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**AN BILLE UM SHÁBHÁILTEACHT, SLÁINTE AGUS LEAS  
AG AN OBAIR 2004**  
**SAFETY, HEALTH AND WELFARE AT WORK BILL 2004**

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**EXPLANATORY MEMORANDUM**

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*Introduction*

The purpose of the Bill is to consolidate and update the Safety, Health and Welfare at Work Act 1989 (the 1989 Act) and to include relevant provisions of the Safety, Health and Welfare at Work (General Application) Regulations, 1993 which implement, in part, requirements of Directive No. 89/391/EEC of 12 June, 1989 of the Council of the European Union on the introduction of measures to encourage improvements in the health and safety of workers in the workplace and of Council Directive 91/383/EEC of the 25th June, 1991 or measures to improve the safety and health at work of workers with a fixed-duration or temporary employment relationship.

The features of the Bill are as follows:

**PART 1**

**PRELIMINARY AND GENERAL**

*Section 1* sets out the short title as the Safety, Health and Welfare at Work Act 2004 and provides that the Minister may commence the Act by order, or orders in whole or in part on days to be decided. The commencement of the repeals of existing enactments provided for under *section 4(2)* may also be on days to be decided in respect of different existing enactments or provisions within them. On the day on which the Act is commenced generally, the repeal of the Safety, Health and Welfare at Work Act 1989 will also be commenced.

*Section 2* is an interpretation section and defines terms used in the Bill. It defines accident and dangerous occurrence, article and substance, contract of employment, employee and employer, place of work, record and other terms. It defines competent person and employment in State bodies. It specifies that employees engaged through employment agencies are regarded as employees of those employers for whom they carry out work. It defines the term “reasonably practicable” which is a qualification which applies to general duties in the Bill. It defines the financial year of the Health and Safety Authority (the Authority).

*Section 3* provides for procedures as regards the service of notices under the Bill.

*Section 4* provides for repeals and savings. It provides for the repeal of provisions of the Organisation of Working Time Act 1997

which are overtaken by provisions in the Bill. It provides a basis for repeal of the 1989 Act when the Bill is enacted and the repeal, over time, of other statutes which apply to safety and health according as they are reviewed and rationalised. It provides for continuance, as appropriate, of references in documents to the 1989 Act and for the continuance of orders or regulations made under other health and safety statutes, unless otherwise provided for in the Bill.

*Section 5* provides for payment of the Minister's expenses administering the Bill.

*Section 6* specifies that health and safety laws apply to prisons and places of detention except where this conflicts with safe custody, good order and security. The section also specifies that health and safety laws apply to the Defence Forces except where they are on active service.

*Section 7* provides that health and safety laws must be complied with by self-employed persons as if they were employers and as if they were their own employees.

## PART 2

### GENERAL DUTIES

#### CHAPTER 1

##### *General Duties of Employer*

*Section 8* sets out the general duties of every employer to ensure, so far as is reasonably practicable, the safety, health and welfare of employees. These include duties in regard to the management and conduct of work, preventing improper conduct or behaviour, providing safe workplaces, safe means of access and egress, safe plant and machinery, providing articles and substances that are safe to work with, protecting against noise, vibration or radiation and providing safe systems of work. The employer must also provide welfare facilities and the necessary information, instruction, training and supervision to ensure safety and health.

Following the risk assessment required under *section 19* and the preparation of the safety statement under *section 20*, the employer must decide on and implement any safety, health and welfare measures which are necessary. The employer must provide protective clothing and equipment as appropriate and have emergency plans in place. Employers may be required by regulations to report to the Authority (or to any other body given functions under *section 33*) accidents to employees and dangerous occurrences. Employers must retain, where necessary, the services of a competent person to help them meet their safety and health obligations. The employer's duties extend also to fixed-term contract or temporary contract employees. Employers shall not charge employees for safety and health measures.

*Section 9* sets out in greater detail the types of information on safety, health and welfare required to be given by employers to employees under *section 8*. The information must be in a form, manner and language that can be understood. It must include information on hazards, risks and measures taken as regards safety, health and welfare and the names of emergency staff and safety representatives. Employees of another employer working in the place of work must also be informed.

The competent persons appointed under *section 18* and safety representatives, if any, must be given additional information on risk assessment, on accidents and dangerous occurrences and information resulting from experience of applying protective measures. The employer must also give fixed-term and temporary employees information on any potential risk, on health surveillance and on any special skills required for the job. An employer who hires an employee through a temporary employment business must inform them about the skills required for the job and its specific features and ensure the information is passed on to the employees. The temporary employment business is obliged to give the same information to employees.

*Section 10* sets out the specific requirements as regards the instruction, training and supervision of employees by employers in support of the general duty in *section 8*. Instruction and training must be given in a form, manner and language that can be understood. Employees must also be given training in safety and health during time off from work and at no cost to themselves. Such training must include information and instructions in the job to be carried out and emergency measures. In assigning an employee to a job, the employer must take account of his or her capabilities.

In the case of groups of particularly sensitive employees and employees covered by specific safety and health legislation, the employer must ensure they are protected against the specific dangers involved.

Training must be adapted to changed circumstances and be repeated periodically. Training must be provided on recruitment, in the event of transfer, and when new work equipment, systems of work or new technology is introduced.

In cases where legislation requires specific health and safety training, employees must be released for training and without loss of pay. Employers are obliged to instruct employees of another employer carrying out work in their places of work of any risks. Fixed-term and temporary employees must be given appropriate training, taking account of their qualifications and experience.

*Section 11* provides for the measures to be taken in emergencies and in the case of serious and imminent danger, in support of the general duties on employers in *section 8* to have plans and procedures for emergencies. The measures must cover first aid, fire fighting and the evacuation of employees and others present in the workplace, contacts with the emergency services and the designation of employees to carry out the emergency plans. Based on the size of the place of work and the hazards present, sufficient employees must be delegated, trained and provided with the necessary equipment.

When an emergency or serious and imminent danger presents, the employer must as soon as possible inform all employees about the risk and the protective measures to be taken and workers may not be required to carry out or resume work while this serious and imminent danger continues. In those circumstances also, the employee must be able to take appropriate steps to avoid the danger in the absence of appropriate guidance or instruction having been given and having regard to the employee's state of knowledge and the technical equipment available for protection.

If there is serious, imminent and unavoidable danger the employer must take action and instruct employees so that they can either or both stop work, leave the place of work and go to a safe place. An

employee must not be penalised for taking such action. Where there is serious specific danger present in part of the place of work the employer must ensure that only employees given appropriate instructions have access.

When members of the Defence Forces and the Garda Síochána, employees of a fire authority or persons engaged in civil protection or civil defence are involved in civil emergencies, public order, security or war, the emergency provisions in this section do not apply where compliance is not possible.

*Section 12* provides that an employer must manage and conduct business, so far as is reasonably practicable, so that other persons present in the place of work are not, in the course of work being carried on, exposed to risks to their safety, health or welfare.

## CHAPTER 2

### *General Duties of Employee and Persons in Control of Places of Work*

*Section 13* provides for a range of duties on employees. They must comply with safety and health laws and take reasonable care to protect their own safety, health and welfare and that of others who may be affected by their acts or omissions at work. An employee must not be under the influence of an intoxicant to the extent that the state he or she is in is likely to endanger his or her own safety, health or welfare at work or that of any other person. Regulations may set down requirements whereby an employee must submit to tests by a competent person which are appropriate, reasonable and proportionate, if reasonably required by his or her employer.

Every employee must cooperate with the employer or any other person, as necessary, so that the employer or the person can comply with health and safety laws as appropriate.

An employee must not engage in improper conduct or other behaviour, which could endanger his or her safety, health and welfare at work or that of another person.

