessary to obtain amounts expressed in convenient and suitable terms.

(3) Regulations made by the Department under this subsection may, in the case of a provision which falls within any of paragraphs (a) to (c) of subsection (1) above and contains words which refer to units other than metric units, repeal those words if the Department is of the opinion that those words could be omitted without altering the effect of that provision.

51 Exclusion of application to domestic employment

Nothing in this Part shall apply in relation to a person by reason only that he employs another, or is himself employed as a domestic servant in a private household.

52 Meaning of work and at work

(1) For the purposes of this Part [. . . .]1-

- (a) '**work**' means work as an employee or as a self-employed person;
- (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise; and
- (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person;

and, subject to the following subsection, the expressions 'work' and 'at work', in whatever context, shall be construed accordingly.

(2) Regulations made under this subsection may-

- (a) extend the meaning of 'work' and 'at work' for the purposes of this Part; and

(b) in that connection provide for any of the relevant statutory provisions to have effect subject to such adaptations as may be specified in the regulations.

(3) The power to make regulations under subsection (2) above shall be exercisable by the Department.

53 General interpretation of Part I

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

'article for use at work' means -

(a) any plant designed for use or operation (whether exclusively or not) by persons at work, and

(b) any article designed for use as a component in any such plant;

'code of practice' (without prejudice to section 16(8)) includes a standard, a specification and any other documentary form of practical guidance;

'conditional sale agreement' means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

'contract of employment' means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);

'credit-sale agreement' means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

'the Department' means the Department of Local Government and the Environment;

'domestic premises' means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling), and 'non-domestic premises' shall be construed accordingly;

'employee' means an individual who works under a contract of employment, and related expressions shall be construed accordingly;

'enforcing authority' has the meaning assigned by section 18(7);

'the existing statutory provisions' means the following provisions while and to the extent that they remain in force, namely the enactments specified in Schedule 1 and the regulations, orders or other instruments of a legislative character made or having effect under any provision so specified;

'the general purposes of this Part' has the meaning assigned by section 1;

'health and safety regulations' has the meaning assigned by section 15(1);

'hire-purchase agreement' means an agreement other than a conditional sale agreement, under which -

- (a) goods are bailed in return for periodical payments by the person to whom they are bailed; and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs:
 - (i) the exercise of an option to purchase by that person;
 - (ii) the doing of any other specified act by any party to the agreement;
 - (iii) the happening of any other event;

and **'hire-purchase'** shall be construed accordingly;

'improvement notice' means a notice under section 21;

'inspector' means an inspector appointed under section 19;

'ionising radiations' has the meaning given by section 7 of the Ionising Radiations (Protection of Workers) Act 1968 (an Act of Tynwald);

'offshore installation' means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

'personal injury' includes any disease and any impairment of a person's physical or mental condition;

'plant' includes any machinery, equipment or appliance;

'premises' includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and
- (c) any tent or movable structure;

'prescribed' means prescribed by regulations made by the Department;

'prohibition notice' means a notice under section 22;

'radioactive substance' means any substance which consist of or contains any radioactive element (whether natural or artificial) and whose specific activity exceeds 0.002 microcurie of parent radioactive element per gram of substance;

'the relevant statutory provisions' means-

- (a) the provisions of this Part and of any health and safety regulations; and

(b) the existing statutory provisions;

'self-employed person' means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others;

'substance' means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour;

'substance for use at work' means any substance intended for use (whether exclusively or not) by persons at work;

'supply', where the reference is to supplying articles or substances, means supplying them by way of sale, lease, hire or hire-purchase, whether as principal or agent for another;

'the Tribunal' means the Health and Safety Tribunal constituted by section 10.

(1A) In this Act 'advocate', 'constable', 'Governor in Council', 'the High Court', 'local authority', 'summary conviction' and 'statutory provision' have the meanings given by the Interpretation Act 1976 (an Act of Tynwald).

