

No. S 44

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))**

WORKPLACE SAFETY AND HEALTH ORDER, 2009

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under Article 83(3))

WORKPLACE SAFETY AND HEALTH ORDER, 2009

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Workplace Safety and Health Order, 2009 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order relating to the safety, health and welfare of persons at work in workplaces and for matters connected therewith".

Application of Order.

2. (1) Except as otherwise expressly provided in this Order (but not the regulations), this Order shall apply to workplaces within the class or description of workplaces specified in the First Schedule.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, add to the class or description of workplaces specified in the First Schedule and may prescribe in the order such transitional provisions as may be necessary or expedient.

Application of Order to Government.

3. (1) Except as provided in subsection (2), this Order shall bind the Government and shall apply to —

(a) any workplace wholly or partly owned or occupied by the Government; and

(b) any premises in which any building operation or any work of engineering construction is carried on by or on behalf of the Government.

(2) Nothing in this Order shall render the Government liable to prosecution for an offence.

(3) For the avoidance of doubt, it is hereby declared that no person shall be immune from prosecution for any offence under this Order by reason only that he is engaged to provide services to the Government.

PART II

INTERPRETATION

Interpretation.

4. (1) In this Order, unless the context otherwise requires —

"air receiver" means —

(a) any vessel (other than a pipe or coil or an accessory, a fitting or part of a compressor) for containing compressed air and connected with an air compressing plant;

(b) any fixed vessel for containing compressed air and used for the purpose of starting an internal combustion engine;

(c) any blast air bottle; or

(d) any vessel in which any substance in the form of solid or liquid is stored and from which it is forced by compressed air;

"approved code of practice" means any code of practice issued or approved under section 39;

"at work" means —

(a) in relation to an employee, all times when the employee is performing work in connection with any trade, business, profession or undertaking carried on by his employer, wherever that work is carried out;

(b) in relation to a self-employed person, all times when that person is performing work as a self-employed person, wherever the work is carried out; and

(c) in any other case, all times when the person is performing work at the direction of the person who engaged him, wherever the work is carried out;

"authorised examiner" means any person approved by the Commissioner under section 33 for the purpose of carrying out any prescribed examination or test of any —

- (a) hoist and lift;
- (b) lifting gear;
- (c) lifting appliance or lifting machine;
- (d) steam boiler;
- (e) steam receiver;
- (f) air receiver;
- (g) refrigerating plant pressure receiver;
- (h) pressure vessel; or
- (i) any other machinery required by this Order to be examined or tested by an authorised examiner;

"authorised officer" means an authorised officer appointed under section 7(3);

"bodily injury" includes injury to health, the contraction of a disease, and the aggravation, acceleration or recurrence of any bodily injury or disease;

"building" includes —

- (a) the whole or any part of any house or any other structure, whether used for the purpose of human habitation or otherwise; and
- (b) any structure, support or foundation connected to the house or structure referred to in paragraph (a);

"building operation" means —

- (a) the construction, structural alteration, repair or maintenance of a building (including the re-wiring of any electrical installation, the replacement of any lift, air-conditioning plant and ancillary ducting of a building, and the re-pointing, redecoration and external cleaning of the structure);

- (b) the demolition of a building; or

(c) the preparation of the site for, and the laying of foundation of, an intended building,

but does not include any operation which is a work of engineering construction;

"class or description", in relation to workplaces, includes a group of workplaces described by reference to locality;

"Commissioner" means the Commissioner of Workplace Safety and Health referred to in section 7(1)(a);

"contract of service" means any agreement, whether oral or in writing, express or implied, whereby any person agrees to employ any other person as an employee and that other person agrees to serve as his employee, and includes a contract of apprenticeship;

"contractor" means a person engaged by a principal;

"dangerous occurrence" means any occurrence specified in the Second Schedule;

"Deputy Commissioner" means a Deputy Commissioner of Workplace Safety and Health referred to in section 7(1)(b);

"electrical installation" means any cable, wire, fitting, accessory, apparatus or other device used for, or for purposes incidental to, the conveyance, control or use of electricity;

"employ" means to engage or use the service of any person, whether under a contract of service or otherwise, with or without remuneration;

"employee" has the meaning ascribed to it by section 6(1);

"employer" has the meaning ascribed to it by section 6(1);

"factory" has the meaning ascribed to it by section 5(2);

"gas" includes any gas in its gaseous or liquid state;

"gas plant" —

(a) means any plant, apparatus or machine for the manufacture or storage of any gas; and

(b) includes pipes and appliances used in carrying any gas to the place where the gas is to be used;

"inspector" means an inspector appointed under section 7(3) and includes the Commissioner and any Deputy Commissioner;

"lift" includes any lifting appliance or lifting machine used for carrying persons, whether together with goods or otherwise;

"lifting appliance" includes a pulley block, gin wheel and chain block or set of chain blocks;

"lifting gear" includes —

(a) any chain, rope, chain sling, webbing sling, rope sling, ring, hook, shackle, swivel or eyebolt; and

(b) any cage or work platform used for carrying persons while it is suspended from the load line of a crane;

"lifting machine" includes —

(a) any crane, crab, winch, teagle, runway, transporter, piling frame or piling machine; and

(b) any work platform or suspended scaffold capable of being raised or lowered by climbers, winches or other powered device;

"machinery" includes —

(a) any oil engine, gas engine, steam engine and any other machine in which mechanical movement, either linear, rotated or both, takes place;

(b) any steam boiler, gas cylinder, air receiver, steam receiver, steam container or refrigerating plant pressure receiver;

(c) any appliance for transmission of power by ropes, belts, chains, driving straps or bands or gearing; and

(d) any electrical generator or electrical motor,

but does not include any machinery used solely for the propulsion of vehicles;

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

"mechanical power" means any energy derived from steam, water, wind, electricity, compressed air or gas, or the combustion of fuel or explosive, which is used to drive or work any machinery;

"Minister" means the Minister of Home Affairs;

"occupational disease" means any disease specified in the Third Schedule;

"occupier", in relation to any premises or part of any premises, means —

(a) in the case of a factory where a certificate of registration or a factory permit has to be obtained in relation to the premises pursuant to any regulations, the person who is, or is required to be, the holder of that certificate or permit; and

(b) in the case of any other premises, the person who has charge, management or control of those premises either on his own account or as agent of another person, whether or not he is also the owner of those premises;

"owner", in relation to any premises, means —

(a) the person receiving the rents or profits for the lease of the premises, whether on his own account or as agent or trustee for any other person; or

(b) the person who would so receive the rents or profits if the premises were leased;

"premises" includes any place whether enclosed or built on or not, whether situated underground or under water and, in particular, includes —

(a) any building, vehicle, vessel or aircraft;

(b) any structure, whether a fixed structure or a movable structure such as a tent; and

(c) a part of any premises, including a part of premises of a kind referred to in paragraphs (a) or (b);

"pressure vessel" —

(a) means any container or vessel used for containing any substance under pressure; and

(b) includes any steam boiler, steam receiver, air receiver, steam container, refrigerating plant pressure receiver and gas cylinder;

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

"principal" means a person who, in connection with any trade, business, profession or undertaking carried on by him, engages any other person otherwise than under a contract of service —

(a) to supply any labour for gain or reward; or

(b) to do any work for gain or reward;

"refrigerating plant pressure receiver" means any vessel which contains refrigerant under pressure;

"registered medical practitioner" means a person registered under the Medical Practitioners and Dentists Act (Chapter 112);

"regulations" means regulations made under this Order;

"self-employed person" means a person who works for gain or reward otherwise than under a contract of service, whether or not employing others;

"ship" includes every description of vessel used in navigation, a floating rig, a barge or any platform used in any form of operations at sea;

"steam boiler" —

(a) means any closed vessel in which, for any purpose, steam is generated under pressure greater than atmospheric pressure; and

(b) includes any economiser used to heat water being fed to any such vessel and any superheater used for heating steam;

"steam container" means any vessel, other than a steam pipe or coil —

(a) constructed with a permanent outlet into the atmosphere or into a space where the pressure does not exceed atmospheric pressure; and

(b) through which steam is passed at atmospheric pressure, or at approximately that pressure, for the purpose of heating, boiling, drying, evaporating or any similar purpose;

"steam receiver" means any vessel or apparatus, other than a steam boiler, steam container, steam pipe or coil or a part of a prime mover, used for containing steam under pressure greater than atmospheric pressure;

"sub-contractor" means a person engaged, otherwise than under a contract of service, by any contractor or sub-contractor —

(a) to supply any labour for gain or reward; or

(b) to do any work for gain or reward,

which the contractor or sub-contractor has been engaged as contractor or sub-contractor, as the case may be, to do;

"training provider" means a training provider authorised by the Commissioner to provide safety and health training courses for the purposes of section 31;

"work of engineering construction" means any work specified in the Fourth Schedule;

"workplace" has the meaning ascribed to it by section 5(1);

"workplace safety and health auditor" means a workplace safety and health auditor appointed under section 30;

"workplace safety and health committee" means a workplace safety and health committee appointed under section 29;

"workplace safety and health co-ordinator" means a workplace safety and health co-ordinator appointed under section 28;

"workplace safety and health officer" means a workplace safety and health officer appointed under section 28.

(2) For the purposes of this Order —

(a) mechanical power shall not be treated as being used in a workplace by reason only that mechanical power is used for the purpose of heating, ventilating, cooling, air-conditioning or lighting the workplace or any part thereof; and

(b) any reference to the health of a person shall, where that person is pregnant, include a reference to the health of any unborn child which that person is carrying.

(3) For the purposes of this Order, a person shall be regarded as being at work in a workplace whether or not he is lawfully at work in that workplace.

Meanings of "workplace" and "factory".

5. (1) In this Order, "workplace" means any premises where a person is at work, is to work or customarily works, and includes a factory.

(2) In this Order but subject to this section, "factory" means any premises within which —

(a) persons are employed in any process for or incidental to any of the following purposes —

- (i) the making of any article or part of any article;
- (ii) the altering, repairing, ornamenting, finishing, cleaning or washing, or the breaking up or demolition of any article; or
- (iii) the adapting for sale of any article; and

(b) any work referred to in paragraph (a) is carried out by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control.