If safety and health training is required under health and safety laws or training related to a particular job, the employee must attend, if reasonably required by the employer. Taking account of the training and instructions given by the employer, the employee must correctly use any article or substance used at work and protective clothing and equipment.

An employee is required to report to the employer, or other appropriate person, as soon as may be, where work being carried on, or likely to be carried on, can endanger his or her safety, health or welfare or that of another person, any defect in the place of work, the systems of work or in any article or substance likely to endanger him or her or another person and any breach of health and safety laws likely to endanger him or her or another person which comes to his or her attention.

*Section 14* specifies that no person shall intentionally, recklessly or without good cause, interfere with, misuse or damage any thing provided under health and safety laws, or otherwise, protecting the safety, health and welfare of persons at work. The section also provides that no person shall place at risk the safety, health or welfare of persons in connection with work activities.

*Section 15* applies to a person who, including a person engaged in business, controls a non domestic place of work which is made available for others to work in, the means of access to and egress from that place and articles or substances provided for use at that place (unless another person has control of those articles or substances).

This duty applies also to any person who, under a contract, tenancy, licence or other interest, is obliged to maintain or repair the place of work or the means of access or egress, or the safety or the absence of risk to health from any article or substance provided for use in the place of work. A person to whom the section applies must ensure, so far as is reasonably practicable, that the place of work, access and egress and any article or substance is safe and without risk to health.

### CHAPTER 3

#### *General duties of other persons*

*Section 16* places duties on any person who designs, manufactures, imports or supplies any article used at work to ensure that, so far as is reasonably practicable, the article is designed and constructed so that it can be used safely and without risk to health at work and that it complies with any relevant legislation which implements a Directive of the European Union and that the article is properly tested and examined so as to meet these requirements.

The person must also provide information, and any updating of information, about the safe use of the article to persons supplied and the information must relate to the use for which the article has been designed, manufactured or tested and must include information on safe installation, use, maintenance, cleaning, dismantling or disposal without risk to safety or health. The person who designs, manufactures, imports or supplies must maintain the article in a safe condition and in compliance with health and safety laws if he or she has retained responsibility under a rental, leasing or other arrangement to do so.

A person who designs or manufactures an article for use at work must carry out research to discover if the article gives rise to risks to safety or health, with a view to eliminating or minimising those risks.

A person who erects, assembles or installs an article for use at a place of work must ensure that nothing in the way in which it is erected, assembled or installed makes it unsafe when used.

The section sets down similar requirements in relation to any substance for use at work except that information supplied about a substance must include its identification, any risk arising from its inherent properties, the results from any tests carried out which are relevant to its safe use and any conditions necessary to ensure its safe use, handling, processing, storing, transportation or disposal.

Where results of tests carried out on articles or substances can be relied upon, it is not necessary to repeat such tests, examination or research. Duties under the section apply only to things done in the course of a trade, undertaking or business and to matters within the control of a person on whom the duties fall. If another person gives a written undertaking to take steps to ensure that an article or substance is safe for use at a place of work this can relieve the person who designs, manufactures, imports or supplies the article or substance from duties as regards its safe use, tests and examination. This

does not relieve an importer from any duty where the design, and the control of the design, was outside the State and where the manufacture of an article or substance was carried out and controlled outside the State.

The section provides that where articles or substances are provided under a hire purchase agreement, a leasing agreement or credit sale agreement, the responsibilities in this section do not fall on the financial institution making those arrangements but rather on the person supplying the article or substance to the person who will use the article or substance at work.

Finally, the section provides that if an occurrence could not reasonably have been foreseen as a risk to safety or health it shall be disregarded and, also, in determining if there has been compliance with duties under the section, account can be taken of the information or advice given to any person by the person who designed, manufactured, imported or supplied an article or via a person who manufactured, imported or supplied a substance.

*Section 17* specifies duties to be complied with by persons who commission, procure, design or construct places of work. A person who commissions or procures the construction of a place of work must appoint a competent person or persons to ensure, so far as is reasonably practicable, and that the place of work is designed and is capable of being constructed so as not to present risk to safety and health; that it can be maintained without risk to safety and health when in use and that it complies with health and safety laws.

A person who designs a place of work must ensure, so far as is reasonably practicable, that it is designed and is capable of being constructed without risk to safety and health, that it can be maintained without risk to safety and health and that it complies with health and safety laws.

A person who constructs a place of work must ensure, so far as is reasonably practicable, that it is constructed so as not to endanger safety or health, that it can be maintained safely and without risk to health during use and that it complies with relevant health and safety laws.

### PART 3

#### PROTECTIVE AND PREVENTIVE MEASURES

*Section 18*, in support of *section 8*, requires the employer to appoint one or more competent persons and to specify their functions as regards advising the employer so as to enable him or her to comply with health and safety laws. The competent person must be given enough time with no loss of remuneration to perform the functions and the numbers of competent persons appointed and the time and facilities available to them must reflect the size of the business, the risks involved and the spread of those risks in the business. The employer must also ensure cooperation between competent persons and with any safety representatives appointed. First preference must be given to appointing a person employed in the business as competent person unless that person does not have the capabilities to carry out the full range of safety and health functions.

The employer must provide the competent person with information on factors which affect the safety, health and welfare of the employees, the risks involved, the protective measures in place, the

evacuation measures in the case of emergencies, as in *section 11*, including the names of employees designated for emergency duties, as well as any necessary information about fixed term employees or temporary employees so that the competent person can discharge his or her functions.

*Section 19* provides that every employer and every person to whom *section 12* and *15* apply must identify the hazards at the place of work, assess the risks from those hazards and have a written risk assessment of those risks as they apply to all of the employees and to any single employee and group of employees who may be exposed to any unusual risks. In carrying out the risk assessment, the employer must take account of health and safety laws which apply. The risk assessment must be reviewed and amended if necessary, at least annually or if it is no longer valid or there has been a significant change. Any improvements in safety, health and welfare arising from the risk assessment must be implemented by the employer.

*Section 20* provides that every employer and every person covered by *sections 12* and *15* must have a written safety statement based on the hazards identified and the risk assessment under *section 19* and setting out how the safety, health and welfare of employees will be secured and managed. Safety statements must set out the hazards identified, the risks assessed, the protective and preventive measures, the resources allocated to safety, health and welfare, the duties of employees as regards safety and health, the names and job titles of persons assigned tasks under the safety statement and the arrangements for the appointment of safety representatives and safety consultation in the place of work in compliance with *sections 25* and *26*. The names of the safety representatives and those on the safety committee, if appointed, must be included.

The safety statement must be brought to the attention of employees at least annually or when it is amended and also to others at the place of work exposed to specific risk. Where specific jobs pose serious risk the employer must give relevant extracts of the safety statement to the employees affected covering the risk, the risk assessment and the safety measures taken.

The safety statement must be reviewed, and amended if necessary, at least annually, if an inspector directs under *section 64* that it be amended, and within 30 days of that direction, or if it is no longer valid or if there has been significant change.

Employers in employment sectors which will be detailed in Regulations who contract for services to be provided by another employer, must ensure that that employer has an up to date safety statement.

A copy of the safety statement, or a relevant extract, must be available for inspection at every workplace while work is ongoing.

Employers with three or less employees can comply with this section if they observe a code of practice under *section 60* applying to safety statements covering the employment sector they are in.

*Section 21* requires employers who share a place of work to cooperate in complying with and implementing health and safety laws and to coordinate their preventive activities and keep each other and their employees, and safety representatives (if any), informed about the risks to safety, health and welfare arising from the work, including by exchanging safety statements or relevant extracts of them.