PART IV MISCELLANEOUS AND GENERAL

78 Transitional provisions with respect to fire certificates

(10) Schedule 8 (transitional provisions with respect to fire certificates under the Factories and Workshops Act 1909 (an Act of Tynwald) shall have effect.

80 General power to repeal or modify Acts and instruments

(1) Regulations made by the Department under this subsection may repeal or modify any provision to which this subsection applies if it appears to the Department that the repeal or, as the case may be, the modification of that provision is expedient in consequence of or in connection with any provision made by or under Part I.

(2) Subsection (1) above applies to any provision, not being among the relevant statutory provisions, which-

- (a) is contained in any Act of Tynwald passed before the 31st July 1980; or
- (b) is contained in any regulations, order or other instrument of a legislative character which was made under an Act before the 31st July 1980; or
- (c) applies, excludes or for any other purpose refers to any of the relevant statutory provisions and is contained in any Act of Tynwald not falling within paragraph (a) above or in any regulations, order or other instrument of a legislative character which is made under an Act of Tynwald but does not fall within paragraph (b) above.

(3) Without prejudice to the generality of subsection (1) above, the modifications which may be made by regulations thereunder include modifications relating to the enforcement of provisions to which this section applies (including the appointment of persons for the purpose of such enforcement, and the powers of persons so appointed).

(6) In this section 'the relevant statutory provisions' has the same meaning as in Part I.

82 General provisions as to interpretation and regulations

(1) In this Act-

- (a) '**Act**' includes an Act of Tynwald;
- (b) '**contravention**' includes failure to comply, and 'contravene' has a corresponding meaning;
- (c) '**modifications**' includes additions, omissions and amendments, and related expressions shall be construed accordingly;
- (d) any reference to a Part, section or Schedule not otherwise identified is a reference to that Part or section of, or Schedule to, this Act.

(2) Except in so far as the context otherwise requires, any reference in this Act to an enactment is a reference to it as amended, and includes a reference to it as applied, by or under any other enactment, including this Act.

(3) Any power conferred by Part I or this Part to make regulations-

- (a) includes power to make different provision by the regulations for different circumstances or cases and to include in the regulations such incidental, supplemental and transitional provisions as the authority making the regulations considers appropriate in connection with the regulations.

(4) Before the Department makes any order, rules or regulations under this Act it shall consult such organisations as it considers represent interests affected by the order, rules or regulations.

(5) An order, rules or regulations under this Act shall not have effect unless approved by Tynwald.

85 Short title

(1) This Act may be cited as the Health and Safety at Work etc. Act 1974.

Schedule 1

Existing Enactments of Tynwald which are Relevant Statutory Provisions

The Factories and Workshops Act 1909 (VII p.297)

The White Phosphorus Matches Prohibition Act 1909 (VIII p.363)

The Dangerous Goods Act 1928 (XII p.476)

The Employment of Women, Young Persons and Children Act 1930 (XIII p.114)

The Factories and Workshops (Amendment) Act 1931 (XIII p.201)

The Boiler Act 1934 (XIV p.331)

The Factories and Workshops Amendment Act 1936 (XIV p.331)

The Factories and Workshops Amendment Act 1939 (XV p.381)

The Mines and Quarries Regulation Act 1950 (XVII p.864)

The Dangerous Goods Act 1954 (XVIII p.349)

The Agriculture (Poisonous Substances) Act 1961 (XIX p.201)

The Ionising Radiations (Protection of Workers) Act 1969 (XX p.449)

The Agriculture (Safety, Health and Welfare Provisions) Act 1974 (c.29) Schedules 6 (inspection of railways) and 7 (railway accidents) to the Isle of Man Passenger Transport Act 1982 (c.3)

Schedule 3 **Subject-matter of Health and Safety Regulations**

1. (1) Regulating or prohibiting-

- (a) the manufacture, supply or use of any plant;
- (b) the manufacture, supply, keeping or use of any substance;
- (c) the carrying on of any process or the carrying out of any operation.

(2) Imposing requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing or inspection of any plant.