(3) The following premises within which persons are employed are deemed to be factories —

(a) any yard, including any dock, wharf, jetty, quay and the precincts thereof, where the construction, reconstruction, repair, refitting, finishing or breaking up of ships is carried out, including the waters adjacent to any such yard where such construction, reconstruction, repair, refitting, finishing or breaking up is carried out by or on behalf of the occupier of that yard;

(b) any premises where the sorting of articles is carried on as a preliminary to the work carried on in any other factory, or incidentally to the purposes of any other factory, whether that other factory is situated within or outside Brunei Darussalam;

(c) any premises where the washing or filling of bottles or containers or the packing of articles is carried on incidentally to the purposes of any other factory, whether that other factory is situated within or outside Brunei Darussalam;

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

(e) any laundry ancillary to another business or incidental to the purposes of any public institution;

(f) any premises where the construction, reconstruction or repair of locomotives, aircraft, vehicles or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking, not being premises used for the purpose of housing locomotives, aircraft or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out;

(g) any premises where the printing by letter press, offset, lithography, photogravure, rotogravure or other similar process, or the binding of such printed materials, is carried on by way of trade or for purposes of gain or incidentally to another business so carried on;

(h) any premises where the making, adaptation or repair of dresses, scenery or props is carried on incidentally to the production of films, tapes or discs for public broadcast or screening or to the presentation of theatrical performances by way of trade or for purposes of gain, but not a stage or dressing-room of a theatre in which only occasional adaptations or repairs are made;

(i) any premises where the business of making or mending nets is carried on incidentally to the fishing industry;

(j) any premises where mechanical power is used in connection with the making or repair of any article incidentally to any business carried on by way of trade or for purposes of gain;

(k) any premises where the production of cinematograph films is carried on by way of trade or for purposes of gain, but not a stage or a dressing-room of any actor in or connected with the production of any cinematograph film;

(l) any premises where articles are made or prepared incidentally to the carrying on of any building operations or any works of engineering construction, not being premises in which such operations or works are being carried on;

(m) any premises which are used for the storage of gas, including liquefied gas, in a container having a storage capacity of not less than 140 cubic metres;

(n) any premises where work is carried out for or in connection with the generating of electrical energy for supply by way of trade or for purposes of gain;

(o) any premises where mechanical power is used for the purposes of or in connection with a water supply;

(p) any sewage works where mechanical power is used and any pumping station used in connection therewith;

(q) any premises where building operations or any work of engineering construction are carried on;

(r) any premises where mechanical power is used in connection with the sorting, packing, handling or storing of articles carried on by way of trade or for purposes of gain or incidentally to another business so carried on;

(s) any premises which are used for the bulk storage of toxic or flammable liquid (excluding liquefied gas) in a container, not being an underground container, that has a storage capacity of not less than 5,000 cubic metres.

(4) Where any person carries on any work referred to in subsections (2) or (3) in a workplace with the express or implied permission of, or under any agreement with, the occupier of that workplace, then notwithstanding that the person is not an employee of the occupier of the workplace —

(a) the workplace shall be treated as a factory for the purposes of this Order;

(b) the provisions of this Order relating to the duty of an occupier shall apply to the occupier of the workplace as if he were the occupier of a factory.

(5) Notwithstanding subsection (2), where any place situated within a factory is solely used for some purpose other than any of the processes carried on in the factory —

(a) that place shall not be treated as forming part of the factory for the purposes of this Order; but

(b) that place shall, if it would otherwise be a factory, be treated as a separate factory for the purposes of this Order.

(6) A part of a factory may, with the approval in writing of the Commissioner, be treated as a separate factory for the purposes of this Order.

(7) 2 or more factories may, with the approval in writing of the Commissioner, be treated as a single factory for the purposes of this Order.

(8) For the avoidance of doubt, no premises shall be excluded from the definition of a factory by reason only that they are open air premises.

(9) Any premises in which work is carried on by or on behalf of the Government or any statutory body shall not be excluded from the definition of a factory by reason only that the work carried on at the premises is not carried on by way of trade or for purposes of gain.

Meanings of "employee" and "employer".

6. (1) Subject to subsections (2), (3), (4) and (5), in this Order —

"employee" means any person employed by an employer to do any work under a contract of service;

"employer" means a person who, in the course of his trade, business, profession or undertaking, employs any person to do any work under a contract of service.

(2) For the purposes of this Order, any reference to an employee shall include a volunteer who —

(a) does work for another person with the knowledge or consent of that other person; and

(b) does the work on an ongoing and regular basis for that other person,

being work that is in connection with any trade, business, profession or undertaking carried on by that other person, and this Order shall apply —

(i) as if the volunteer were an employee of that other person;

(ii) as if that other person were the volunteer's employer; and

(iii) as if the volunteer were at work when doing work for that other person.

(3) For the purposes of this Order, any reference to an employee shall also include a person who is in a workplace for the purpose of receiving on-the-job training or gaining work experience, including under a rehabilitation scheme (referred to in this subsection as person A), and this Order shall apply —

(a) as if person A were an employee of the person (referred to in this subsection as person B) who agreed to provide on-the-job training or work experience;

(b) as if person B were person A's employer; and

(c) as if person A were at work when in the workplace for the purpose of receiving on-the-job training or gaining work experience.

(4) Where —

(a) an employer places an employee (referred to in this subsection as the loaned employee) at the disposal of another person to do work for that other person; and

(b) there is no contractual relationship between the employer and that other person regarding the work to be performed by the loaned employee,

then, for the purposes of this Order —

(i) the loaned employee shall be regarded as if he were an employee of that other person (instead of his employer) while the loaned employee is at work for that other person;

(ii) that other person shall be regarded as if he were the employer of the loaned employee while the loaned employee is at work for that other person; and

(iii) the loaned employee shall be regarded as if he were at work when doing work for that other person.

(5) Where a person carries on any work in a factory —

(a) the occupier of the factory shall be deemed to be the employer of that person;

(b) the provisions of this Order shall apply as if the occupier of the factory were the employer of that person,

unless the occupier of the factory proves that he is not the employer of that person.

PART III
ADMINISTRATION OF ORDER

Appointment of Commissioner of Workplace Safety and Health and other officers.

7. (1) For the purposes of this Order —

(a) the Commissioner of Labour appointed under section 3(1) of the Employment Order, 2009 shall be the Commissioner of Workplace Safety and Health;

(b) any Deputy Commissioner of Labour appointed under section 3(1) of the Employment Order, 2009 shall be a Deputy Commissioner of Workplace Safety and Health.

(2) The Commissioner shall, subject to any general or special directions of the Minister, be responsible for the administration of this Order and may perform such duties as are imposed and may exercise such powers as are conferred upon him by this Order or any other written law.

(3) The Commissioner may appoint such number of persons as inspectors, and such number of other persons as authorised officers, as may be necessary to assist the Commissioner in the administration of this Order.

(4) The Commissioner may, with the approval of the Minister, delegate the exercise of all or any of the duties imposed and the powers conferred upon him by this Order (except the power of delegation conferred by this subsection) to any Deputy Commissioner, inspector or authorised officer, subject to such conditions as the Commissioner may specify.

(5) Notice of all appointments made under subsection (3) shall be published in the *Gazette*.

Commissioner, Deputy Commissioners, inspectors and authorised officers deemed to be public servants.

8. The Commissioner and every Deputy Commissioner, inspector and authorised officer shall be deemed to be public servants within the meaning of section 21 of the Penal Code (Chapter 22).

Identification of inspectors and authorised officers.

9. Every inspector and authorised officer shall —

(a) be furnished by the Commissioner with a certificate of his appointment as an inspector or authorised officer, as the case may be; and

(b) when exercising any powers under this Order, on demand, produce the certificate of his appointment to the person affected by the exercise of those powers.

PART IV

GENERAL DUTIES OF PERSONS AT WORKPLACES

Duties according to different capacities.

10. For the avoidance of doubt, it is hereby declared that —

(a) a person may at any one time be 2 or more of the following —

- (i) an employer;
- (ii) a contractor;
- (iii) a sub-contractor;
- (iv) a principal;
- (v) a self-employed person;
- (vi) an occupier of a workplace;
- (vii) a designer, manufacturer or supplier of any machinery, equipment or hazardous substance for use at work;
- (viii) an erector, installer or modifier of machinery or equipment for use at work;
- (ix) an owner, a hirer or lessee of machinery moved by mechanical power or a person who maintains such machinery for use at work,

and this Order may impose duties or liabilities on that person accordingly;

(b) this Order may at any one time impose the same duty or liability on 2 or more persons, whether in the same capacity or in different capacities;

(c) a duty or liability imposed by this Order on any person is not diminished or affected by the fact that it is imposed on one or more other persons, whether in the same capacity or in different capacities.

Duty of occupier of workplace.

11. It shall be the duty of every occupier of any workplace to take, so far as is reasonably practicable, such measures to ensure that —

(a) the workplace;

(b) all means of access to or egress from the workplace; and

(c) any machinery, equipment, plant, article or substance kept at the workplace,

are safe and without risks to health to every person within those premises, whether or not that person is at work or is an employee of the occupier.

Duties of employers.

12. (1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.

(2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him at the workplace.

(3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —

(a) providing and maintaining for those persons a work environment that is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;

(b) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;

(c) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —

(i) in their workplace; or

(ii) near their workplace and under the control of the employer;

(d) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work;

(e) ensuring that the person at work has adequate instruction, information, training and supervision as is necessary for him to perform his work.

(4) Every employer shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while they are at his workplace.

Duties of self-employed persons.

13. (1) It shall be the duty of every self-employed person (whether or not he is also a contractor or sub-contractor) to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him at the workplace.

(2) Every self-employed person shall, where required by the regulations, give to persons (not being his employees) the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while they are at his workplace.

Duties of principals.

14. (1) Subject to subsection (2), it shall be the duty of every principal to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of —

(a) any contractor engaged by the principal when at work;

(b) any direct or indirect sub-contractor engaged by such contractor when at work;

(c) any employee employed by such contractor or sub-contractor when at work.

(2) The duty imposed on the principal in subsection (1) shall only apply where the contractor, sub-contractor or employee referred to in that subsection is working under the direction of the principal as to the manner in which the work is carried out.