*Section 22* requires employers to ensure that health surveillance

relevant to the risks to safety, health and welfare identified by the risk assessment under *section 19* is available to employees. If particular health surveillance is required under health and safety laws, this must be carried out.

*Section 23* gives the right to the employer, subject to the making of the Regulations which will name the types of employments concerned and under what circumstances, to require employees to be assessed by a registered medical practitioner as to fitness to carry out work which presents critical risks to the safety, health and welfare of persons at work. If the registered medical practitioner is of the view that an employee is unfit to perform such work, he or she must tell the employer and the employee, giving the reasons for it and the likelihood of early resumption to facilitate rehabilitation.

If an employee covered by this section suffers any disease or illness likely to add to risks, he or she must immediately tell the employer. If the employer is informed as above by either the registered medical practitioner or the employee, action must be taken by the employer to comply with the general duties under *section 8* as regards a safe place of work etc.

*Section 24* provides that employee trade unions and bodies representing employers can make agreements setting out practical guidance on safety, health and welfare and the requirements of health and safety laws and can apply to the Authority for approval of an agreement or of its variation. The Authority can approve a joint safety and health agreement if the parties have consented to the approval being sought, if the agreement stipulates that it applies to all employees in a particular class of employees, and the Authority is satisfied with this, if the parties substantially represent employees and employers covered by the agreement, if the agreement does not conflict with safety and health laws and is in a form suitable for approval.

Where an application for approval is made to the Authority, the Authority must direct the parties to publish information on the agreement to inform all those likely to be affected. The Authority must withhold approval for 1 month to allow for objections and cannot approve if it does not meet the conditions above. The Authority can withdraw approval if all the parties agree or if any party terminates the agreement. Where the Authority approves an agreement, it must publish a notice of approval in *Iris Oifigiúil* and at least 2 daily newspapers identifying the agreement, setting out the safety, health and welfare matters covered and giving the date on which it comes into effect. The parties must make copies of agreements available for inspection by any person affected.

In assessing compliance with health and safety laws, the Authority must take account of an approved joint safety and health agreement, whether or not an employer in an employment sector covered by the agreement is a party to it.

## PART 4

### SAFETY REPRESENTATIVES AND SAFETY CONSULTATION

*Section 25*, without prejudice to *section 26*, entitles employees to decide on a safety representative (or, if the employer agrees, more than one) to represent them in consultations with the employer on matters of safety, health and welfare. The safety representative has

the right to inspect the place of work having given reasonable notice to the employer (and with the employer being reasonable as to the frequency of inspections) and to inspect immediately if there is an accident, dangerous occurrence or imminent danger or risk to safety, health and welfare. The safety representative may also investigate accidents and dangerous occurrences provided this does not interfere with another person carrying out duties under health and safety laws.

The safety representative can also investigate complaints, accompany an inspector carrying out an inspection under *section 64* (except for the investigation of an accident or a dangerous occurrence, unless at the discretion of the inspector), be present, at the discretion of the inspector, when an employee is being interviewed by an inspector about an accident or dangerous occurrence, make representations to the employer on safety, health and welfare, make verbal or written representations to inspectors and receive advice and information from them and also consult and liaise with other safety representatives appointed in the same undertaking.

The employer is obliged to consider any representations made by the safety representative and, so far as is reasonably practicable, take any necessary and appropriate action in response. The employer must give reasonable time off to the safety representative, without loss of remuneration, both to train as a safety representative and to carry out the function. The employer must tell the safety representative when an inspector arrives to carry out an inspection under *section 64*.

*Section 26* places a duty on the employer to consult the employees so as to make and maintain arrangements to enable the employer and employees to cooperate to promote and develop safety, health and welfare and to monitor the effectiveness of the arrangements. As part of the arrangements, the employer must consult the employees and their safety representatives on any measure likely to substantially affect safety, health and welfare, on the designation of employees having emergency duties under *section 11*, things done relating to protection from and prevention of risks, the hazard identification and risk assessment under *section 19*, the preparation of the safety statement under *section 20*, the information required to be given to employees under *section 9*, information on accidents and dangerous occurrences notified under *section 8*, the appointment of competent persons under *section 18*, the planning and organisation of training under *section 10*, the planning and introduction of new technologies and the implications for safety, health and welfare of choices available as regards equipment, working conditions and the working environment.

Employees have a right to make representations to and consult their employer on matters of safety, health and welfare.

If there is a safety committee in the undertaking agreed by the employer and employees which can meet the requirements set out above, the safety committee can be used to meet the consultation requirements under this section.

The employer is obliged to consider any representations made by the employees regarding safety, health and welfare and, so far as is reasonably practicable, to take any appropriate or necessary action.

The employer must give employees involved in the consultation arrangements sufficient time off their duties, without loss of remuneration, for training for the purposes of this section and to discharge their functions.

In an undertaking where there is joint decision making involving the employer and the employees, this should include consultation under this section.

*Section 27* prohibits an employer from penalising an employee for acting in accordance with or performing any duty or exercising any right under health and safety laws, or making a complaint or a representation about health and safety to the safety representative or to the employer or to an inspector, or for giving evidence in health and safety cases, or for being a safety representative or an employee having duties in an emergency or as a competent person or for leaving or refusing to return to the place of work where there is serious or imminent danger which the employee could not reasonably have dealt with.

Penalisation by the employer includes any act or omission affecting detrimentally any term or condition of employment of an employee and includes suspension, layoff or dismissal, demotion or loss of opportunities for promotion, transfer or a change of location, reduction in wages or change in working hours, imposition of any discipline, reprimand or other penalty and coercion or intimidation.

The dismissal of the employee will be a dismissal under the Unfair Dismissals Acts 1977-2001 if it results from penalisation under this section.

*Section 28* entitles an employee to complain in writing, within 6 months, to a Rights Commissioner where the employer has contravened *section 27* and the Rights Commissioner, having given both parties an opportunity to be heard, must make a recommendation and inform the parties of the recommendation, which must do one or other of the following — indicate that the complaint was or was not well founded, require the employer to take specific action or require the employer to pay fair compensation to the employee.

The Rights Commissioner must hear the case in private and give a copy of the recommendation to the Employment Appeals Tribunal.

*Section 29* entitles either party affected by a recommendation of a Rights Commissioner under *section 28* to appeal within six weeks to the Employment Appeals Tribunal and the Tribunal, having heard the case, must make a determination affirming, altering, varying or setting aside the recommendation and the parties must be informed.

The Minister, at the request of the Tribunal, and either party may appeal to the High Court on points of law and the determination of the High Court is final and conclusive. The Tribunal can take evidence on oath and any person giving false evidence can be guilty of perjury. The Tribunal can, by notice, summon persons to attend and to produce documents and failure to do so is an offence.

If, up to 6 weeks after the appeal period, an employer has not carried out a recommendation of a Rights Commissioner, the employee can go to the Tribunal, which can make a determination reflecting the recommendation.

*Section 30* permits an employee, his or her trade union or the Minister to apply to the District Court if no appeal has been made and where an employer fails within 6 weeks to implement a determination of the Tribunal and the District Court must order the employer to carry out the determination including the payment of interest or compensation.

*Section 31* provides that a document signed by the Chairperson or Vice-Chairperson of the Tribunal specifying that a person did not attend before the Tribunal, having been given notice, on a day on which the Tribunal has sat, is regarded as evidence in a prosecution under *section 29* for failure to attend.

## PART 5

### THE AUTHORITY

#### CHAPTER 1

##### *The Authority*

*Section 32* provides for the continuance in being of the National Authority for Occupation Safety and Health and renames it as the Health and Safety Authority, by which it is commonly known, and provides that anything commenced by the Authority before the commencement of the repeal of the Act of 1989 by *section 4* may be carried on and completed by the Authority. In addition, the new name of the Authority is substituted in any legal proceedings which are pending. The Authority is a body corporate with an official seal and has power to sue and be sued and, with the consent of the Minister and Minister for Finance, to acquire, hold and dispose of land or property. *Schedule 5* applies to the Authority.