(3) Imposing requirements with respect to the marking of any plant or of any articles used or designed for use as components in any plant, and in that connection regulating or restricting the use of specified markings.

(4) Imposing requirements with respect to the testing, labelling or examination of any substance.

(5) Imposing requirements with respect to the carrying out of research in connection with any activity mentioned in sub-paragraphs (1) to (4) above.

2. (1) Prohibiting the importation into the Isle of Man or the landing or unloading there of articles or substances of any specified description, whether absolutely or unless conditions imposed by or under the regulations are complied with.

(2) Specifying, in a case where an act or omission in relation to such an importation, landing or unloading as is mentioned in the preceding sub-paragraph constitutes an offence under a provision of this Act and of the Customs and Excise Acts 1986 (within the meaning of the Customs and Excise Management Act 1986 (an Act of Tynwald)), the Act under which the offence is to be punished.

3. (1) Prohibiting or regulating the transport of articles or substances of any specified description.

(2) Imposing requirements with respect to the manner and means of transporting articles or substances of any specified description, including requirements with respect to the construction, testing and marking of containers and means of transport and the packaging

and labelling of articles or substances in connection with their transport.

4. (1) Prohibiting the carrying on of any specified activity or the doing of any specified thing except under the authority and in accordance with the terms and conditions of a licence, or except with the consent or approval of specified authority.

(2) Providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to licences).

5. Requiring any person, premises or thing to be registered in any specified circumstances or as a condition of the carrying on of any specified activity or the doing of any specified thing.

6. (1) Requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons (or persons with specified qualifications or experience, or both) to perform specified functions, and imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions.

(2) Restricting the performance of specified functions to persons possessing specified qualifications or experience.

7. Regulating or prohibiting the employment in specified circumstances of all persons or any class of persons.

8. (1) Requiring the making of arrangements for securing the health of persons at work or other persons, including arrangements for medical examinations and health surveys.

(2) Requiring the making of arrangements for monitoring the atmospheric or other conditions in which persons work.

9. Imposing requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as the structural condition and stability of premises, the means of access to and egress from premises, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations, dust and fumes.

10. Securing the provision of specified welfare facilities for persons at work, including in particular such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshment facilities.

11. Imposing requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including affording protection against the weather.

12. Requiring in specified circumstances the taking of specified precautions in connection with the risk of fire.

13. (1) Prohibiting or imposing requirements in connection with the emission into the atmosphere of any specified gas, smoke or dust or any other specified substance whatsoever.

(2) Prohibiting or imposing requirements in connection with the emission of noise,

vibrations or any ionising or other radiations.

(3) Imposing requirements with respect to the monitoring of any such emission as is mentioned in the preceding sub-paragraphs.

14. Imposing requirements with respect to the instruction, training and supervision of persons at work.

15. (1) Requiring, in specified circumstances, specified matters to be notified in a specified manner to specified persons.

(2) Empowering inspectors in specified circumstances to require persons to submit written particulars of measures proposed to be taken to achieve compliance with any of the relevant statutory provisions.

16. Imposing requirements with respect to the keeping and preservation of records and other documents, including plans and maps.

17. Imposing requirements with respect to the management of animals.

18. The following purposes as regards premises of any specified description where persons work, namely -

(a) requiring precautions to be taken against dangers to which the premises or persons therein are or may be exposed by reason of conditions (including natural conditions) existing in the vicinity;

(b) securing that persons in the premises leave them in specified circumstances.

19. Conferring, in specified circumstances involving a risk of fire or explosion, power to search a person or any article which a person has with him for the purpose of ascertaining whether he has in his possession any article of a specified kind likely in those circumstances to cause a fire or explosion, and power to seize and dispose of any article of that kind found on such a search.

20. Restricting, prohibiting or requiring the doing of any specified thing where any accident or other occurrence of a specified kind has occurred.