(3) It shall be the duty of every principal to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (other than a person referred to in subsections (1)/*a*, *b* or *c*) working under the principal's direction who may be affected by any undertaking carried on by him in the workplace.

(4) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —

(a) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;

(b) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;

(c) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —

(i) in their workplace; or

(ii) near their workplace and under the control of the principal;

(d) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work;

(e) ensuring that the persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

(5) Every principal shall, where required by the regulations, give to persons (other than a person referred to in subsections (1)/*a*, *b* or *c*) working under the principal's direction the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their safety or health while they are at his workplace.

Duties of persons at work.

15. (1) It shall be the duty of every person at work —

(a) to use in such manner so as to provide the protection intended, any suitable appliance, protective clothing, convenience, equipment or other means or thing provided (whether for his use alone or for use by him in common with others) for securing his safety, health and welfare while at work;

(b) to co-operate with his employer or principal and any other person to such extent as will enable his employer, principal or the other person, as the case may be, to comply with this Order.

(2) No person at work shall wilfully or recklessly interfere with or misuse any appliance, protective clothing, convenience, equipment or other means or thing provided (whether for his use alone or for use by him in common with others) pursuant to any requirement under this Order for securing the safety, health or welfare of persons (including himself) at work.

(3) Any person at work who, without reasonable cause, wilfully or recklessly does any act which endangers the safety or health of himself or others is guilty of an offence.

(4) Any person who contravenes subsections (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 and, in the case of a second or subsequent conviction, to a fine not exceeding \$2,000.

Duties of manufacturers and suppliers of machinery, equipment or hazardous substances used at work.

16. (1) This section shall apply only to machinery, equipment or hazardous substance specified in the Fifth Schedule.

(2) Subject to this section, it shall be the duty of any person who manufactures or supplies any machinery, equipment or hazardous substance for use at work to ensure, so far as is reasonably practicable —

(a) that the following information about the safe use of the machinery, equipment or hazardous substance is available to any person to whom it is supplied for use at work —

(i) the precautions (if any) to be taken for the proper use and maintenance of the machinery, equipment or hazardous substance;

- (ii) the health hazards (if any) associated with the machinery, equipment or hazardous substance;
 - (iii) the information relating to and the results of any test or examination of the machinery, equipment or hazardous substance under paragraph (c) that are relevant to its safe use;
- (b) that the machinery, equipment or hazardous substance is safe, and without risk to health, when properly used;
- (c) that the machinery, equipment or hazardous substance is tested and examined so as to comply with the obligation imposed by paragraph (b).
- (3) The duties imposed on any person to whom subsection (2) applies shall —
- (a) apply only if the machinery, equipment or hazardous substance is manufactured or supplied in the course of any trade, business, profession or undertaking carried on by that person, whether for profit or not;
 - (b) apply whether or not the machinery, equipment or hazardous substance is exclusively manufactured or supplied for use by persons at work;
 - (c) extend to the supply of the machinery, equipment or hazardous substance by way of sale, transfer, lease or hire and whether as principal or agent, and to the supply of the machinery, equipment or hazardous substance to any person for the purpose of supply to others.
- (4) The duties imposed on any person to whom subsection (2) applies shall not apply to a person by reason only that he supplies the machinery or equipment under a hire-purchase agreement, conditional sale agreement or credit-sale agreement to another person (referred to in this section as the customer) in the course of a business of financing the acquisition of the machinery or equipment by the customer from others.
- (5) Where a person (referred to in this subsection as the ostensible supplier) supplies any machinery or equipment for use at work to a 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 machinery or equipment supplied to the customer as a means of financing its acquisition by the customer from a third person (referred to in this subsection as the effective supplier),

the effective supplier shall be treated for the purposes of this section as supplying the machinery or equipment to the customer instead of to the ostensible supplier, and any duty imposed by subsection (2) on a supplier shall accordingly apply to the effective supplier, and not to the ostensible supplier.

(6) Where a person designs, manufactures or supplies any machinery, equipment or hazardous substance for use at work and does so 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 machinery, equipment or hazardous substance will be safe and without risk to health when properly used, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by subsection (2)(b) to such extent as is reasonable having regard to the terms of the undertaking.

(7) Any person required under subsection (2)(c) to ensure that any machinery, equipment or hazardous substance is tested and examined so as to comply with the obligation imposed by subsection (2)(b) shall be regarded as having complied with subsection (2)(c) to the extent that —

(a) the test and examination has already been carried out otherwise than by, or on behalf of, that person; and

(b) it is reasonable for him to rely on that test and examination.

(8) For the purposes of this section, an absence of safety, or a risk to health, shall be disregarded in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen.

(9) In this section, "supplier", in relation to any machinery, equipment or hazardous substance, does not include a manufacturer of those items when supplying, but includes an importer when supplying, those items.

Duties of persons who erect, install or modify machinery or equipment and persons in control of machinery for use at work.

17. (1) Subsections (2), (3) and (4) shall apply only to machinery or equipment specified in Part I of the Fifth Schedule.

(2) It shall be the duty of any person who erects, installs or modifies any machinery or equipment for use at work to ensure, so far as is reasonably practicable, that the machinery or equipment is erected, installed or modified in such a manner that it is safe, and without risk to health, when properly used.

(3) The duty imposed on a person erecting, installing or modifying any machinery or equipment under subsection (2) shall apply only if the machinery or equipment is erected, installed or modified in the course of that person's trade, business, profession or undertaking.

(4) Any person required under subsection (2) to ensure that any machinery or equipment is erected, installed or modified in such a manner that it is safe, and without risk to health, when properly used shall be regarded as having complied with that subsection to the extent that —

(a) he ensured, so far as is reasonably practicable, that the erection, installation or modification was in accordance with the information supplied by the designer, manufacturer or supplier of the machinery or equipment regarding its erection, installation or modification; and

(b) it is reasonable for him to rely on that information.

(5) Where any machinery moved by mechanical power is used in any workplace, then notwithstanding anything in this Order, it shall be the duty of the owner of the machinery to ensure —

(a) so far as is reasonably practicable, that the machinery is maintained in a safe condition; and

(b) that the precautions (if any) to be taken for the safe use of the machinery and for the health hazards (if any) associated with the machinery are available to any person using the machinery.

(6) Where the owner of any machinery moved by mechanical power has entered into a contract of hire or lease with a hirer or lessee, the duty imposed under subsection (5) shall apply to the hirer or lessee of the machinery instead of the owner.

(7) Where the owner, hirer or lessee of any machinery moved by mechanical power has entered into a contract with another person to maintain the machinery, the duty under subsection (5)(a) shall apply to that other person instead of the owner, hirer or lessee.

Other related duties of occupiers and employers.

18. (1) An employer shall not —

(a) deduct, or allow to be deducted, from the sum contracted to be paid by him to any employee of his; or

(b) receive, or allow any agent of his to receive, any payment from any employee of his,

in respect of anything to be done or provided by him in accordance with this Order in order to ensure the safety, health or welfare of any of his employees at work.

(2) An employer shall not dismiss or threaten to dismiss an employee because the employee —

(a) has assisted (whether by the giving of information or otherwise) an inspector, an authorised person or any public officer in the conduct of any inspection or investigation under this Order for a breach or an alleged breach of this Order, or proposes to do so;

(b) has in good faith sought the assistance of, or made a report to an inspector or authorised person in relation to a safety and health matter, or proposes to do so;

(c) is performing his duties in good faith as a member of a workplace safety and health committee; or

(d) has complied with an order made under section 21 or has otherwise complied with this Order, or proposes to do so.

(3) The occupier of a workplace shall cause to be kept in the workplace —

(a) every document issued in respect of the workplace by the Commissioner under this Order;

(b) a copy of every notice furnished to the Commissioner as required under this Order;

(c) all reports and particulars prepared in respect of the workplace under this Order.

(4) Any occupier of a workplace shall ensure that the documents referred to in subsection (3) shall —

(a) be kept for not less than 5 years from the date they were made or for such other period as may be prescribed; and

(b) whenever he is required to do so within that period, be produced and made available to an inspector for inspection.

(5) Any person who contravenes subsections (1) or (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

(6) Any person who contravenes subsections (3) or (4) is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Duties of occupier of common areas.

19. (1) For the purposes of subsection (2), where a building comprises one or more workplaces, any common property or limited common property of that building (referred to in this section as the common area) which is used by persons at work in any such workplace or is used by such persons to move through shall be treated as part of their workplace.

(2) It shall be the duty of the occupier of the common area to comply with any provision of this Order with respect to —

(a) electric generators and motors located in the common area;

(b) hoists and lifts, lifting gear, lifting appliances and lifting machines located in the common area;

(c) means of access into or egress from the common area;

(d) any machinery or plant located in the common area which belongs to or is supplied by the owner or occupier of the common area;

(e) signage and evacuation plans in the common area in cases of emergency; and

(f) safety and environmental conditions in the common area.

(3) In this section —

"common property" means —

(a) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —

(i) not comprised in any lot or proposed lot in that strata title plan; and

(ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots; or

(b) in relation to any other land and building, such part of the land and building —

(i) not comprised in any non-strata lot; and

(ii) used or capable of being used or enjoyed by occupiers of 2 or more non-strata lots within that land or building;

"limited common property" means such part of the common property in a parcel that is —

(a) in the case of common property to be comprised in a strata title plan, designated in the sale and purchase agreement of any proposed lot in the parcel for the exclusive benefit of the purchasers of any 2 or more (but not all) of those proposed lots in the parcel; or

(b) in the case of common property comprised in a strata title plan, designated in the strata title plan or a comprehensive resolution passed by the management corporation constituted in respect of that strata title plan for the exclusive benefit of the subsidiary proprietors of 2 or more (but not all) lots in that strata title plan,

but does not include —

(i) the foundations, columns, beams, supports, walls, roofs of, and any window installed in any external wall of, any building within that parcel; and

(ii) any chute, pipe, wire, cable, duct and other facility for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, not comprised in any lot or proposed lot and necessary for the common use of the occupiers of all lots or proposed lots in that parcel;

"occupier", in relation to a common area, includes the strata or management corporation having control of that common area;

"parcel" means the whole of any land, building and common property comprised or to be comprised in a strata title plan.