*Section 33* enables the Minister, with the consent of the Minister for Finance and in consultation with any other appropriate Minister, to prescribe persons (natural or legal) by Regulations to perform functions under the Act in lieu of the Authority to an extent as may be prescribed. For that purpose, where references are made in other sections to the Authority, reference is also made to persons prescribed under this section. In accordance with any guidelines given by the Authority, a person prescribed under this section must make adequate arrangements for the performance of functions assigned under this section, as well as other functions conferred by health and safety laws, and must report annually to the Authority and to the appropriate Minister.

*Section 34* specifies the general functions of the Authority. These are to promote, encourage and foster the prevention of accidents, dangerous occurrences, and injury to health at work, education and training in safety, health and welfare and measures promoting safety, health and welfare. The Authority must also make adequate arrangements for the enforcement of health and safety laws and monitor, evaluate and make recommendations to the Minister regarding the implementation of and compliance with both health and safety laws and best practice relating to safety, health and welfare at work and the review and maintenance of records by employers. The Authority must also promote, encourage and foster cooperation with and between representative bodies as regards the prevention of risks to safety, health and welfare, make arrangements to provide information and advice and engage in or support research, surveys and studies on matters within its responsibilities and publish the results.

The Authority is obliged under *section 43*, to prepare, adopt and to monitor its strategy statement and under *section 44* to prepare and adopt a work programme. The Authority is obliged to comply with any directions given from time to time by the Minister and to give the Minister information on the performance of its functions if so requested. The Authority must also perform any additional functions conferred on it under *section 35*.

The Authority, subject to the agreement of the Minister and the consent of the Minister for Finance may make agreements with other Ministers or persons for those to perform functions on its behalf (with or without payment) or for the Authority to perform appropriate functions on behalf of other Ministers.

The Authority has all the necessary powers to perform its functions and can delegate the performance of its functions to the Chief Executive or other members of staff.

*Section 35* enables the Minister, with the consent of the Minister for Finance and having consulted the Authority and any other relevant Minister, to confer by order additional functions connected to its primary functions on the Authority. The Minister may amend or revoke such an order.

*Section 36* provides that the Authority can establish, with the consent of the Minister and the Minister for Finance, a subsidiary to perform any of its functions (other than as regards the enforcement of health and safety laws). The Memorandum and Articles of Association of a subsidiary may be determined by the Authority, with the consent of the Minister and the Minister for Finance. The Minister may give directions to the Authority concerning any policy, programme or activity of a subsidiary. The consent of the Minister for Finance is required where a direction is given to a subsidiary as regards the disposal of any assets or profits.

*Section 37* provides that the Board of the Authority consists of a Chairperson and 12 ordinary members appointed by the Minister, including 3 persons nominated by trade unions, 3 nominated by employer organisations, the Chief Executive and 5 persons appointed by the Minister including 1 from the Department. The Minister also designates an ordinary member as deputy Chairperson. Board members in office when the Act commences can complete their term of office unless they die or resign.

*Section 38* enables the Authority to establish advisory committees to advise it in relation to its functions and the Authority must appoint the Chairperson and Deputy Chairperson. The members will be paid allowances for expenses and a member of an Advisory Committee in office when the Act commences may serve out the term of office unless he or she dies or resigns.

*Section 39* specifies that there shall be a Chief Executive Officer of the Authority, known as the Chief Executive, who, with the consent of the Minister, is appointed and may be removed from office in accordance with the terms and conditions of the appointment. The Authority, with the consent of the Minister, may also appoint one or more Assistant Chief Executives. The Chief Executive has the function of carrying on, managing and controlling generally the administration and business of the Authority and performing any other functions conferred by the Act or determined by the Authority.

The Chief Executive must submit a draft strategy statement under *section 43* and a draft work programme under *section 44* to the Authority, provide annual and other progress reports to the Authority on the implementation of the strategy, provide advice to the Authority in connection with its functions and provide information on his or her performance to the Authority as required. The Chief Executive has the function of managing all matters relating to appointments, performance, discipline and dismissal of staff below the level of Assistant Chief Executive. The Chief Executive in office at the commencement of the Act will continue for the remainder of the

appointed term of office unless he or she dies or resigns. *Schedule 6* applies to the Chief Executive Officer.

*Section 40* permits the Authority to engage consultants and advisors to assist them in the performance of its functions. Any fees payable must have regard to guidelines issued by the Minister or the Minister for Finance and the Authority must comply with any Ministerial directions in regard to consultants or advisors.

*Section 41* provides that any member present at a meeting of the Authority who, other than in a capacity as a member, has a material interest in an arrangement, contract or agreement with the Authority or to which the Authority is a party, must disclose the interest before the matter arises during a meeting with the Authority, may neither influence nor seek to influence a decision on the matter, must leave the meeting while the matter is being discussed, take no part in any deliberation of the Authority on the matter and not vote on a decision on the matter.

The disclosure of interest must be recorded in the minutes of the meeting and a member is excluded from the quorum of the meeting while the matter is being dealt with, unless the Authority determines otherwise. If an issue arises at a meeting because a member is about to fail to comply with the above requirements, the Chairperson can determine the issue and record it in the minutes. If the issue involves the Chairperson, the members must choose another member to chair the meeting to determine the issue. If a member fails to meet the above conditions the Minister can remove the person from office or take other appropriate action. A person removed from office is disqualified from future membership.

*Section 42* specifies that where a member of the Authority staff (or consultant, advisor or other person retained by the Authority) has a material interest in any contract, agreement or arrangement with the Authority (other than as a member of staff, consultant, advisor or other person engaged by the Authority), that person must disclose the interest to the Authority before it is considered, neither influence nor seek to influence a decision in the matter and take no part in the negotiation of the contract, agreement or arrangement. Where a person contravenes this section the Authority may decide on action to be taken including altering the terms of, or terminating, the person's employment or contract for services.

*Section 43* requires the Authority to prepare and submit a strategy statement to the Minister for his or her approval, in the first instance 4 months after *section 32* is commenced and thereafter every 3 years. The strategy statement must specify the key objectives, outputs, the latest strategies of the Authority, have regard to the need to ensure the most beneficial, effective and efficient use of the Authority resources, include a review of the outcomes and effectiveness of the preceding strategy statement (except for the first statement), set out how the Authority proposes to assess its performance and be in the form and manner that the Minister directs. The strategy statement is deemed to be adopted when it is approved by the Minister and the Minister shall lay a copy before each House of the Oireachtas. The Authority may consult other persons in preparing a strategy statement and must publish it.

*Section 44* requires the Authority to prepare and submit a work programme to the Minister for approval at least 2 months before each year setting out the objectives of the Board, taking account of the strategy statement, the priorities for the year and any other matter that the Minister may direct. The Minister can issue directions or

guidelines to the Authority concerning the preparation of the work programme and the Authority shall comply. The work programme is deemed to be adopted when it is approved by the Minister.

*Section 45* empowers the Minister, with the consent of the Minister for Finance, to pay a grant each year to the Authority to enable it to perform its functions. The Authority may, subject to the consent of the Minister and the Minister for Finance, invest money. Subject to *section 46* and *47*, and with the prior consent of the Minister and the Minister for Finance, the Authority may seek and accept funds from any source.

*Section 46* enables the Authority, with the consent of the Minister and the Minister for Finance, to borrow money for current or capital expenditure.

*Section 47* provides, that subject to the approval of the Minister and the Minister for Finance, the Authority may charge appropriate fees for the performance of its functions, for the provision of services (other than providing advice to the Minister or another Minister) and for the carrying on of activities. Provision is made for different fees, waivers, remission or refund of fees as appropriate. The Authority may, subject to Ministers' approval, sell anything it produces, publishes, approves of, or develops, for appropriate prices and can enter into contracts for the further development and commercial exploitation of anything produced, published or developed by it.

The Authority must record receipts from fees, sales or payments as income and must make available on request, free of charge, details of fees. Fees, prices and payments must not, except with the prior approval of the Minister, be less than the cost involved. The Authority can recover monies owing to it as a simple contract debt in a court of competent jurisdiction. The Public Offices Fees Act 1879 does not apply to fees charged under this Section.

*Section 48* requires the Authority to keep accounts and to submit them to the Comptroller and Auditor General not later than 3 months after the end of each year and to present them to the Minister within 1 month of receiving the report of the Comptroller and Auditor General following the audit. The Minister must lay the accounts and audit report before each House of the Oireachtas. The accounts must include an income and expenditure account, a cash flow statement and a balance sheet showing all income received and expenditure by the Authority, indicate the sources of the income and subject matter of the expenditure and record the property, assets and liabilities of the Authority.

*Section 49* requires the Chief Executive to appear before the Committee of Public Accounts whenever required in writing to do so to give evidence on the regularity and propriety of transactions recorded in the Authority accounts, on the economy and efficiency of the Authority in the use of its resources, on the systems, procedures and practices employed by the Authority for evaluating its effectiveness and when any matter affecting the Authority is referred to in a special report of the Comptroller and Auditor General. In appearing before the Committee of Public Accounts (or another Committee of the Houses of the Oireachtas referred to *section 50*), the Chief Executive must not question or express an opinion on the merits of any Government policy.

The references to the Authority's power to borrow in *section 46*, the charging of fees under *section 47*, the keeping of accounts under *section 48* and the attendance before the Committee of Public

Accounts under this section, include references also to any subsidiary or subsidiaries of the Authority.

*Section 50* requires the Chief Executive, when requested in writing to do so, to appear before a Committee of the Houses of the Oireachtas, other than the Committee of Public Accounts, the Committee on Members' Interests of Dáil Éireann and the Committee on Members' Interests of Seanad Éireann (or sub-committees thereof), to account for the general administration of the Authority.

The Chief Executive will not be required to account to a Committee for any matter related to proceedings before a court or Tribunal in the State and, if so requested, must inform the Committee accordingly. If the Committee does not withdraw such a request, the Chief Executive may apply to the High Court for a determination in support of his or her opinion and the Chairperson of the Committee may also make an application. Pending the High Court determination, the Chief Executive shall not attend before the Committee and, if the High Court determines that the matter is the subject of proceedings before a court or Tribunal, the Committee must withdraw the request. If the High Court determines otherwise, the Chief Executive must attend before the Committee to account for the matter.

*Section 51* requires the Authority to submit an annual report to the Minister not later than 3 months after the end of each year and the Minister to lay the report before each House of the Oireachtas. A report must be in the form that the Minister may direct and include information on the performance of the Authority's functions during the year in question having regard to the strategy statement and the work programme, information on the performance of any agreement under *section 34(2)*, information on any annual report provided by a prescribed person under *section 33* and any other information the Authority considers appropriate or that the Minister may require. The Authority must publish its annual report and may, as appropriate, make other reports to the Minister.

## CHAPTER 2

### *Staff of Authority*

*Section 52* enables the Authority, with the consent of the Minister and the Minister for Finance, to appoint staff, who will be appointed on terms and conditions decided by the Authority with the consent of those Ministers. Remuneration and allowances for expenses of staff is payable out of monies at the disposal of the Authority with the consent of the above Ministers. The grades of the staff and the numbers of staff in each grade is determined by the Authority with the consent of the above Ministers. Staff employed by the Authority prior to the commencement of the Act will continue as members of staff after the commencement and at no less beneficial conditions of service or of remuneration than applied before the commencement.

*Section 53* provides that the Authority, in determining remuneration or allowances for expenses of staff or other terms or conditions of employment, must have regard to Government or nationally agreed guidelines applying from time to time and comply with any directives related thereto given by the Minister with the consent of the Minister for Finance.

*Section 54* relates to the arrangements for transfer to staff of the Authority of the officers of the Minister who may be on secondment to the Authority. Officers may be so transferred on the basis of a

designation order made by the Minister but the Minister must not make an order without having notified in writing an officer concerned and any recognised trade unions or staff associations concerned and having considered any representations made by them.

Unless negotiated under a collective agreement, an officer designated for transfer must not receive a lesser scale of pay or be subject to less beneficial terms and conditions of service than those which applied prior to transfer. Until such time as the scale of pay and the terms or conditions of service (other than those relating to tenure of office) of transferred officers are varied by the Authority following consultation with recognised trade unions and staff associations, the same scales of pay and terms and conditions of service will continue to apply and any variation made by the Authority cannot worsen those scales of pay or terms or conditions of service, except under a negotiated collective agreement.

Terms and conditions relating to tenure of office granted by the Authority to a transferred officer must not be less favourable than those applying for the time being in the civil service and any alteration in conditions applying to tenure of office must not make those conditions less favourable, unless negotiated under a collective agreement. Any dispute as to conditions applicable in the civil service will be determined by the Minister for Finance after consultation with the Minister. In the case of officers transferred to the Authority previous service in, or service reckonable for, superannuation benefits payable by the civil service is reckonable, subject to exceptions or exclusions, for the Redunancy Payments Acts 1967-2003, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973-2001, the Unfair Dismissals Acts 1977-2001 and the Terms of Employment (Information) Acts 1994 and 2001.

*Section 55* requires the Authority, following consultation with the Minister, to draw up and publish a code of conduct in respect of controls on staff interests and ethical behaviour to apply to each member of staff.

*Section 56* requires the Authority to prepare and submit to the Minister schemes for staff superannuation benefits and schemes amending or revoking schemes already approved. A scheme shall fix the time and conditions of retirement for staff to whom superannuation benefits are payable. Superannuation schemes approved by the Minister with the consent of the Minister for Finance must be carried out by the Authority in accordance with its terms. Any superannuation scheme in place under the 1989 Act will continue in operation after the commencement of the Act.

A superannuation scheme applying to an officer of the Minister transferred under *section 54* to the staff of the Authority must not contain terms and conditions less favourable than those which applied prior to transfer. Where a superannuation scheme is not in place under which benefits would have been paid in respect of service to the Minister of a person transferred under *section 54* to the staff of the Authority, those benefits shall be paid by the Authority based on pensionable service with the Authority plus previous pensionable service. Apart from that, the Authority can only pay superannuation benefits based on approved superannuation schemes or as approved of by Ministers. Any disputes on claims or amounts of superannuation benefit must be submitted to the Minister who will refer it to the Minister for Finance.

The Minister is required to lay before each House of the Oireachtas every approved superannuation scheme and amendment and if a resolution annulling the scheme is passed by either House within 21 days, the scheme is annulled but without prejudice to the validity of anything done under the scheme.

## PART 6

### REGULATIONS, CODES OF PRACTICE AND ENFORCEMENT

#### CHAPTER 1

##### *Regulations and Codes of Practice*

*Section 57* requires the Authority to keep under review health and safety laws, and certain other statutes, listed in *Schedule 1*, which could have a bearing on occupational safety and health, and to submit such proposals to the Minister as it considers appropriate from time to time. The Minister may also direct the Authority to undertake reviews of health and safety laws and, also, to assist in the preparation of draft legislation. The Authority, before submitting proposals to the Minister, is required to consult appropriate bodies.

*Section 58* gives power to the Minister to make Regulations either where matters are prescribed, or generally for the purposes of giving full effect to the Act and in respect of the matters set out in *Schedule 7*. Before making Regulations, other than on foot of a proposal by the Authority under *section 57*, the Minister must consult the Authority and may give public notice giving persons 21 days to make comments. The Minister must also consult the Authority if making Regulations with modifications which implement a proposal made by the Authority.

Regulations may contain incidental, supplementary and consequential provisions as necessary, may apply generally or to a specified class or classes of persons, places of work, work activities, article or substance or other matter, and may include different provisions in relation to different classes of persons, place of work, work activity, article or substance. Regulations may, subject to conditions, exempt from all or any of the provisions of health and safety laws, any specified class of work activity, employment, article or substance or any specified class of person or place of work where the Minister is satisfied that the application of those provisions is unnecessary or impracticable and that adequate protective measures are in place.

The Regulations may apply to all work activities or particular work activities and to chemical, physical or biological agents, the classification, packaging, labelling, marketing or use of any article or substance, the control of major accident hazards, the storage or transport of dangerous substances or to factories, the extractive industries, office premises or to boilers. Regulations may apply to employers or other persons who control places of work or specified places of work, employees or a particular classes of employees, or work activities or particular work activities, to designers, manufacturers, sellers or suppliers of articles, substances or personal protective clothing or

equipment, to places of work of a particular class or classes and any article or substance or class thereof. Regulations may incorporate, adopt, apply or make prescriptions by reference to, with or without any modifications, any code of practice issued under *section 60*.

The Minister is required to lay every Regulation or Order (other than an Order made under *section 1(2)*), before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the Regulation or Order is passed by either House within 21 days, the Regulation or Order is annulled. The power to make Regulations includes power to give effect to either any provision of the treaties of the European Communities or any act adopted by any institution of the European Communities, which regulates any matter set out in *Schedule 7*.

*Section 59* provides that references to the Minister (other than as regards making rules, regulations, bye-laws, orders, exemptions, or exceptions) contained immediately before the commencement of the Act in any existing enactment referred to in *Schedule 2* shall, insofar as they relate to functions exercisable by the Authority, be regarded as references to the Authority.

*Section 60* provides that the Authority can, and shall if requested by the Minister, draw up and publish codes of practice to give practical guidance to employers, employees and other persons with respect to safety, health and welfare at work as regards the requirements or prohibitions of any health and safety laws. The Authority may also approve of codes of practice or part of a code of practice made or published by another body. Before such publication or approval, the Authority must obtain the consent of the Minister, may publish a draft giving persons one month to comment (or a further 28 days), and, having considered representations made, submit a code to the Minister for consent to publication or approval, with or without modification.

Where the Authority publishes or approves of a code of practice, or part of, it must publish a notice in *Iris Oifigiúil* identifying the code, specifying the health and safety matters to which it relates and giving the date the code comes into operation. The Authority, with the consent of the Minister and having consulted other appropriate persons or bodies, may amend or revoke or withdraw its approval of any code of practice or part thereof. Where it does so, it must publish a notice in *Iris Oifigiúil*. The Authority must make available for public inspection without charge at its principal office during normal working hours a copy of each code of practice published or approved by it or amended by it.

Continuation is provided for in respect of codes of practice in force under the 1989 Act.

*Section 61* provides that where relevant, a code of practice is admissible in evidence in proceedings in relation to safety and health laws to which the code relates. Where an act or omission of the defendant is either a failure to observe a code of practice or is compliance with that code of practice, such failure or compliance is admissible in evidence. A document carrying the seal of the Authority and said to be a code of practice or part of a code of practice published or approved by the Authority is admissible in evidence in proceedings under the Act.

*Enforcement*

*Section 62* provides that the Authority can authorise persons as inspectors to enforce health and safety laws. Any person prescribed under *section 33* may also authorise inspectors. An inspector must be given a certificate of authorisation and, when requested, must produce the certificate or a copy of it and a form of personal identification. An authorisation as an inspector ceases to operate when the Authority or a person prescribed under *section 33*, revokes it. Continuance is provided for in the case of inspectors already authorised under the 1989 Act.

*Section 63* empowers the Authority, or a person prescribed under *section 33*, to designate in writing inspectors or other persons, who are registered medical practitioners to receive any notice, report or certificate required under health and safety laws to be sent by a registered medical practitioner. Such a designated person may invite persons exposed to risk of personal injury or other danger to health to provide biological samples to be examined medically at a designated place, including by another registered medical practitioner. Persons may also be asked to provide biological samples or to be medically examined for the purposes of comparing the state of health of persons in different places of work or specified places of work or in different places in the same place of work, with the health of other persons.

Provision is made so that references in health and safety laws to occupational medical advisors are read as references to persons designated under this section.

*Section 64* provides power for an inspector to enter any place of work and to enquire into, search, examine and inspect to check if health and safety laws are being complied with and to take along any necessary equipment or materials. An inspector can direct that a place of work be left undisturbed for an inspection or investigation, direct that a safety statement be amended, require an employer, an employee or owner or person in charge of a place of work to produce records, inspect and take copies or extracts of records, require access to computer records, remove and retain records, and require that records be maintained for set periods.

An inspector may direct an employer, an employee or owner or person in charge of a place of work to give information, assistance and facilities for the purposes of any search, examination, investigation, inspection or enquiry under health and safety laws. An inspector can summon persons by written notice to give information and to produce records but no person is required to give any answer or information likely to incriminate that person. An inspector can also require that any article be operated or set in motion and can take any measurements or photographs or make any tape, electrical or other recordings and install, use, and maintain monitoring instruments, systems and seals for the purposes of health and safety laws.

An inspector is also empowered to carry out or have carried out tests, examination or analysis of any article or substance found at the place of work and to require that any article or substance there be supplied to the inspector for testing, examination or analysis. In this case, the inspector can take advice on any dangers involved. An inspector can also cause any article or substance which appears to pose a risk to safety or health to be dismantled or subjected to any process or test in the presence of the employer or owner or person

in charge but not to damage or destroy it unless this is necessary for the purposes of health and safety laws. In this case, the inspector must leave a sample with a responsible person.

An inspector can also sample the atmosphere in a place of work and in that connection, remove any article or substance for examination, ensure that it is not tampered with and is kept available for use as evidence. An inspector may exercise such other powers as may be necessary for carrying out his or her functions.

When requested by an inspector for the purposes of an investigation or an inspection, an employer must divulge the name and address of the supplier of an article or substance.

An inspector cannot enter a dwelling except with the consent of the occupier or on foot of a District Court order. If an inspector is prevented from entering any place an application may be made to the District Court for a warrant authorising entry. If an inspector is obstructed in the course of duty he or she may be accompanied by a member of the Garda Síochána or any other person authorised by the Authority when performing functions. When an inspector has reasonable grounds for believing that a person has committed an offence under health and safety laws he or she may require that person to provide his or her name and address.

*Section 65* provides that an inspector may give a written direction to an employer requiring the submission of an improvement plan in the case of an activity presenting risk to the safety, health or welfare of persons. The direction must identify the activity, require the submission of the improvement plan within 1 month specifying remedial measures, require the employer to implement the plan and include any other necessary requirements. The inspector must give a copy of the direction to the safety representative, if there is one. Where an improvement plan is submitted to an inspector, the inspector must, within 1 month, confirm whether or not he or she is satisfied with the plan and may direct that the plan be revised and resubmitted.

*Section 66* provides that where an inspector is of the opinion that a person is breaching health and safety laws or has failed to submit a revised improvement plan or to implement an improvement plan under *section 65*, he or she can serve an improvement notice confirming and giving the reasons for the opinion, identifying the particular legal requirement which is in breach, directing that the matter be remedied within one month and include information on the appeal procedures and any other appropriate requirement. The notice must be signed and dated by the inspector.

An improvement notice can include directions on necessary remedies. The inspector must give a copy of the improvement notice to the safety representative, if there is one. Where the person on whom the notice is served is of the opinion that matters have been rectified, he or she must confirm this in writing to the inspector and send a copy to the safety representative. A person on whom a notice is served can appeal to the District Court within 14 days and the judge can confirm, vary, or cancel the notice. When making an appeal, the person must also notify the Authority, which is entitled to appear and give evidence in court.

Where an appeal has been taken and the notice is not cancelled, it takes effect on the later of the day following its confirmation or the day the appeal is withdrawn or the date of the notice. Where there is no appeal, the notice takes effect on the later of the end of

the period for making an appeal or the date of the notice. An inspector can withdraw an improvement notice at any time or, where no appeal is made or is pending, extend the 1 month period for remedying matters.

*Section 67* enables an inspector who is of the opinion that an activity at a place of work involves or could involve a risk of serious personal injury to any person, to serve a prohibition notice on the person in control of the activity. A prohibition notice must set out the inspector's opinion and the reasons for it, indicate the activity concerned and the health and safety laws which may be breached, prohibit the carry on of the activity until the matters giving rise to the risk are remedied and the notice must be signed and dated by the inspector.

The notice may include directions on safety measures to be taken and a copy must be given to the safety representative if there is one. The prohibition notice takes effect either immediately or, when appeal is taken, on the later of the day next following the day on which it is confirmed on appeal or the appeal is withdrawn or the date of the notice. The launch of an appeal does not suspend the operation of the notice but the appellant can apply to the court to have its operation suspended until the appeal is disposed of and the court, if it thinks fit, can suspend until the appeal is dealt with.

A person can, within 7 days of the service of a prohibition notice, appeal to the District Court and the judge can confirm, vary, or cancel the notice. Where a notice is confirmed the judge can, on the application of the appellant, suspend the operation of the notice for a specified period. A person who appeals a prohibition notice, or applies for suspension of the notice, must notify the Authority at the same time, giving the grounds of appeal, and the Authority is entitled to appear and give evidence on the appeal. Where a person on whom a prohibition notice has been served is of the opinion that the matters have been remedied by the due date he or she must so confirm in writing to the inspector and give a copy to the safety representative, if there is one.

An inspector may withdraw a prohibition notice at any time if satisfied that the activity no longer involves a risk of serious personal injury or is satisfied that the notice was issued in error or is incorrect. A withdrawal of the notice takes effect when the notice of withdrawal is given to the person on whom the notice was served. Its withdrawal does not prevent the service of any other prohibition notice.

*Section 68* provides that where activities are carried on in contravention of a prohibition notice served under *section 67*, the High Court may, on an application by an inspector, prohibit the continuance of the activities. The application to the High Court may be *ex parte* and the court may make an interim or interlocutory order and set down terms and conditions regarding the payment of costs.

*Section 69* provides that a person on whom an improvement notice or a prohibition notice is served must bring it to the attention of any person whose work is affected by the notice and display the notice or a copy of it in a prominent place at or near the place of work or article or substance affected by the notice.

*Section 70* provides that the Authority can direct one of its staff, or any other competent person, to investigate the causes and circumstances surrounding any accident, incident, illness, disease, occurrence or situation and to make a special report of the investigation

to the Authority. A person who is not an inspector carrying out such an investigation has all the powers of an inspector and the Authority may pay the person such fees and expenses as determined by the Minister with the approval of the Minister for Finance. The Authority can meet other costs incurred in preparing the report.

Any special report must be presented to the Minister as soon as practicable and the Authority can publish the report. The Authority must seek the consent of the Minister, given with the agreement of any other appropriate Minister, before commissioning a special report into an accident covered by the Air Navigation (Notification and Investigation of Accidents and Incidents) Regulations 1997, a rail accident or an accident in Irish waters (within the meaning of the Merchant Shipping (Investigation of Marine Casualties) Act 2000).

*Section 71* empowers the Authority, where it considers that the risk to the safety, health and welfare of persons is so serious that the use of a place of work or part of a place of work should be restricted or immediately prohibited until specified measures have been taken to reduce the risk to a reasonable level, to apply, *ex parte* to the High Court for an order restricting or prohibiting the use of the place of work or part thereof. The court can make any interim or interlocutory order it considers appropriate. Such an order has effect despite permission under any other statute for the use of the place of work. In the case of an application for the revocation or variation of an order the Authority is entitled to be heard.

### CHAPTER 3

#### *Obtaining and Disclosure of Information*

*Section 72* provides that the Authority can serve an information notice on a person requiring information to be furnished within a given period (which can be extended), as may reasonably be required for the performance of its functions. The person served with the notice can appeal within 7 days to the District Court and the judge can confirm, vary or cancel the notice and if confirmed, can suspend the operation of the notice for a set time. A person on whom the notice is served must, where no appeal is made, comply with it before the later of the appeal period or the end of the period, or its extension, set out in the notice for giving the information. Where an appeal is made and the information notice is confirmed or varied or the appeal is withdrawn, the person must comply with the notice by the day following its confirmation or variation or withdrawal, or by the end of the period set out in the notice or, where the operation of the notice has been suspended by a District Court judge, on the expiration of that period.

*Section 73* specifies that save as otherwise provided by law, a member of the Authority, a member of its staff, a member of an advisory committee, or consultant or advisor to the Authority or that person's employee cannot unless authorised by the Authority, disclose confidential information obtained while performing Authority functions. This does not apply to the disclosure of information in a report to the Authority or to the Minister.

The section also makes technical amendments to the Third Schedule of the Freedom of Information Act 1997 relating to the repeal of the Safety, Health and Welfare at Work Act 1989 and its replacement by new safety, health and welfare at work legislation.

*Section 74* amends the Freedom of Information Act 1997 by inserting references to records arising from the enforcement functions of the Authority in *section 46(1)* of that Act.

*Section 75* provides that the Revenue Commissioners may give information in relation to articles or substances imported into the State to the Authority or to an inspector where it facilitates the exercise of their functions under health and safety laws. The Minister for Health and Children and the Minister for Social and Family Affairs may give information to the Authority in relation to personal injuries to persons at work for the purposes of promoting the safety, health and welfare of persons at work.

A member of the Garda Síochána may give information to the Authority relating to personal injury to a person at work for the purposes of enforcement of health and safety laws. The Minister, having consulted any other appropriate Minister, can make Regulations naming other persons requiring them to give information in relation to personal injury to persons at work to facilitate promotion of safety, health and welfare at work.

*Section 76* enables an inspector to give to employees and their safety representatives (if any) factual information relating to a place of work or to any article or substance or activity being carried on, and also information on any action being taken by the inspector. Where an inspector discloses such information, the same information must be given to the employer.

An inspector is prohibited from disclosing any information relating to any manufacturing, trade or commercial secrets or work processes obtained in the performance of functions under the Act, except that this does not prevent the disclosure of information for the purpose of discharge of functions under the Act which is disclosed with the relevant consent, for the purposes of any legal proceedings or special report under *section 70*.

## PART 7

### *Offences and Penalties*

*Section 77* provides for two broad ranges of offences under the Act and under health and safety laws. The first category applies to less serious matters and the second category covers all of the more serious offences. The section provides for several other offences covering contraventions of particular sections or other specific matters. This section also provides that, in addition to the imposition of a fine in respect of an offence, a convicted person may also be ordered to take steps to remedy safety and health matters within a specific time.

The section provides that a person having duties under the Act who breaches health and safety laws is guilty of an offence if another person suffers any personal injury as a consequence of such breach unless the case has been heard and dismissed before the personal injury occurred or where the injury, excluding death, was not caused directly by the alleged breach.

A person charged with a summary offence under health and safety laws can have another person whom he or she charges as the actual offender brought before a court when the case is being heard. If the offence is proved and the first person satisfies the court that he or she used all due diligence to enforce health and safety laws and that

the second person committed the offence without his or her consent, connivance or wilful default, that person can be convicted and be liable to pay incidental costs and the first person is not guilty but may be cross examined by the prosecution.

Where an offence is committed through failure to meet the time deadline to do something, the offence is deemed to continue until that thing is done.

An employer does not have a defence in a case taken for breach of health and safety laws by reason of any act or default by an employee or by a competent person appointed under *section 18*.

*Section 78* provides for a fine under summary jurisdiction not exceeding €3,000 for a person guilty of an offence under the first category of offences set out in *section 77* applying to less serious offences. A person guilty of any other offence set out in *section 77* is liable, on summary conviction, to a fine not exceeding €3,000 or imprisonment up to 6 months or both or, on conviction on indictment, to a fine not exceeding €3 million or imprisonment for up to 2 years or both.

Nothing in this Section can be regarded as creating an indictable offence in respect of Regulations made under the European Communities Act 1972. In the case of a conviction, the Court, unless it is satisfied that there are special and substantial reasons for not doing so, must order the person convicted to pay the Authority's costs and expenses.

*Section 79* provides that where an inspector believes that an offence which will be set out in Regulations has been committed, he or she may serve the person with a notice of an on-the-spot fine indicating the offence and that a prosecution will not be instituted during the period of notice if a payment specified in the notice is made. A person on whom the notice is served has 21 days in which to make payment, which will not exceed €1,000 and which will be set out in Regulations. The Authority may receive payments, issue receipts and retain monies so paid which are not recoverable. The Authority may not initiate a prosecution in respect of the alleged offence during the period of the notice and, if the payment is made during that period, no prosecution can be launched. If a prosecution is taken, the onus is on the accused to prove that payment has been made.

*Section 80* provides that when an offence under health and safety laws is committed by an undertaking and the acts involved were authorised or consented to or were attributable to connivance or neglect on the part of a director, manager or other similar officer in the undertaking or a person acting in any such capacity, both the person and the undertaking will be guilty of an offence and liable to be proceeded against and punished as if the person was guilty of the offence committed by the undertaking. If it is proven in such a case that the person's duties included making decisions that affected the management of the undertaking, it is presumed, until the contrary is proved, that the acts which resulted in the offence were authorised, consented to or attributable to connivance or neglect on the part of that person. Where the affairs of a body corporate are managed by its members the above provisions apply to acts or defaults of the member as if he or she were a director of the body corporate.

*Section 81* provides that in proceedings where a breach of health and safety laws includes a failure to comply with a duty or requirement to do something as far as is practicable or so far as is reasonably practicable or to use the best practicable means to do something, it is for the accused to prove that it was not so practicable to comply with the duty or requirement.

*Section 82* empowers the Authority, or other person prescribed under *section 33*, to initiate proceedings for offences, and within 12 months from the date an offence was committed notwithstanding *Section 10(4)* of the Petty Sessions (Ireland) Act 1851. Where, arising from a special report made under *section 70* or from the proceedings from a coroner's inquest, it appears that there was a breach of health and safety laws, proceedings may be commenced within 6 months of the making of the special report or the conclusion of the inquest or 12 months after the date of the contravention, whichever is the later.

*Section 83* specifies that any person aggrieved by a District Court order determining a complaint under the Act may appeal to a judge of the Circuit Court and the decision of the judge of the Circuit Court is final and conclusive.

*Section 84* provides that if a person is found to be carrying on work in any place of work at any time that work is being carried on there, he or she is, unless the contrary is proved, deemed to be employed in that place of work by the person reasonably regarded as being in control, or by another employer carrying on work there. Where an entry is required to be made in any record under health and safety laws, the entry made by an employer, or on the behalf of an employer, is admissible in evidence against the employer as also is any failure to make an entry required when complying with health and safety laws. In any proceedings, a copy record may be given in evidence and stands as *prima facie* evidence if the court is satisfied that the system used to make the copy is reliable.

*Section 85* provides that the Authority may from time to time, compile and publish lists of names and addresses and business activities of persons on whom fines and penalties were imposed, or prohibition notices were served or in respect of whom interim or interlocutory orders were made under *section 71*. The list must include details, as the Authority thinks fit, of the matter involved and the fine, penalty, notice or order.

## PART 8

### *Miscellaneous*

*Section 86* requires a coroner to adjourn an inquest on a person whose death was caused by an accident or disease at work where an inspector, or other person on behalf of the Authority, is not present unless the jury think it unnecessary to adjourn the inquest. The Authority must be informed of the time and place of holding the adjourned inquest. This section contains other provisions excluding from the jury persons with personal interest in the undertaking, enabling persons on behalf of the Authority or the deceased or the employer and others to be entitled to examine witnesses including representatives of trade unions and associations of employers. If the Authority is not represented and evidence is given of neglect or defect in the place of work, the coroner must report this to the Authority. Provision is made for the adjournment of inquests in the case of criminal proceedings.

*Section 87* requires the Authority to indemnify inspectors against

actions or claims arising out of the enforcement of health and safety laws carried out in a bona fide manner. The section also provides that no action or proceedings shall lie or be maintainable against the Authority, or person prescribed under *section 33* or a person referred in *section 34(2)*, for the recovery of damages in respect of injury to persons, damage to property or loss alleged to happen, be caused or contributed to by a failure to perform or to comply with any functions under the Act.

*Section 88* gives power to the Revenue Commissioners to detain any article or substance, not longer than 48 hours, for examination by an inspector under health and safety laws.

*Section 89* enables the Minister, by Regulations, to list work activities which may not be carried on except under licence, to which conditions may be attached. The Authority has power to grant or refuse licences and can publish particulars of an application and invite comment. The Authority must keep a register of all licences granted and open it to inspection on payment of a fee. Where it refuses to grant a licence, the Authority must give a certificate stating the grounds for refusal and the applicant may appeal to the High Court, which shall either confirm the decision or direct the Authority to grant the licence. A decision of the High Court on an appeal under this section is final except that an appeal may be made to the Supreme Court on a specified question of law.

*Schedule 1* lists the associated statutory provisions.

*Schedule 2, part 1*, lists enactments which are existing enactments.

*Schedule 2, part 2*, lists Regulations made under the European Communities Act 1972, which are existing enactments.

*Schedule 3* sets out the general principles of prevention.

*Schedule 4* sets down the conditions attaching to safety committees.

*Schedule 5* provides for matters relating to appointments and procedures for the Health and Safety Authority.

*Schedule 6* specifies matters relating to the appointment and functions of the Chief Executive.

*Schedule 7* sets out the list of matters in respect of which Regulations may be made by the Minister under *section 58*.

#### *Financial implications*

The provisions in the Bill do not create appreciable additional costs to the Exchequer as they represent consolidation, with improvements, of existing laws which has been already in place over ten years. The State, as an employer, is obliged to comply with safety and health laws. However, better management of health and safety at work and reductions in accidents and illnesses will result in savings both to the State and to businesses generally. Injuries and ill health at work are conservatively estimated to cost the economy up to €1.6bn per annum. Any improvement in health and safety performance consequent on the Bill will yield economic benefits including as regards social insurance and health service costs, as well as social benefits.

*An Roinn Fiontar, Trádála agus Fostaíochta,  
Meitheamh, 2004.*