21. As regards cases of any specified class, being a class such that the variety in the circumstances of particular cases within it calls for the making of special provision for particular cases, any of the following purposes, namely-

(a) conferring on employers or other persons power to make rules or give directions with respect to matters affecting health or safety;

(b) requiring employers or other persons to make rules with respect to any such matters;

(c) empowering specified persons to require employers or other persons either to make rules with respect to any such matters or to modify any such rules previously made by virtue of this paragraph; and

(d) making admissible in evidence without further proof, in such circumstances and subject to such conditions as may be specified, documents which purport to be

copies of rules or rules of any specified class made under this paragraph.

22. Conferring on any local or public authority power to make byelaws with respect to any specified matter, specifying the authority or person by whom any byelaws made in the exercise of that power need to be confirmed, and generally providing for the procedure to be followed in connection with the making of any such byelaws.

22A. Removing discrimination between the sexes in legislation relating to health and safety at work.

Interpretation

23. (1) In this Schedule '**specified**' means specified in health and safety regulations.

(2) It is hereby declared that the mention in this Schedule of a purpose that falls within any more general purpose mentioned therein is without prejudice to the generality of the more general purpose.

Schedule 8 Transitional Provisions with Respect to Fire Certificates under Fire Precautions Act 1975

1. In this Schedule-

'**the 1975 Act**' means the Fire Precautions Act 1975 (an Act of Tynwald);

'**1975 Act certificate**' means a fire certificate within the meaning of the 1975 Act;

'**Factories Act certificate**' means a certificate under rule 2 of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald).

2. (1) Where by virtue of an order under section 1 of the 1975 Act a 1975 Act certificate becomes required in respect of any premises at a time when there is in force in respect of those premises a Factories Act certificate ('the existing certificate'), the following provisions of this paragraph shall apply.

(2) The existing certificate shall continue in force (irrespective of whether the section under which it was issued remains in force) and-

(a) shall as from the said time be deemed to be a 1975 Act certificate validly issued with respect to the premises with respect to which it was issued and to cover the use or uses to which those premises were being put at that time; and

(b) may (in particular) be amended, replaced or revoked in accordance with the 1975 Act accordingly.

(3) Without prejudice to sub-paragraph (2)(b) above, the existing certificate, as it has effect by virtue of sub-paragraph (2) above, shall as from the said time be treated as imposing in relation to the premises the like requirements as were previously imposed in relation thereto by rule 2(d) to (g) of the Rules and Regulations made pursuant to the Factories and Workshops Act 1909 (an Act of Tynwald).

Schedule 9

Minor and Consequential Amendments

The Agriculture (Poisonous Substances) Act 1961

1. (1) In section 2(1), for 'as mentioned in subsection (1) of section 1 of this Act' substitute 'in connection with the use in agriculture of substances to which this Act applies, or on land on which such substances are being or have been used in agriculture,'.

(2) In section 11(1), after the definition of 'Department' insert-

"inspector" means an inspector within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Isle of Man;'

The Agriculture (Safety, Health and Welfare Provisions) Act 1974

2. In section 27(1)-

(a) for the definition of 'Department' substitute

"the Department" means the Department of Local Government and the Environment;'

(b) in the definition of 'inspector', for 'appointed under this Act' substitute 'within the meaning of the Health and Safety at Work etc. Act 1974 (an Act of Parliament), as it has effect in the Island;';

(c) in the definition of 'magistrates' court', for 'three' substitute 'two'.'.

Schedule 10 Enactments Repealed

<i>Short title</i>	<i>Extent of repeal</i>
The Agriculture (Poisonous Substances Act 1961.	Section 1. Section 2(2). Section 3. Section 4(1)(c) and (d), (2), (3) and (4). Section 5. In section 6(1), the words 'appointed under this Act'. Sections 9 and 10.
The Agriculture (Safety, Health and Welfare Provisions) Act 1974.	Section 1(1) to (5). Section 2(2). Section 4. Section 6(2) and (3). Section 7(1) and (2). Section 8. Sections 10 and 11. Sections 12 to 14. Sections 16 and 17. Sections 19 to 24. Section 26.