Offence of breach of duty under this Part.

20. In the event of any contravention by any person of any provision in this Part which imposes a duty on a person, that person is guilty of an offence.

PART V

POWERS OF COMMISSIONER

Power to issue remedial order or stop-work order.

21. (1) This section shall apply if the Commissioner is satisfied that —

(a) any workplace is in such condition, or is so located, or any part of the machinery, equipment, plant or article in the workplace is so used, that any process or work carried on in the workplace cannot be carried on with due regard to the safety, health and welfare of persons at work;

(b) any person has contravened any duty imposed by this Order; or

(c) any person has done any act, or has refrained from doing any act which, in the opinion of the Commissioner, poses or is likely to pose a risk to the safety, health and welfare of persons at work.

(2) Where this section applies, the Commissioner may serve a remedial order or a stop-work order in respect of a workplace on —

(a) any person who is in control of the workplace, or the process or work carried out in the workplace;

(b) any person whose duty under this Order is to ensure the safety, health and welfare of any person at work in the workplace; or

(c) any person who poses or is likely to pose a risk to the safety, health and welfare of any person at work in the workplace.

(3) A remedial order under this section shall —

(a) direct the person served with the order to take such measures, to the satisfaction of the Commissioner —

(i) to remedy any danger so as to enable the work or process in the workplace to be carried on with due regard to the safety, health and welfare of the persons at work;

(ii) to comply with any duty imposed by this Order; or

(iii) to do or refrain from doing any act referred to in subsection (1)(c); and

(b) specify the date on which it is to take effect and the period (which shall run from the date the remedial order takes effect) within which any step required by the order shall be taken.

(4) A stop-work order shall —

(a) direct the person served with the order to immediately cease to carry on any work or process —

(i) indefinitely; or

(ii) until such measures as are required by the Commissioner have been taken, to the satisfaction of the Commissioner, to remedy any danger so as to enable the work or process in the workplace to be carried on with due regard to the safety, health and welfare of the persons at work; and

(b) specify the date on which it is to take effect.

(5) Notwithstanding section 7(4), the Commissioner may delegate the power to issue a remedial order or stop-work order to any Deputy Commissioner.

(6) Any person who fails to comply with a remedial order is guilty of an offence and liable on conviction to a fine not exceeding \$50,000, imprisonment for a term not exceeding one year or both and, in the case of a continuing offence, to a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

(7) Any person who fails to comply with a stop-work order is guilty of an offence and liable on conviction to a fine not exceeding \$500,000, imprisonment for a term not exceeding one year or both and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part thereof during which the offence continues after conviction.

(8) Where any person fails to comply with a remedial order or stop-work order, the Commissioner may —

(a) at all reasonable times enter upon the workplace and take such measures and do such work as may be necessary to give effect to the order; and

(b) take appropriate measures to prevent —

(i) unauthorised entry to any area; or

(ii) unauthorised access to any machinery, equipment, plant or article affected by the order.

(9) Any costs and expenses incurred by the Commissioner under subsection (8) may be recovered as a debt due to the Government from the person served with the remedial order or stop-work order.

(10) Where the Commissioner has taken measures under subsection (8)(b) in respect of any area or machinery, equipment, plant or article, any person who, knowing that such measures have been taken, enters that area or gains access to that machinery, equipment, plant or article without the authorisation of the Commissioner is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Appeal from order made by Commissioner.

22. (1) Any person who is affected by any order made by the Commissioner under section 21 may, within 14 days of the date of service of the order, appeal to the Minister who may rescind or vary the order and whose decision shall be final.

(2) Where an appeal is made to the Minister against any remedial order, that order shall not have effect pending the outcome of the appeal.

(3) Where an appeal is made to the Minister against any stop-work order, the affected person shall comply with the order pending the outcome of the appeal, and the stop-work order shall have effect until it is otherwise rescinded or varied.

Power to suspend certificate.

23. (1) The Commissioner may, if he thinks fit, suspend any certificate issued by him under this Order in respect of any work or workplace, and shall inform the person named in the certificate in writing of the suspension and of the reason for the suspension.

(2) Where any certificate is suspended under subsection (1), the person affected shall immediately cease to do any work at any workplace for which the certificate was required.

(3) Any person who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

PART VI

**INVESTIGATIONS, INQUIRIES AND REPORTING OF ACCIDENTS,
DANGEROUS OCCURRENCES AND OCCUPATIONAL DISEASES**

Investigation into accidents, dangerous occurrences etc.

24. Where the Commissioner becomes aware of any accident, dangerous occurrence or occupational disease in a workplace, he may direct an inspector to investigate the circumstances of that accident, dangerous occurrence or occupational disease.

Alteration or addition to machinery, equipment etc.

25. (1) No person shall, without the consent of the Commissioner —

(a) alter, replace, remove or add to any machinery, equipment, plant or article which may have contributed to the cause of any accident resulting in the death of any person or any dangerous occurrence or occupational disease; or

(b) modify the scene of the fatal accident or dangerous occurrence or the scene where the occupational disease occurred.

(2) The occupier of a workplace in which an accident, a dangerous occurrence or an occupational disease occurs shall take all reasonable measures to prevent any person from —

(a) altering, replacing, removing or adding to any machinery, equipment, plant or article which may have contributed to the cause of the accident resulting in the death of any person or the dangerous occurrence or occupational disease; or

(b) modifying the scene of the fatal accident or dangerous occurrence or the scene where the occupational disease occurred.

(3) It shall be presumed, unless it is proved to the contrary, that any alteration, replacement, removal or addition referred to in subsection (1) was made by the occupier of a workplace.

(4) Nothing in subsections (1) or (2) shall operate to interfere with rescue work or work necessary for the general safety of life and property.

(5) Any person who contravenes subsection (1) and any occupier of the workplace who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

Minister may direct inquiry to be held.

26. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, appoint an Inquiry Committee to hold an inquiry into any accident, dangerous occurrence or occupational disease that has occurred in a workplace and into its causes and circumstances, and direct that the Committee reports its findings to the Minister.

(2) The Inquiry Committee shall hold the inquiry in a place to which the public generally may have access in such manner and under such conditions as it thinks most effectual for —

(a) ascertaining the causes and circumstances of the accident, dangerous occurrence or occupational disease; and

(b) enabling it to make the report to the Minister.

(3) The Inquiry Committee shall have, for the purposes of the inquiry —

(a) all the powers of a Court of a Magistrate;

(b) all the powers of an inspector under this Order; and

(c) all of the following powers —

(i) to enter and inspect any premises, the entry or inspection of which appears to the Inquiry Committee necessary for the purposes of the inquiry;

(ii) by summons to require attendance of all such persons as the Inquiry Committee thinks fit to call before it and examine and to require answers or returns to such inquiries as it thinks fit;

(iii) to require the production of all books, papers and documents which the Inquiry Committee considers important for the purposes of the inquiry; and

(iv) to administer oaths and to require any person examined to make and sign a declaration of the truth of the statements made by him in his examination.

(4) Upon conclusion of its inquiry, the Inquiry Committee shall make a report to the Minister —

(a) stating the causes of the accident, dangerous occurrence or occupational disease and their circumstances; and

(b) adding any observations or recommendations which it thinks appropriate to make.

(5) If the Inquiry Committee is of the opinion that criminal proceedings ought to be instituted against any person in connection with the accident, dangerous occurrence or occupational disease, he shall forward a copy of the report to the Public Prosecutor.

(6) Any person who —

(a) fails to comply with any summons, order or requisition of the Inquiry Committee; or

(b) prevents or impedes the Inquiry Committee in the execution of its duties,

is guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

(7) It shall be a defence for a person charged with an offence under subsection (6)/*a*/ to prove that he had a reasonable excuse for failing to comply with the summons, order or requisition of the Inquiry Committee.

(8) The Minister may cause the report of the Inquiry Committee to be made public at such time and in such manner as he thinks fit.

Notification and reporting of accidents, dangerous occurrences etc.

27. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by regulations require an employer, an occupier, a registered medical practitioner or any other person to notify or to submit a report to the Commissioner, in the event of an accident, a dangerous occurrence or an occupational disease in a prescribed workplace.

(2) Regulations made under subsection (1) may apply to —

(a) a workplace which is not specified in the First Schedule; and

(b) a person who is an exempt person at work specified in the Sixth Schedule.

PART VII

SAFETY AND HEALTH MANAGEMENT ARRANGEMENTS

Workplace safety and health officers and co-ordinators.

28. (1) Every workplace within the prescribed class or description of workplaces shall have a workplace safety and health officer or a workplace safety and health co-ordinator appointed in respect thereof.

(2) For the purposes of this section, the Minister may prescribe —

(a) the manner of appointment of a workplace safety and health officer and a workplace safety and health co-ordinator;

(b) the functions and duties of a workplace safety and health officer and a workplace safety and health co-ordinator;

(c) the powers of a workplace safety and health officer and a workplace safety and health co-ordinator, being necessary powers for the officer or co-ordinator, as the case may be, to discharge his functions and duties under this Order.

Workplace safety and health committees.

29. (1) Every workplace within the prescribed class or description of workplaces shall have a workplace safety and health committee appointed in respect thereof.

(2) Every workplace safety and health committee of a workplace shall comprise representatives of employees of the workplace as well as of the employer.

(3) The functions of a workplace safety and health committee appointed in respect of a workplace shall be —

(a) to keep under review circumstances in the workplace which affect or may affect the safety or health of persons in the workplace;

(b) to promote co-operation between the employer and the employees in achieving and maintaining safe and healthy working conditions;

(c) to carry out inspections of the scene of any accident or dangerous occurrence in the interests of the safety and health of the employees;

(d) to exercise such other functions and duties as may be prescribed or conferred on the committee under this Order;

(e) such other functions as may be prescribed.

(4) The employer shall provide such facilities and assistance to the workplace safety and health committee of a workplace as the committee may reasonably require for the purpose of discharging its functions and duties under this section.

(5) A workplace safety and health committee shall have such powers as may be prescribed, being necessary powers for it to discharge its functions and duties under this Order.

Workplace safety and health auditors.

30. (1) Every workplace within the prescribed class or description of workplaces shall have a workplace safety and health auditor appointed in respect thereof.

(2) The functions of a workplace safety and health auditor appointed in respect of a workplace shall be to audit, in such manner as the Commissioner may determine, with a view to ensuring the safety, health and welfare of persons at work in the workplace —

(a) the safety and health management system of the workplace;

(b) any risk assessment relating to the workplace or the work carried out in that workplace;

(c) any work process at the workplace; and

(d) the workplace.

(3) A workplace safety and health auditor shall have such powers as may be prescribed, being necessary powers for him to discharge his functions and duties under this Order.

(4) In this section, "risk assessment" means the process of evaluating the probability and consequences of injury or illness arising from exposure to an identified hazard, and determining the appropriate measures for risk control.

Safety and health training courses.

31. (1) The Minister may, by order published in the *Gazette*, require such prescribed class or description of persons to attend such training courses as are specified in the order.

(2) The employer of any person required to attend any training course under subsection (1) shall ensure that he completes such safety and health training course before allowing him to perform any work for which the training is required.

(3) Any safety and health training course referred to in subsection (1) shall be conducted by a training provider authorised by the Commissioner.

(4) Notwithstanding that a person has completed such safety and health training course as is required under this section, the Commissioner may, if he thinks that a refresher course is necessary, issue a written direction requiring that person to attend another such training course.

(5) An employer who contravenes subsection (2) is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Requirement for approval of Commissioner to act.

32. No person shall act as —

(a) an authorised examiner for the purpose of carrying out any prescribed examination or test of any —

- (i) hoist or lift;
- (ii) lifting gear;
- (iii) lifting appliance or lifting machine;
- (iv) steam boiler;
- (v) steam receiver;
- (vi) air receiver;
- (vii) refrigerating plant pressure receiver;
- (viii) pressure vessel; or

- (ix) any other machinery required by this Order to be examined or tested by an authorised examiner;
- (b) workplace safety and health officer;
- (c) a workplace safety and health co-ordinator;
- (d) a workplace safety and health auditor; or
- (e) a training provider,

(referred to in this Part as an authorised person) except with the approval of the Commissioner.

Application for and grant of approval.

33. (1) An application for approval to act as an authorised person shall be —
- (a) in such form as the Commissioner may determine;
 - (b) accompanied by such information, statements and documents as the Commissioner may require; and
 - (c) accompanied by the prescribed fee.
- (2) The Commissioner shall not approve any person as an authorised person unless he is satisfied that the applicant —
- (a) possesses the prescribed qualifications and prescribed practical experience; and
 - (b) is sufficiently competent and is, in all other respects, a fit and proper person, to be entrusted to carry out the work of the relevant authorised person.
- (3) Upon the approval of a person as an authorised person, the Commissioner shall issue him with a certificate of approval to act as a relevant authorised person for such period as the Commissioner may specify therein.

Duration of approval.

34. Subject to section 35, any approval of a person as an authorised person shall each be valid for such period as the Commissioner may determine.

Cancellation of approval.

35. (1) The Commissioner may suspend or cancel the approval of any person as an authorised person if —

(a) he is satisfied that such person —

- (i) had obtained or procured his approval by fraud or misrepresentation;
- (ii) is in breach of any condition subject to which the approval was granted; or
- (iii) is no longer a fit and proper person to act as a relevant authorised person; or

(b) he considers that it is in the public interest to do so.

(2) The Commissioner shall, before suspending or cancelling the approval of any person as an authorised person under subsection (1) —

(a) give the affected person notice in writing of his intention to do so;

(b) specify a date, not less than 21 days after the date of the notice, upon which the suspension or cancellation shall take effect; and

(c) call upon the affected person to show cause to the Commissioner why his approval as an authorised person should not be suspended or cancelled.

(3) If the person to whom a notice has been given under subsection (2) —

(a) fails to show cause within the period of time given to him to do so or such extended period of time as the Commissioner may allow; or

(b) fails to show sufficient cause,

the Commissioner shall give notice in writing to that person of the date from which the suspension or cancellation of the approval shall take effect.

(4) A person whose approval as an authorised person has been suspended or cancelled may, within 14 days after the receipt of the notice referred to in subsection (3), appeal in writing against the suspension or cancellation to the Minister, whose decision shall be final.

Surrender of certificate.

36. A person whose approval as an authorised person has been suspended or cancelled by the Commissioner under section 35 shall, within 7 days of the date of the cancellation, surrender his certificate of approval issued under section 33(3).

False assumption of title.

37. No person shall claim or imply that he has been approved by the Commissioner as a relevant authorised person unless he has been approved as such under section 33.

Offences under this Part.

38. Any person who contravenes sections 32, 36 or 37 is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

PART VIII

CODES OF PRACTICE

Codes of practice.

39. (1) For the purpose of providing practical guidance with respect to the requirements of this Order relating to safety, health and welfare at work, the Commissioner may —

(a) issue one or more codes of practice, which may include any code of practice issued or approved under any other written law if he considers that code of practice suitable for this purpose;

(b) approve as a code of practice any document prepared by any person other than the Commissioner if the Commissioner considers the document as a suitable document for this purpose; and

(c) amend or revoke any code of practice issued or approved under this section.

(2) The power of the Commissioner under subsections (1)(a) or (b) to issue or approve a code of practice that is either a code of practice issued or approved under any other written law or a document prepared by a person other than the Commissioner shall include the power to issue or approve a part of such a code of practice or document.

(3) Where a code of practice is issued, approved, amended or revoked by the Commissioner under subsection (1), the Commissioner shall —

(a) publish a notice of such issue, approval, amendment or revocation, as the case may be, in such manner as will secure adequate publicity for such issue, approval, amendment or revocation;

(b) specify in the notice referred to in paragraph (a) —

(i) the date of issue, approval, amendment or revocation, as the case may be;

(ii) the class of hazards, activities or articles in respect of which the code of practice is issued, approved, amended or revoked; and

(iii) the place at and the time during which the code of practice which is the subject of the notice may be inspected; and

(c) ensure that, so long as the code of practice remains in force, copies of that code, and of all amendments to that code, are available —

(i) for inspection by members of the public free of charge; and

(ii) for purchase by members of the public at a reasonable price.

(4) No code of practice, no amendment to an approved code of practice, and no revocation of any approved code of practice, shall have any force or effect as an approved code of practice until the notice relating thereto is published in accordance with subsection (3).

(5) An approved code of practice that is also either a code of practice issued or approved under any other written law or a document prepared by a person other than the Commissioner shall consist of the contents of that code or document as that code or document existed on the date it was issued or approved as an approved code of practice under this section.

(6) If any provision of any approved code of practice is inconsistent with any provision of this Order, such provision, to the extent of the inconsistency —

(a) shall have effect subject to the provisions of this Order; or

(b) having regard to the provisions of this Order, shall not have effect.

(7) Any approved code of practice shall be deemed not to be subsidiary legislation.

Use of approved codes of practice in criminal proceedings.

40. (1) A person shall not be liable to any criminal proceedings by reason only that he has failed to observe any approved code of practice.

(2) In any proceedings for any offence under this Order, an approved code of practice that is relevant to any matter which it is necessary for the prosecution to prove in order to establish the commission of the offence shall be admissible in evidence in the proceedings.

(3) Without affecting any other method of proof, in any proceedings for an offence under this Order —

(a) the production of a document purporting to be a copy of a notice published by the Commissioner under section 39(3)(a) shall be taken to be such a notice until the contrary is proved; and

(b) the production of a code of practice, or an amendment or a revocation of a code of practice, purporting to be the subject of a notice under section 39(3)(a) shall be taken to be the subject of that notice until the contrary is proved.

(4) In determining for the purpose of any provision of this Order as to whether any machinery, equipment, plant, installation or article is of good construction, sound material, adequate strength or in accordance with the generally accepted principles of safe and sound practice, regard shall be had to any relevant standards, codes of practice or guidance acceptable to the Commissioner.

PART IX

INSPECTIONS AND OTHER POWERS OF ENFORCEMENT

Powers of inspectors.

41. (1) An inspector shall, for the purposes of the execution of this Order, have power —

(a) to enter, inspect and examine any workplace at any time;

(b) at all reasonable times, to enter, inspect and examine any place which he has reasonable cause to believe to be —

(i) a workplace; or

(ii) a place of which a workplace forms a part;

(c) to inspect and examine any machinery, equipment, plant, installation or article in any place referred to in paragraphs (a) or (b);

(d) to require the production of workplace records, certificates, notices and documents kept or required to be kept under this Order, and to inspect, examine and make copies of any of them;

(e) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Order are complied with, so far as regards any workplace and any person at work;

(f) to require any person whom he finds in a workplace to give such particulars of the employer and the occupier of the workplace as are within his knowledge;

(g) in the case of an inspector who is a registered medical practitioner, to carry out on any person who is or had been working in a workplace such medical examination as may be necessary for the purposes of his duties under this Order;

(h) to take samples of any material or substance found in a workplace or being discharged from any workplace for the purpose of analysis or test;

(i) to assess the levels of noise, illumination, heat or harmful or hazardous substances in any workplace and the exposure levels of persons at work therein;

(j) to require any hospital, medical clinic or mortuary to provide any information (including the medical records) of any person who is or had been working in a workplace who is injured in an accident in a workplace or who is suspected of suffering from an occupational disease contracted from a workplace and is receiving treatment at the hospital or medical clinic;

(k) to take such photographs or video-recordings as he thinks necessary to record the conditions in a workplace and the processes carried on therein which may be dangerous to the safety or health of the persons at work therein;

(l) to require any person to produce any article which is relevant to any investigation or inquiry under this Order and, if necessary, to take into custody any such article; and

(m) to require any person whom he finds in the workplace to produce evidence of his identity.

(2) Any person who is found in a workplace shall render all necessary assistance and co-operation to the inspector as is necessary for an entry, inspection, examination, inquiry, the taking of samples or otherwise for the exercise of his powers under this Order in relation to that workplace.

(3) If entry to a workplace cannot be obtained, an inspector may —

(a) break open any outer or inner door or window leading to the workplace;

(b) forcibly enter such workplace and every part thereof; or

(c) remove by force any obstruction to his entry, inspection, examination or inquiry.

(4) Any person who —

(a) obstructs or delays an inspector in the exercise of any of his powers under this section;

(b) fails to comply with any order of an inspector under this section, or fails to produce any record, certificate, notice or document which he is required by or under this Order to produce;

(c) withholds any information as to who the employer or occupier of the workplace is; or

(d) conceals or prevents, or attempts to conceal or prevent, a person from appearing before or being examined by an inspector,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Power to take samples.

42. (1) An inspector may, at any time after informing the occupier of a workplace or any person apparently in charge of the workplace, take for analysis sufficient samples of —

(a) any substance used or intended to be used in the workplace;

(b) any substance found in the workplace that is required for the purposes of an investigation or inquiry under this Order;

(c) any substance the use or presence of which in the workplace is suspected to be prohibited under this Order; or

(d) any substance found in the workplace which, in his opinion, is likely or may prove on analysis to be likely to cause bodily injury to the persons at work in the workplace.

(2) The occupier of a workplace or any person apparently in charge of the workplace may, at the time when a sample is taken under this section, and on providing the necessary appliances, require the inspector to divide the sample into 3 parts, to mark and seal or fasten up each part in such manner as its nature permits, and —

(a) to deliver one part to the occupier of the workplace or the person apparently in charge of the workplace;

(b) to retain one part for future comparison; and

(c) to submit one part to any testing laboratory as the Commissioner may appoint, for analysis.

(3) A certificate purporting to be a certificate by an analyst employed by the testing laboratory appointed by the Commissioner under subsection 2(c) as to the result of an analysis of a sample under this section shall be admissible in any proceedings under this Order as evidence of the matters stated therein, but either party may require the person by whom the analysis was made to be called as a witness.

(4) No person shall interfere with any equipment, instrument or device used for monitoring the workplace or taking samples for analysis.

(5) Any person who —

(a) contravenes subsection (4); or

(b) without the written permission of the Commissioner, publishes or discloses to any person the results of any analysis made under this section,

is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

Power to examine and secure attendance.

43. (1) An inspector may —

(a) examine orally any person supposed to be acquainted with the circumstances of any accident or dangerous occurrence or occupational disease occurring in the workplace, or with respect to any matter under this

Order, and to reduce to writing any statement made by the person so examined; and

(b) require by order in writing the attendance before himself of any person, being in Brunei Darussalam, who, from information given or otherwise, appears to be acquainted with the facts or circumstances of matters under this Order and that person shall attend as so required.

(2) The person referred to in subsection (1)(a) shall be bound to state truly the facts and circumstances with which he is acquainted concerning matters under this Order, except only that he may decline to make, with regard to any fact or circumstance, a statement upon the ground that it will criminate, or may tend directly or indirectly to criminate, him or expose him to any penalty or forfeiture.

(3) A statement made under this section by any person shall be read over to him and shall, after correction, if necessary, be signed by him.

(4) If any person fails to attend as required by an order under subsection (1)(b), the inspector may report such failure to a magistrate who may thereupon issue a warrant to secure the attendance of that person as required by the order.

Persons not to reveal protected information.

44. (1) If a person exercising any function under this Order as an inspector obtains protected information about the affairs of another person, he shall not disclose that protected information to any other person unless the disclosure —

(a) is made with the written consent of the person to whom the information relates;

(b) is for the purpose of the administration or enforcement of this Order; or

(c) is in compliance with the requirement of any court, tribunal, authority or person having lawful authority to require the production of documents or the answering of questions.

(2) If any person acts in contravention of subsection (1), he is guilty of an offence and liable on conviction to a fine not exceeding \$10,000, imprisonment for a term not exceeding 2 years or both.

(3) For the purpose of this section, the reference to a person disclosing any protected information includes his permitting any other person to have any access to any record, document or other thing containing that information which is in his possession or under his control by virtue of his being or having been an inspector.

(4) In this section, "protected information" means information the disclosure of which would, or could reasonably be expected to disclose a trade secret or to adversely affect a person in relation to his lawful business affairs.

PART X

OFFENCES, PENALTIES AND PROCEEDINGS

Unregistered factories.

45. (1) No person shall occupy or use any premises as a factory if —

(a) the regulations require him to hold a certificate of registration of a factory or a factory permit issued under the regulations; and

(b) he does not hold such a certificate of registration of a factory or a factory permit.

(2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction —

(a) to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both; and

(b) in the case of a continuing offence, to a further fine not exceeding \$500, further imprisonment for a term not exceeding 7 days or both for every day or part thereof during which the offence continues after conviction.

Onus of proving what is reasonably practicable.

46. Where in any proceedings for an offence under any provision of this Order, it is alleged that any person failed to comply with a duty to do something so far as is reasonably practicable, it shall be for the accused to prove that —

(a) it was not reasonably practicable to do more than what was in fact done to satisfy that duty; or

(b) there was no better practicable means than was in fact used to satisfy that duty.

Offences by bodies corporate etc.

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

(2) In relation to a body corporate whose affairs are managed by its members, "director", in subsection (1), means any member of that body corporate.

(3) Where an offence under this Order is committed by a partnership, every partner of the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly unless he proves that —

(a) the offence was committed without his consent or connivance; and

(b) he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(4) Where an offence under this Order is committed by an unincorporated association (other than a partnership), any officer of the unincorporated association or member of its governing body shall be guilty of the offence and liable to be proceeded against and punished accordingly unless he proves that —

(a) the offence was committed without his consent or connivance; and

(b) he had exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.

(5) The regulations may provide for the application of any provision of this section, with such modifications as the Minister considers appropriate, to any body corporate or unincorporated association formed or recognised under the law of a country or territory outside Brunei Darussalam.

Arrest of persons accused of offence under sections 15(3) or 21(7).

48. (1) Any person reasonably suspected of having committed an offence under sections 15(3) or 21(7) may be arrested without warrant by any police officer or by any inspector authorised by the Commissioner in that behalf and produced before a court.

(2) Notwithstanding any other written law, any police officer or inspector who, having effected an arrest in accordance with subsection (1), is satisfied as to the identity, name and residence of the person arrested may, instead of producing him before a court or to a police station, serve upon him a notice requiring him to attend at such court, at such time and on such date as may be specified in the notice.

(3) For the purpose of satisfying himself as to the identity of the person arrested, the police officer or inspector may require such evidence of identity as he may consider necessary to be furnished by that person.

(4) A duplicate of the notice served under subsection (2) shall be prepared by the police officer or inspector, as the case may be, and produced by him to the court if so required by the court.

(5) Where an accused person appears before a court in accordance with a notice served under subsection (2), the court shall take cognisance of the offence alleged and shall proceed as though he were produced before it under subsection (1).

(6) If a person upon whom a notice has been served under subsection (2) fails to appear before a court in accordance with the notice, the court may issue a warrant for his arrest.

(7) Where a person arrested pursuant to a warrant issued under subsection (6) is produced before a court, the court shall proceed as though he were produced before it under subsection (1) and shall, at the conclusion of such proceedings, call upon him to show cause why he should not be punished for failing to attend in compliance with the notice served under subsection (2).

(8) If due cause is not shown under subsection (7), the court may order him to pay a fine not exceeding \$2,000 or may commit him to prison for a term not exceeding 2 months.

General penalty.

49. Any person guilty of an offence under this Order (but not including the regulations) for which no penalty is expressly provided is liable on conviction —

(a) in the case of an individual, to a fine not exceeding \$200,000, imprisonment for a term not exceeding 2 years or both; and

(b) in the case of a body corporate, to a fine not exceeding \$500,000,

and, if the contravention in respect of which he was so convicted continues after the conviction, he is (subject to section 51) guilty of a further offence and liable to a fine —

- (i) in the case of an individual, not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction; or
- (ii) in the case of a body corporate, not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Penalty for repeat offenders.

50. Where a person —

(a) has on at least one previous occasion been convicted of an offence under this Order (but not including the regulations) that causes the death of any person; and

(b) is subsequently convicted of the same offence that causes the death of another person,

the court may, in addition to any other imprisonment it imposes, punish him with —

- (i) in the case of an individual, a fine not exceeding \$400,000 and, in the case of a continuing offence, with a further fine not exceeding \$2,000 for every day or part thereof during which the offence continues after conviction; and
- (ii) in the case of a body corporate, a fine not exceeding \$1,000,000 and, in the case of a continuing offence, with a further fine not exceeding \$5,000 for every day or part thereof during which the offence continues after conviction.

Power of court to order cause of contravention to be remedied.

51. (1) Where any person is convicted of an offence under this Order, the court may, in addition to or instead of imposing any penalty, order him to take, within the time specified in the order (or within such further time as the court may allow), such steps as may be so specified for remedying the matters in respect of which the contravention occurred.

(2) Subject to subsection (3), where an order is made under subsection (1), the convicted person shall not be liable under this Order in respect of the

continuation of the contravention during the time specified in the order or allowed by the court to remedy the matters in respect of which the contravention occurred.

(3) If, after the expiration of the time specified in the order or allowed by the court under subsection (1) following a conviction for an offence, the order is not complied with, the person referred to in that subsection is guilty of an offence and liable on conviction to a fine not exceeding \$1,000 for every day during which the non-compliance continues after the date of conviction for that first-mentioned offence.

Forgery of certificates, false entries and false declarations.

52. If any person —

- (a) forges or counterfeits any certificate required by, under, or for the purposes of, this Order;
- (b) gives or signs any certificate required by, under, or for the purposes of, this Order, knowing it to be false in any material particular;
- (c) knowingly utters or makes use of any certificate required by, under, or for the purposes of, this Order that is forged, counterfeited or false;
- (d) knowingly utters or makes use of, as applying to any person, any certificate required by, under, or for the purposes of, this Order which does not so apply;
- (e) personates any person named in any certificate required by, under, or for the purposes of, this Order;
- (f) falsely pretends to be an inspector;
- (g) wilfully connives at any such forging, counterfeiting, giving, signing, uttering, making use of, personating or pretending referred to in paragraphs (a) to (f);
- (h) wilfully makes a false entry in any record, notice, certificate or document required by, under, or for the purposes of, this Order to be kept, served or sent;
- (i) wilfully makes or signs a declaration required by, under, or for the purposes of, this Order which is false; or

(j) knowingly makes use of any false entry or declaration referred to in paragraphs (h) or (i),

he is guilty of an offence and liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding 6 months or both.

When magistrate may take cognisance of offence.

53. For the purpose of section 133 of the Criminal Procedure Code (Chapter 7) and notwithstanding subsection (1) thereof, a magistrate may take cognisance of any offence under this Order upon receiving a complaint in writing signed by an inspector.

Jurisdiction of court.

54. Notwithstanding the provisions of any written law to the contrary, a Court of a Magistrate shall have jurisdiction to try any offence under this Order and shall have the power to impose the full penalty or punishment in respect of the offence.

Compounding of offences.

55. (1) The Commissioner or any person authorised in writing by him in that behalf may compound any offence under this Order which is prescribed as a compoundable offence by collecting from the person reasonably suspected of having committed such offence a sum not exceeding one-half of the amount of the maximum fine that is prescribed for the offence or a sum of \$5,000, whichever is the lower.

(2) On payment of such sum, no further proceedings shall be taken against that person in respect of that offence.

Power to modify agreements.

56. (1) If, by reason of an agreement between the owner and the occupier of the workplace, the whole or any part of which has been let as a workplace, the owner or the occupier is prevented from carrying out any structural or other alterations in the premises which are necessary to enable him to comply with this Order or in order to conform to any standard or requirement imposed by or under this Order, the owner or the occupier may apply to the High Court for the terms of agreement to be set aside or modified.

(2) The High Court may, after hearing the parties and any witness whom they may wish to call, make such an order setting aside or modifying the terms of the agreement as it considers just and equitable in the circumstances of the case.

Power to apportion cost of alterations.

57. (1) Where in any premises, the whole or any part of which has been let as a workplace, any structural or other alterations are required in order to comply with this Order or to conform to any standard or requirement imposed by or under this Order, and the owner or occupier of the workplace, as the case may be, alleges that the whole or part of the cost of the alterations ought to be borne by the other party, the owner or occupier, as the case may be, may apply to the High Court for the cost of the alterations to be apportioned between them.

(2) The High Court may, after hearing the parties and any witness whom they may wish to call, make such an order concerning the apportionment of the cost as it considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative, the Court may, at the request of the owner or occupier of the workplace, determine the lease.

PART XI

GENERAL

Relation to other laws.

58. Nothing in this Order or in any approved code of practice shall derogate from the effect of any other written law.

Civil liability.

59. (1) Nothing in this Order shall be construed —

(a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Order; or

(b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.

(2) Subsection (1) shall not affect the extent (if any) to which a breach of duty imposed under any written law is actionable.

Limitation of liability.

60. (1) No action, suit or other legal proceeding shall be brought against —

(a) the Commissioner;

(b) a Deputy Commissioner;

(c) an inspector;

(d) an authorised officer; or

(e) an authorised examiner,

for any damage done to any item specified in subsection (2) in the course of carrying out in good faith any prescribed examination or test of that item.

(2) Subsection (1) shall apply to the following items —

(a) a hoist or lift;

(b) a lifting gear;

(c) a lifting appliance or lifting machine;

(d) a steam boiler;

(e) a steam receiver;

(f) an air receiver;

(g) a refrigerating plant pressure receiver;

(h) a pressure vessel; or

(i) any other machinery required by this Order to be examined or tested by an authorised examiner.

(3) No action, suit or other legal proceedings shall be brought against the Commissioner or any Deputy Commissioner in respect of any act or thing done or omitted to be done by any of them in good faith in the exercise, performance or purported exercise or performance of any duty or function under section 21.

Exempt workers, workplaces and equipment etc.

61. (1) This Order shall not apply to such persons at work as are specified in the Sixth Schedule, notwithstanding that their work is carried out or performed in a workplace specified in the First Schedule.

(2) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, exempt —

(a) any class or description of workplace from all or any of the provisions of this Order;

(b) any class or description of person from compliance with all or any of the provisions of this Order; and

(c) any class or description of machinery, equipment, plant, installation or articles from all or any of the provisions of this Order.

(3) The Commissioner may, subject to any direction of the Minister, by a certificate in writing exempt —

(a) any machinery, equipment, plant, installation or article that is identified specifically in the certificate from all or any of the provisions of this Order; or

(b) any person identified specifically in the certificate from compliance with all or any of the provisions of this Order.

Service of documents etc.

62. (1) Any document (including any summons or order) required or authorised to be served under this Order may be served —

(a) on any person by delivering it to him, by leaving it at or by sending it by registered post to his residence;

(b) on any firm by delivering it to any partner of that firm, by leaving it at or by sending it by registered post to an office of that firm;

(c) on the owner of any premises, the owner of any equipment or occupier of the workplace (including any such owner or occupier of the workplace being a company registered under the Companies Act (Chapter 39) or a co-operative society registered under the Co-operative Societies Act (Chapter 84)) in any such manner as aforesaid or by delivering it, or a true copy thereof, to the manager, foreman or other responsible person at that workplace.

(2) Any such document may be addressed, for the purpose of the service thereof on the occupier of a workplace, to "the occupier of the workplace" at the proper postal address of the workplace, without further name or description.

(3) Subsections (1) and (2) shall apply, with the necessary modifications, to documents required or authorised under this Order to be sent to any person, firm, owner or occupier of the workplace, and to the sending, addressing and delivering of such documents.

Amendment of Schedules.

63. (1) Subject to section 2(2), the Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by order published in the *Gazette*, amend any of the Schedules.

(2) The Minister may prescribe in the order under subsection (1) such incidental, consequential and supplementary provisions as he considers necessary or expedient.

Regulations.

64. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such regulations as he considers necessary or expedient for giving effect to and carrying out the purposes and provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof, and such regulations may include such incidental, consequential and supplementary provisions as he considers necessary or expedient.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations for or with respect to all or any of the following matters —

- (a) any matter relating to the registration of a factory, including —
 - (i) the class or description of factories which require registration;
 - (ii) the form and manner of application for the registration;
 - (iii) the conditions of registration;
 - (iv) the circumstances under which an application for registration may be granted or refused;
 - (v) the issuance of a certificate of registration of a factory or a factory permit in lieu of such a certificate;
 - (vi) the duration of the certificate of registration or factory permit;

- (vii) the form, custody and maintenance of any register to be kept by the Commissioner of any premises registered as a factory or in respect of which a factory permit is issued;
 - (viii) the circumstances under which a certificate of registration or factory permit may be renewed, extended or revoked;
 - (ix) the imposition of any duty on the occupier of a factory to provide such information to the Commissioner with respect to any change in any matter in relation to the factory;
 - (x) the bringing of appeals to the Minister in respect of the registration of factories or the issue of factory permits;
- (b)* the lighting, ventilation, temperature, humidity, radiant heat, noise, drainage and hygiene in workplaces, and the fixing of standards therefor;
- (c)* the provision of first-aid resources and the appointment of first-aid personnel in workplaces;
- (d)* the procedures and resources required in case of fire at any workplace;
- (e)* the means, if any, required for removing impurities from the air in workplaces and for reducing excessive heat and noise in workplaces;
- (f)* the permissible exposure levels, control and disposal of any toxic or noxious materials, whether solid, liquid, gaseous or vaporous;
- (g)* the handling, storage and disposal of any harmful organisms and biohazardous material;
- (h)* the use and control of, and the safeguards and safety measures when using, any dangerous machinery or equipment;
- (i)* the types of clothing and appliances to be provided for use at work;
- (j)* in relation to any hoist or lift, lifting gear, lifting appliance and lifting machine, steam boiler, steam receiver, air receiver, refrigerating plant pressure receiver and any other machine —
 - (i) the conditions under which it may be used and any safety requirement in relation to its use;
 - (ii) its construction, use or maintenance;

- (iii) the issue of certificates of competency to persons who may operate, or take charge and control over it;
 - (iv) any examination or test which is required to be conducted on it;
 - (v) the person who may examine or test it to ensure its safe working condition;
 - (vi) the manner in which any examination or test is to be carried out;
 - (vii) the frequency of such examination or test;
 - (viii) the form, custody and inspection of any certificate or report of such examination or test;
 - (ix) the duty of any approved person who conducts such examination or test; and
 - (x) the imposition of any duty on any person in order to ensure its safe operation or the safety of persons at work;
- (k) the fees to be paid in respect of any matter or thing done or document issued under this Order;
- (l) the issue of certificates of competency to persons taking charge of or operating internal combustion engines;
- (m) the nature of the examination for certificates of competency to be issued to persons taking charge of or operating steam boilers or internal combustion engines, the constitution of a board of examiners, the form of the certificates of competency, and the fees to be paid for such examination and certificates;
- (n) the authorisation of training providers to conduct safety and health training courses for persons who are required to attend such courses under this Order, the establishment of a scheme to authorise training providers, and the fees to be paid to the training providers under that scheme;
- (o) the nature of any gas plant that may be used;
- (p) the type of fittings and pipes that may be used in all or any types of gas plant;
- (q) the inspection of gas plants;

(r) the prevention or minimisation of risk of bodily injury or injury to health where any manufacture, machinery, equipment, installation, plant, article or process used or work carried out in any workplace involves such risk;

(s) the arrangements to be made for the medical supervision and medical examination (not including medical treatment of a preventive character) and for the removal from exposure to risk of any person or any class of person at work;

(t) the health, safety and welfare in respect of the following types of work —

- (i) building operations undertaken by way of trade or business, or for the purpose of any industrial or commercial undertaking;
- (ii) works of engineering construction undertaken by way of trade or business, or for the purpose of any industrial or commercial undertaking;
- (iii) design and management of building operations or works of engineering construction;
- (iv) work involving the use of or exposure to pesticides;
- (v) maintenance and repair of roads;
- (vi) building renovation work;
- (vii) lift maintenance and repair;
- (viii) work in confined spaces;
- (ix) work involving the use of visual display units;
- (x) work involving a steam boiler, steam receiver or air receiver;
- (xi) any other process, work or operation —
 - (A) which is of such a nature as to cause any risk of bodily injury to any person at work; or
 - (B) which poses any health hazard to persons at work;

(u) the conduct of any risk assessment or safety and health arrangement and the duties of any occupier, employer or any other person in

relation to the conduct of that risk assessment or that safety and health arrangement;

(v) the implementation of any safety and health management system and the duties of any occupier, employer or any other person in relation to the implementation of that safety and health management system.

(3) The regulations made under this section may prescribe offences in respect of the contravention of any provision thereof, and may prescribe that fines not exceeding \$20,000 and imprisonment for a term not exceeding 2 years may, on conviction, be imposed in respect of any such offence.

(4) The regulations may impose duties on any person who has control or influence over any aspect of workplace safety or health, including but not limited to any occupier, owner, employer, manufacturer, designer or employed person.

(5) Regulations made under subsection (2)r) may —

(a) prohibit the employment of, or modify or limit the hours of employment of, any person at work in connection with any manufacture, machinery, plant, process or description of work;

(b) prohibit, limit or control the use of any material or process;

(c) prescribe maximum weights that may be lifted, carried or moved by any person at work;

(d) prescribe the qualifications and minimum age of, and the training to be received by, persons who are at work using any machinery or plant; and

(e) prescribe the procedures to be undertaken before that work can be carried out.

(6) Regulations made under subsection (2)s) may —

(a) require the medical supervision and medical examination under the regulations to be carried out by a person approved by the Commissioner; and

(b) prescribe the qualifications and other conditions to be satisfied for such approval.

(7) Regulations made under subsection (2)t) may —

(a) apply any of the provisions of this Order to the classes of premises, processes or operations referred to in that subsection;

(b) impose duties on persons involved in the type of work referred to in that subsection, including any developer, contractor, architect or engineer; and

(c) prescribe the qualifications and training to be received by persons involved in the type of work referred to in that subsection.

FIRST SCHEDULE {sections 2, 27(2) and 61(1)}

WORKPLACES SUBJECT TO ORDER

1. Any factory, including any premises immediately adjacent to the factory over which the occupier of the factory has charge, management or control.
2. Any premises within an airport where —

(a) any checking or inspection of an aircraft or its contents; or

(b) any cleaning, loading, unloading or refuelling of an aircraft,

is carried out by any person other than by the crew of the aircraft.

3. Any ship in a harbour where —

(a) any scaling, scurfing or cleaning of boilers (including combustion chambers and smoke boxes) in the ship;

(b) any cleaning of any tank, bilges or holds in the ship; or

(c) any construction, re-construction, repair, fitting, furnishing or breaking up,

is carried out.

4. Any dock, wharf or quay where loading, unloading or bunkering of a ship is carried out by persons other than by the crew of the ship.
5. Any premises prescribed as a railway area and where any inspection, testing or maintenance of any railway is carried out.
6. Any premises (other than domestic premises) in which a steam boiler, steam receiver or air receiver is used.
7. Any laboratory or other premises where the testing, examination or analysis of any article is carried out.

FIRST SCHEDULE – *continued*

8. Any ship where any survey or inspection of the ship or its contents is carried out by any person other than by the crew of the ship.
9. Any tunnel, bridge or viaduct where any survey or inspection of the tunnel, bridge or viaduct is carried out.
10. Any hotel, lodging house, dormitory, service apartment, chalet, camping site or other premises where the provision of short-stay accommodation is carried out by way of trade or for purposes of gain.
11. Any restaurant, bar, canteen or other premises where food or drinks are sold or catered for consumption within those premises or elsewhere.
12. Any hospital, hospice, nursing home or medical or dental clinic or other premises providing nursing and rehabilitation services.
13. Any veterinary centre providing any of the following services —
 - (a) diagnosis of disease in, and injuries to, animals or birds, including tests performed for diagnostic purposes;
 - (b) the treatment, vaccination or inoculation of animals or birds.
14. Any premises where landscaping or garden maintenance is carried out.
15. Any premises where the collection, purification or distribution of water is carried out.
16. Any premises where the disposal or treatment of sewage or refuse is carried out.
17. Any premises where the recycling of metal or non-metal waste or scrap is carried out.
18. Any premises where —
 - (a) freight forwarding, packing or crating services;
 - (b) cargo surveying services;
 - (c) container services; or
 - (d) crane services,

are carried out by way of trade or for purposes of gain or incidentally to another business so carried out.

SECOND SCHEDULE

(section 4(1))

DANGEROUS OCCURRENCES

1. Bursting of a revolving vessel, wheel, grindstone or grinding wheel moved by mechanical power.
2. Collapse or failure of a crane, derrick, winch, hoist, piling frame or other appliance used in raising or lowering persons or goods, or any load bearing part thereof (except breakage of chain or rope slings), or the overturning of a crane.
3. Explosion or fire damage to the structure of any room or place in which persons are at work, or to any machine or plant contained therein, and resulting in the complete suspension of ordinary work in that room or place or the stoppage of that machinery or plant for not less than 5 hours, where the explosion or fire is due to the ignition of dust, gas or vapour, or to the ignition of celluloid or of a substance composed wholly or in part of celluloid.
4. Electrical short circuit or failure of electrical machinery, plant or apparatus, attended by explosion or fire or causing structural damage thereto, and involving its stoppage or disuse for not less than 5 hours.
5. Explosion or fire affecting any room in which persons are at work and causing the complete suspension of ordinary work therein for not less than 24 hours.
6. Explosion or failure of structure of a steam boiler or of a receiver or container used for the storage at a pressure greater than atmospheric pressure of any gas or gases (including air) or any liquid or solid resulting from the compression of gas.
7. Failure or collapse of formwork or its supports.
8. Collapse, in part or in whole, of a scaffold exceeding 15 metres in height or of a suspended scaffold or a hanging scaffold from which any person may fall more than 2 metres.
9. Accidental seepage or entry of seawater into a dry dock or floating dock causing flooding of that dry dock or floating dock.

THIRD SCHEDULE

(section 4(1))

OCCUPATIONAL DISEASES

1. Aniline poisoning
2. Anthrax
3. Arsenical poisoning
4. Asbestosis
5. Barotrauma
6. Beryllium poisoning
7. Byssinosis
8. Cadmium poisoning
9. Carbamate poisoning
10. Carbon bisulphide poisoning
11. Carbon dioxide poisoning
12. Carbon monoxide poisoning
13. Catart
14. Chrome ulceration
15. Chronic benzene poisoning
16. Compressed air illness
17. Cyanide poisoning
18. Epitheliomatous ulceration (due to tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any such substance)
19. Glanders
20. Hydrogen sulphide poisoning
21. Lead poisoning

THIRD SCHEDULE – *continued*

22. Leptospirosis
23. Liver angiosarcoma
24. Manganese poisoning
25. Mercurial poisoning
26. Mesothelioma
27. Nitrous fumes poisoning
28. Noise-induced deafness
29. Occupational skin diseases
30. Occupational asthma
31. Pesticide poisoning
32. Phosphorous poisoning
33. Poisoning from halogen derivatives of hydrocarbon compounds
34. Radiation
35. Rengas wood poisoning
36. Repetitive strain disorders
37. Silicosis
38. Toxic anaemia
39. Toxic hepatitis
40. Tuberculosis.

FOURTH SCHEDULE

(section 4(1))

WORKS OF ENGINEERING CONSTRUCTION

1. The construction of any railway line or siding.
2. The construction, structural alteration or repair (including re-pointing and repainting) or the demolition of any dock, harbour, inland navigation, tunnel, bridge, viaduct, waterworks, reservoir, pipe-line, aqueduct, sewer, sewerage works or gas-holder.
3. The construction, laying, structural alteration, inspection, maintenance, repair, demolition or removal of —
 - (a) any pipe-line for the conveyance of water, gas or any other thing;
 - (b) any drain, whether open or covered, except open drains situated on domestic premises; or
 - (c) any underground electrical cable and communication cable.
4. The inspection, repair or maintenance of any manhole, sump, inspection chamber, valve chamber and any other similar confined structure providing access to pipe-lines or underground electrical cables and communication cables.
5. The construction of any road or car park.
6. The reclamation of any land.

FIFTH SCHEDULE

(sections 16(1) and 17(1))

MACHINERY, EQUIPMENT OR HAZARDOUS SUBSTANCES

PART I

MACHINERY AND EQUIPMENT

1. Scaffolds and any materials or components used to erect them
2. All lifting equipment
3. Forklifts
4. Power presses

FIFTH SCHEDULE – *continued*

5. Bar-benders
6. Any equipment or piping intended for operation under pressure, including all statutory pressure vessels
7. Any equipment or piping intended to contain corrosive, toxic or flammable substances
8. Welding equipment, including any accessory, apparatus or fitting necessary to enable its use
9. Materials or components used for the construction of support structures
10. Explosive powered tools
11. Equipment used for abrasive blasting, including any accessory, apparatus or fitting necessary to enable its use and operation.

PART II

HAZARDOUS SUBSTANCES

1. Corrosive substances
2. Flammable substances
3. Explosives
4. Oxidising substances
5. Pyrophoric substances
6. Gases under pressure
7. Organic peroxides
8. Self-heating substances
9. Self-reactive substances
10. Substances which, in contact with water, emit flammable gases
11. Toxic substances

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

FIFTH SCHEDULE – *continued*

12. Mutagens
13. Carcinogens
14. Teratogens
15. Sensitisers
16. Irritants
17. Substances hazardous to aquatic environment.

SIXTH SCHEDULE (sections 27(2) and 61(1))

EXEMPT PERSONS AT WORK

1. Any member of the Royal Brunei Police Force, the Prisons Department, the Internal Security Department, the Narcotics Control Bureau, the Royal Brunei Armed Forces, the Royal Customs and Excise Department, the Fire and Rescue Department, the National Disaster Management Centre; and an Immigration Officer appointed under section 3 of the Immigration Act (Chapter 17), while on duty.
2. A crew member at work on board any ship, aircraft or any other international mode of transport which does not pose a risk to the safety and health of any person other than the crew member himself or any other crew member on board that ship, aircraft or other international mode of transport.

Made this 14th. day of Syawal, 1430 Hijriah corresponding to the 3rd. day of October, 2009 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM