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CHAPTER F5

FACTORIES ACT

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FACTORIES ACT

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FACTORIES ACT

PRELIMINARY

Definition of "factory"

1. In this Act, "factory" means any premises included in Schedule 1.

Interpretation

2. (1) In this Act and in any regulations or orders made thereunder—

"air receiver" means—

(a) any vessel (other than a pipe or coil, or an accessory, 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 or compressed exhaust gases and used for the purpose of starting an internal combustion engine;

(c) any fixed or portable vessel (not being part of a spraying pistol) used for the purpose of spraying by means of compressed air any paint, varnish, lacquer or similar material; or

(d) any vessel in which oil is stored and from which it is forced by compressed air;

"bodily injury" includes injury to health;

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

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

"contravention", in relation to any provision, includes a failure to comply with the provision and the expression "contravene" shall be construed accordingly;

"driving-belt" includes any driving strap or rope;

"fume" includes gas or vapour;

"harbour" includes harbours properly so called, whether natural or artificial, piers, jetties and other works in or at which ships can obtain shelter, or ship or unship goods or passengers;

"inspector" means the Factory Inspector appointed under this Act;

"machinery" includes any driving belt;

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

"mine" includes any place, excavation or working whereon, wherein, or whereby any operation in connection with mining is carried on, but does not include a quarry;

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

"parent" means a parent or guardian of, or person having the legal custody of, or the control over, a child or young person, and includes in relation to any child or young person, any person having direct benefit from his wages;

"prescribed" means prescribed by regulation under this Act or by order of the Governor in Council;

"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;

"process" includes the use of any locomotive;

"quarry" means any excavation for the purpose of mining stone, slate, granite or other igneous or metamorphic rocks, quartz, marble, flint, chalk, gravel, sand, clay or gypsum, together with all buildings, erections, plant, machinery, railways, appliances, stores, waste heaps and dumps belonging or appertaining thereto;

"railway" means any railway used for the carriage of passengers or goods and includes any works of the railway company connected with the railway;

"salt works" means any works in which the extraction of salt from brine is carried on or in which salt is produced by refining rock salt by its dissolution at the place of deposit or otherwise;

"sanitary conveniences" includes urinals, waterclosets, earthclosets, privies, ashpits, and any similar convenience;

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

"steam container" means any vessel (other than a steam pipe or coil) constructed with a permanent outlet into the atmosphere or into a space where the pressure does not exceed atmospheric pressure, and through which steam is passed at atmospheric pressure, or at approximately that pressure, for the purpose of heating, boiling, drying, evaporating or other similar purpose;

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

"stone" includes all kinds of limestone, sandstone, calcareous sandstone or basalt;

"tenement factory" means any premises where mechanical power from any prime mover within the close or curtilage of the premises is distributed for use in manufacturing processes to different

parts of the same premises occupied by different persons in such manner that those parts constitute in law separate factories;

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

"woman" means a woman who has attained the age of 18 years;

"work of engineering construction" means the construction of any railway line or siding otherwise than upon an existing railway, and the construction, structural alteration or repair (including re-pointing and re-painting) or the demolition of any dock, harbour, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, sewage works, or gasholder, except where carried on upon a railway and shall include such other works as may be specified by regulation made by the Governor in Council;

"young person" means a person who has attained the age of 14 years and has not attained the age of 18 years.

(2) A woman, young person, or child who works in a factory, whether for wages or not, either in a process or in cleaning any part of the factory used for any process, or in cleaning or oiling any part of the machinery or plant, or in any other kind of work whatsoever incidental to or connected with the process, or connected with the article made or otherwise the subject of the process therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein for the purposes of this Act or of any proceedings thereunder.

(3) A young person who works in a factory, whether for wages or not, in collecting, carrying or delivering goods, carrying messages or running errands, shall be deemed to be employed in the factory for the purposes of this Act or of any proceedings thereunder.

(4) For the purposes of this Act, an apprentice shall be deemed to be a person employed.

Provisions of Act to be additional

3. Except where otherwise expressly provided, the provisions of this Act shall be in addition to, and not in substitution for, or diminution of, the provisions of any other Act.

PART 1

APPLICATION OF ACT

General application

4. Save as in this Act otherwise expressly provided, the provisions of this Act shall apply only to factories as defined by this Act, but shall, except where the contrary intention appears, apply to all such factories.

Application to factories belonging to Government

5. (1) This Act shall apply to factories belonging to or in the occupation of Her Majesty's Government in the United Kingdom or the Government of Anguilla and to building operations and works of engineering construction undertaken by or on behalf of Her Majesty's Government in the United Kingdom or the Government of Anguilla; but in the case of any public emergency the Governor may, by regulation, to the extent and during the period named in the regulation, exempt from this Act any factory belonging to Her Majesty's Government in the United Kingdom or the Government of Anguilla or any building operations or works of engineering construction undertaken by or on behalf of Her Majesty's Government in the United Kingdom or the Government of Anguilla or any factory in respect of work which is being done on behalf of Her Majesty's Government in the United Kingdom or the Government of Anguilla.

(2) In this section—

"Government of Anguilla" includes any department thereof;

"Her Majesty's Government in the United Kingdom" includes any department thereof.

Application of specific provisions

6. The Governor in Council may by regulation declare that the provisions of certain sections of this Act shall be applicable to tenement factories, electrical stations, premises in which steam boilers are used, premises in which hoists and lifts are used, institutions, docks, wharves, quays (including any warehouses in connection with same), and other warehouses, ships on which work is being carried out in harbour or wet dock, building operations, works of engineering construction.

Responsibility where part of building is separate factory

7. Where a part of a building is let off as a separate factory, the Governor in Council may by regulation declare which sections of this Act are to be the responsibility of the owner of the building and which the responsibility of the occupier of the factory.

PART 2

HEALTH, SAFETY AND WELFARE

Health

8. (1) The occupier of every factory shall—

(a) keep the factory in a clean state;

(b) not permit the factory to be overcrowded;

(c) maintain a reasonable temperature in the factory;

(d) secure adequate ventilation in the factory;

(e) provide suitable and sufficient lighting therein;

(f) provide effective means for draining floors; and

(g) provide suitable and sufficient sanitary conveniences for the use of the persons employed in the factory.

(2) The Governor in Council may make regulations prescribing the standards to be achieved in respect to any of the above obligations and the methods of attaining them.

(3) The Governor in Council may make regulations prohibiting the employment of any young person in a factory after a prescribed period of time, being not less than 7 days, unless he has been examined by a duly qualified medical practitioner and certified by him to be fit for that employment.

(4) Such regulations may apply to all factories or to such prescribed classes or descriptions of factories and to all young persons or to prescribed classes and descriptions of young persons.

(5) Such regulations may also prescribe the conditions and procedure under which certificates are to be issued.

(6) The Governor in Council may make regulations requiring arrangements to be made for medical supervision in any factory.

Safety

9. (1) For the purpose of securing the safety of persons employed in or performing any duty in a factory, the following provisions shall apply to every factory—

(a) there shall so far as is reasonably practicable be provided and maintained safe means of access to every place at which any person has at any time to work;

(b) adequate measures shall be taken for the prevention of fire in every factory and the provision of adequate means of escape in case of fire for the persons employed therein;

(c) where in any factory explosive or inflammable dust, gas, vapour or substance is present, precautions shall be taken in order to reduce the risk of fire or explosion to a minimum;

(d) all machinery used and every part thereof which is in use in any factory shall be made safe to all persons employed or working in the factory and for this purpose the word "machinery" shall be deemed to include—

(i) every machine and every part thereof,

(ii) prime movers and every part thereof, and

(iii) transmission machinery including every shaft, wheel, drum, pulley, system of fast and loose pulleys, driving-belt or chain, couplings, clutch or other device by which the motion of a prime mover is transmitted to or received by any machinery or appliance;

(e) every steam boiler, steam container, steam receiver, air receiver, gas holder or other pressure vessel used in any factory shall be operated and maintained in such a manner as to be safe to persons employed or working in the factory;

(f) all chains, ropes and lifting tackle, cranes and other lifting machines, hoists and lifts used in any factory shall be operated and maintained in such a manner as to be safe to persons employed in the factory;

(g) all floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and every part of the ways, works, machinery or plant used in the factory shall be used in such a condition or so constructed, or so placed that it can be used without risk of bodily injury.

(2) The Governor in Council may make regulations prescribing the standards to be achieved in respect to any of the above obligations and the methods of attaining them.

(3) If on complaint by an inspector the Magistrate is satisfied that any part of the ways, works, machinery or plant used in a factory is dangerous or cannot be used without danger, or that any process or work in a factory is carried on in such a manner as to be dangerous, the Magistrate may by order prohibit the use of the factory or part thereof or of the machinery or plant either absolutely or until the danger is remedied.

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

Welfare

10. (1) The Governor in Council may make regulations requiring such steps to be taken in connection with securing the welfare of persons employed in any factory as may be specified in such regulations. Such regulations—

(a) may be made for any particular factory, or for factories of any class or description, or for any class of persons employed in any factory; and

(b) may in particular require—

(i) the provision of an adequate supply of wholesome drinking water,

(ii) the provision of washing facilities,

(iii) the provision of accommodation for clothing not worn during working hours and for drying such clothing,

(iv) the provision for the use of employed persons of suitable facilities for sitting during the course of their employment,

(v) the provision and maintenance so as to be readily accessible of a first-aid box or first-aid equipment, and

(vi) the provision and maintenance of such other arrangements as appear to him to be necessary, including canteens, mess-rooms, rest rooms, and welfare supervision.

(2) The Governor in Council may make regulations prescribing the standards to be achieved in respect to the above regulations and the methods of attaining them.

Special protective measures

11. (1) The Governor in Council may make regulations prescribing the measures to be taken to protect the persons employed against the inhalation of any dust, fumes or other impurities likely to be injurious or offensive to persons employed.

(2) No persons shall be permitted to partake of food or drink in any room where any lead, arsenic or other poisonous substance is used.

(3) The Governor in Council may by regulation prohibit the taking of meals in any room where he is satisfied that it may be undesirable or injurious to health to take meals in such rooms.

(4) Suitable provision shall be made for enabling persons employed in any such room to take their meals elsewhere in the factory.

(5) The Governor in Council may by regulation specify any process which involves a special risk of injury to the eyes and may require the provision of suitable goggles or effective screens to protect the eyes of the persons employed in that process.

(6) Where in any factory workers are employed in any process involving exposure to wet or to any injurious or offensive substance, the Governor in Council may by regulation require the provision and maintenance of suitable protective clothing and appliances, including, where necessary, suitable gloves, footwear, goggles and head coverings for the use of such workers.

(7) No person shall use white phosphorus in the manufacture of matches.

(8) For the purpose of this Part the expression "white phosphorus" means the substance usually known as white or yellow phosphorus.

(9) The Governor in Council may make regulations to secure the health and welfare of workers employed in any factory in which atmospheric humidity is artificially produced by steaming or other means in connection with any textile process.

(10) The Governor in Council may make regulations prohibiting or restricting the carrying on of work in any underground room, and may prescribe the standards of construction, height, light, ventilation, any hygienic conditions and the means of escape in case of fire to be provided in any such workroom in which work is permitted to be carried on.

(11) In every laundry effective steps shall be taken to regulate the temperature in every ironing room and to carry away the steam in every washhouse and all stoves for heating irons shall be so separated from any ironing room or ironing table so as to protect the workers from the heat thereof.

(12) The Governor in Council may make regulations prescribing the maximum weights which may be lifted, carried, or moved by persons employed in factories; and any such regulation may prescribe different weights in different circumstances, and may relate either to persons generally or to any class of persons, or to persons employed in any class or description of factory or in any process.

(13) Where the Governor in Council is satisfied that any manufacture, machinery, plant, equipment, appliance, process or description of manual labour used in factories is of such a nature as to cause risk of bodily injury or be offensive to the persons employed, or any class of those persons he may, subject to the provisions of this Act, make such special regulations as appear to him to be reasonably practicable and to meet the necessity of the case.

(14) Such regulations as mentioned in subsection (13) may prohibit or restrict the employment of all persons or any class of persons in circumstances specified in the regulations, may prohibit, limit or control the use of any material or process and may apply to all factories or to any specific class or description of such factories, may provide for exemption in prescribed circumstances and may impose obligations on owners of factories, employed persons and other persons, as well as on the occupiers of factories.

PART 3

MISCELLANEOUS

Notice of occupation of factory, and use of mechanical power

12. Every person shall, not less than 1 month before he begins to occupy, or to use premises as, a factory, serve on the inspector a written notice stating the particulars prescribed in Schedule 2, and if he fails to do so, he is guilty of an offence and is liable on conviction to a fine of $1,000 or $400 for each day since the expiration of the month aforesaid, whichever is the greater, or to imprisonment for 2 months or to both.

Notices, records, etc.

13. The Governor in Council may by regulation require—

(a) such notices to be posted in any factory;

(b) such registers and records to be kept; and

(c) such returns of persons employed to be submitted;

as may appear to him to be necessary.

Protection of outworkers

14. The Governor in Council may make regulations to facilitate the protection of persons employed outside a factory by the occupier of the factory in the business of the factory.

Duties of person employed

15. (1) No person employed in a factory or in any other place to which any provisions of this Act apply shall wilfully interfere with or misuse any means, appliance, convenience or other thing

provided in pursuance of this Act for securing the health, safety or welfare of the persons employed in the factory or place, and where any means or appliance for securing health or safety is provided for the use of any such person under this Act, he shall use the means or appliance.

(2) No person employed in a factory or in any other place to which any provisions of this Act apply shall wilfully and without reasonable cause do anything likely to endanger himself or others.

Prohibition of deductions from wages

16. The occupier of a factory shall not in respect of anything to be done or provided by him in pursuance of this Act make any deduction from the sum contracted to be paid by him to any person employed or receive or allow any person in his employment to receive any payment from any such person.

PART 4

ADMINISTRATION

Appointment of inspector and other officers

17. (1) The Factory Inspector shall be responsible for the administration of this Act except insofar as the Governor in Council may impose certain duties on other Government officers.

(2) The Governor may appoint a Factory Inspector, under whatever title he may from time to time determine and with such duties as he may from time to time assign, and such other officers as he thinks necessary for the execution of this Act and may remove such inspector and other officers.

Powers of inspector

18. (1) An inspector shall, for the purpose of the execution of this Act, have power to do all or any of the following things, that is to say—

(a) to enter, inspect and examine, by day or by night, a factory, and every part thereof, when he has reasonable cause to believe that any person is employed therein, and to enter, inspect and examine by day, any place which he has reasonable cause to believe to be a factory and any part of any building of which a factory forms part and in which he has reasonable cause to believe that explosive or highly inflammable materials are stored or used;

(b) to take with him a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;

(c) to require the production of the registers, certificates, notices and documents, directed to be kept in pursuance of this Act and to inspect, examine and copy any of them;

(d) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with, so far as respects a factory and any persons employed in a factory;

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

(f) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, every person whom he finds in a factory or whom he has reasonable cause to believe to be or to have been within the preceding 3 months employed in a factory, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined; so, however, that no one shall be required under this provision to answer any question or to give any evidence tending to incriminate himself;

(g) in the case of an inspector who is a duly qualified medical practitioner, to carry out such medical examinations as may be necessary for the purposes of his duties under this Act;

(h) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) An inspector if so authorised in writing by the Labour Commissioner may, although he is not a qualified legal practitioner, prosecute, conduct or defend in any legal proceedings arising under this Act or in the discharge of his duties as the inspector.

(3) Where an inspector is of opinion that the employment of any young person in a factory or in any particular process or kind of work in a factory is prejudicial to his health or the health of other persons, he may serve written notice thereof on the occupier of the factory requiring that the employment of that young person in the factory or in the process or kind of work, as the case may be, be discontinued after the period named therein, not being less than 1 nor more than 7 days after the service of the notice and the occupier shall not continue after the period named in the notice to employ that young person, unless, after the service of the notice, the young person has been examined by a duly qualified medical practitioner, and certified by him to be fit for employment in the factory or in the process or kind of work, as the case may be.

(4) An inspector may take for analysis samples of material used, or intended to be used, in a factory, which he thinks may prove on analysis to be likely to cause bodily injury to the persons employed.

(5) The Governor in Council may make regulations prescribing the procedure to be followed in taking samples.

Certificate of appointment of inspector

19. Every inspector shall be furnished with a certificate of his appointment, and when visiting a factory or place to which any of the provisions of this Act apply, shall, if required, produce the certificate to the occupier of, or other person holding a responsible position of management at, the factory.

Duty to furnish means for inspector

20. The occupier of every factory, his agents and employees shall furnish the means required by an inspector as necessary for an entry, inspection, examination, inquiry, the taking of samples, or otherwise for the exercise of his powers under this Act in relation to that factory.

Penalty for disclosure of trade secrets

21. If any person who, in pursuance of powers conferred by this Act or any regulations or orders made thereunder, enters or is admitted into any factory or place discloses, without the permission of the occupier to any person any information obtained by him in a factory or place with regard to any manufacturing process or trade secret, he is, unless such disclosure was made in the performance of his duty, guilty of an offence and is liable to a fine of $4,000 or imprisonment for a term of 6 months or to both.

Issue and revocation of certificates

22. Any certificate issued under or for the purposes of this Act by an inspector may be issued for a limited period or without limit of period and may be varied or revoked by the inspector issuing the same, or any successor in office.

Provisions as to regulations and orders made under this Act

23. Any regulation or order made under this Act may be made for a limited period or without limit of period, and may be made subject to such conditions as the authority or persons which or who made the regulation or order thinks fit, and may contain such supplemental and consequential provisions as that authority or person considers necessary for giving full effect to the regulation or order.

PART 5

OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

Offences

24. (1) In the event of any contravention in or in connection with or in relation to a factory of the provisions of this Act, or of any regulation or order made thereunder, the occupier or (if the contravention is one in respect of which the owner is by or under this Act made responsible) the owner, of the factory is, subject as hereinafter in this Act provided, guilty of an offence.

(2) In the event of a contravention by an employed person of the provisions of this Act with respect to duties of persons employed or of a contravention by any person of any regulation or order made under this Act which expressly imposes any duty upon him, that person is guilty of an offence and the occupier or owner, as the case may be, is not guilty of an offence in respect of that contravention unless it is proved that he failed to take all reasonable steps to prevent the contravention.

(3) If the occupier of a factory avails himself of any special exception allowed by or under this Act and fails to comply with any of the conditions attached to the exception, he shall be deemed to have contravened the provisions of this Act.

(4) If any persons are employed in a factory otherwise than in accordance with the provisions of this Act or of any regulation or order made thereunder, there shall be deemed to be a separate contravention in respect of each person so employed.

(5) Where an offence under this Act committed by a company, co-operative society or other body of persons is proved to have been committed with the consent or connivance of, or to have been

facilitated by any neglect on the part of, any director, chairman, manager, secretary or other officer of the company, co-operative society or other body of persons, he, as well as the company, co-operative society or other body of persons, is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly.

Provisions regarding continuing offences

25. It is hereby declared that where the contravention of any provision of this Act is a continuing offence—

(a) the recommencement of such offence after any interval constitutes a fresh offence; and

(b) a prosecution may be instituted, and the person accused may be convicted and sentenced, from time to time in relation to any portion of the period during which the offence continues to be committed, not being a portion of such period in relation to which the person accused has been previously convicted and sentenced for the offence.

Fines for offences for which no express penalty provided

26. Subject as hereinafter in this Act or in any regulations or orders made thereunder provided, any person guilty of an offence under this Act or in any regulations or orders made thereunder for which no express penalty is provided by this Act or in any regulations or orders made thereunder is liable to a fine of $4,000, and, if the contravention in respect of which he was so convicted is continued after the conviction he is (subject to the provisions of section 27) guilty of a further offence and liable in respect thereof to a fine of $400 for each day on which the contravention was so continued.

Power of court to order cause of contravention to be remedied

27. Where the occupier or owner of a factory is convicted of an offence under this Act, the court may, in addition to or instead of inflicting a fine, order him, within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time so specified, and where such an order is made, the occupier or owner shall not be liable under this Act in respect of the continuation of the contravention during the time allowed by the court, but if, after the expiration of that time as originally specified or enlarged by subsequent orders, the order is not complied with, the occupier or owner, as the case may be, is liable to a fine of $400 for each day on which the non-compliance continues.

Fines in case of death or injury

28. If any person is killed, or dies, or suffers any bodily injury, in consequence of the occupier or owner of a factory having contravened any provision of this Act or of any regulation or order made thereunder, the occupier or owner of the factory is, without prejudice to any other penalty, liable to a fine of $20,000, and the whole or any part of the fine may be applied for the benefit of the injured person or his family or otherwise as the Governor in Council determines, but—

(a) in the case of injury to health, the occupier or owner is not liable to a fine under this section unless the injury was caused directly by the contravention; and

(b) the occupier or owner is not liable to a fine under this section if proceedings against him under this Act in respect of the act or default by which the death or injury was caused have taken place and been dismissed before the death or injury occurred.

Fine for offence by parent

29. If a young person is employed in any factory in contravention of the provisions of this Act, the parent of the young person is guilty of an offence and is liable to a fine of $1,000, unless it appears to the court that the contravention occurred without the consent, connivance or wilful default of the parent.

Forgery of certificates, false entries, and false declarations

30. If any person—

(a) forges or counterfeits any certificate required by, under, or for the purposes of, this Act or any order or regulation made thereunder;

(b) gives or signs any such certificate knowing it to be false in any material particular;

(c) knowingly utters or makes use of any such certificate so forged, counterfeited, or false as aforesaid;

(d) knowingly utters or makes use of as applying to any person any such certificate which does not so apply;

(e) personates any person named in any such certificate;

(f) falsely pretends to be an inspector;

(g) wilfully connives at any such forging, counterfeiting, giving, signing, uttering, making use, personating or pretending as aforesaid;

(h) wilfully makes a false entry in any register, notice, certificate, or document required by, under or for the purposes of this Act or any order or regulation made thereunder to be kept or served or sent;

(i) wilfully makes or signs a false declaration required by, under or for, the purposes of this Act or any order or regulation made thereunder; or

(j) knowingly makes use of any such false entry or declaration as aforesaid;

he is, without prejudice to any other penalty, guilty of an offence under this Act, and is liable to a fine of $20,000 or to imprisonment for a term of 1 year.

Penalty for person actually committing offence for which occupier is liable

31. Where an act or default for which an occupier or owner is liable under this Act is in fact the act or default of some agent, servant, worker or other person, that agent, servant, worker or other person is guilty of an offence and liable to the like fine as if he were the occupier or owner, as the case may be.

Penalty for obstruction, etc.

32. (1) Any person who—

(a) obstructs or delays an inspector in the due exercise of any power conferred on him by or under this Act;

(b) refuses to answer, or answers falsely, any inquiry authorised by or under this Act to be made;

(c) fails to produce any register, certificate, book, or document, he is required by or under this Act to produce; or

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

is guilty of an offence and is liable on conviction to a fine of $1,000 or to imprisonment for a term of 3 months or to both, and, in the case of a second or subsequent conviction under this section within 2 years from the last conviction for the same offence, to a fine of $2,000 or to imprisonment for a term of 6 months or to both.

(2) Where an offence against subsection (1) is committed in a factory by a person other than the occupier thereof, both that person and the occupier of the factory are guilty of that offence.

Power of occupier or owner to exempt himself from liability on conviction of the actual offender

33. (1) Where the occupier or owner of a factory is charged with an offence under this Act, he shall be entitled, upon information duly laid by him and on giving to the prosecution not less than 3 days' notice in writing of his intention, to have any other person whom he charged as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the occupier or owner of the factory proves to the satisfaction of the court—

(a) that he has used all due diligence to enforce the execution of this Act and of any relevant order or regulation made thereunder; and

(b) that the other person had committed the offence in question without his consent, connivance or wilful default;

that other person shall be summarily convicted of the offence, and the occupier or owner shall not be guilty of the offence and the person so convicted is also liable, in the discretion of the court, to pay any costs incidental to the proceedings. The prosecution shall have the right in any such case to cross-examine the occupier or owner if he gives evidence and any witnesses called by him in support of his charge, and to call rebutting evidence.

(2) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—

(a) that the occupier or owner (as the case may be) of the factory has used all due diligence to enforce the execution of this Act;

(b) by what person the offence has been committed; and

(c) that it has been committed without the consent, connivance or wilful default of the occupier or owner and in contravention of his orders;

the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the occupier or owner of the factory.

Proceedings against persons other than occupiers or owners

34. Where, under this Act, any person is substituted for the occupier or owner with respect to any provisions of this Act, any order, summons, notice, or proceeding, which for the purpose of any of those provisions is by or under this Act required or authorised to be served on or taken in relation to the occupier or owner, is hereby required or authorised (as the case may be) to be served on or taken in relation to that person.

Owner of machine liable in certain cases instead of occupier

35. Where in a factory the owner or hirer of a machine or implement moved by mechanical power is some person other than the occupier of the factory, the owner or hirer shall, so far as respects any offence under this Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

Prosecution of offences and recovery and application of fines

36. (1) In any proceedings under this Act, it shall be sufficient in the information to allege that the factory is a factory within the meaning of this Act and to state the name of the ostensible occupier of the factory, or, where the occupier is a firm, or company, the title or name of such firm or company.

(2) Where, with respect to or in consequence of any accident in a factory, a report is made by any authority appointed to hold a formal investigation under any law, or a coroner's inquest is held, and it appears from the report, or from the proceedings at the inquest, that any of the provisions of this Act, or any orders or regulations made thereunder, were not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect of such non-compliance may be commenced at any time within 3 months after the making of the report or the conclusion of the inquest.

(3) Where any offence is committed under this Act by reason of a failure to make an examination, enter a report, or do any other thing, at or within a time specified by this Act or any regulation or order made thereunder, the offence shall be deemed to continue until the examination is made, or the report entered, or the other thing done, as the case may be.

(4) Where a proceeding is taken before a court with respect to an offence under this Act alleged to be committed in or with reference to a factory, no person shall be qualified to act as a member of the court who is the occupier, or owner of the factory, or the husband, wife, parent, son, daughter, brother, or sister of the occupier or owner of the factory, or a person engaged in, or an officer of any association of persons engaged in, the same trade or occupation as any person charged with the offence.

Special provisions as to evidence

37. (1) If a person is found in a factory at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the factory but this subsection

shall not apply to a factory in which the only persons employed are members of the same family dwelling there.

(2) Where in any proceedings under this Act with respect to a young person it appears to the court that that young person is apparently of or below the age alleged by the informant, it shall lie on the defendant to prove that the young person is not of or below that age.

(3) Where any entry is required by this Act or by any order or regulations made thereunder to be made, the entry made by the occupier of a factory or on his behalf shall, as against him, be admissible as evidence of the facts therein stated, and the fact that any entry so required with respect to the observance of any provision of this Act or of any order or regulation made thereunder has not been made, shall be admissible as evidence that the provision has not been observed.

Service and sending of documents, etc.

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

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

(b) on any firm or company by delivering it to any partner of the firm or any director, chairman, manager, secretary or other officer of the company, or by leaving it at, or sending it by post to, the office or the registered office of the firm or company; or

(c) on the owner or occupier of a factory (including any such owner or occupier being a limited company), in any such manner as aforesaid, or by delivering it, or a true copy thereof, to any person apparently not under the age of 16 years at the factory.

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

(3) The foregoing provisions of this section shall apply with the necessary modifications to documents required or authorised under this Act to be sent to any person, firm, owner or occupier, and to the sending, addressing, and delivery of such documents.

Certificates of birth

39. Where the age of any person is required to be ascertained or proved for the purposes of this Act any person shall, on application and on payment of the prescribed fee, be entitled to obtain a certified extract under the hand of the Registrar-General of the entry in the register under the Registration of Births, Deaths and Marriages Act, of the birth of that person.

Power of court to modify agreements

40. If by reason of an agreement between the owner and the occupier of premises the whole or any part of which has been let as a factory the owner or occupier is prevented from carrying out any structural or other alterations in the premises which are necessary to enable him to comply with the provisions of this Act or of any regulation or order made under this Act or in order to conform with any standard or requirement imposed by or under this Act, he may apply in accordance with Rules of Court to the High Court, and the Court, after hearing the parties and any witnesses whom they desire

to call, may make such an order setting aside or modifying the terms of the agreement as the Court considers just and equitable in the circumstances of the case.

Power of Court to apportion expenses

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

Citation

42. This Act may be cited as the Factories Act, Revised Statutes of Anguilla, Chapter F5.

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SCHEDULE 1

(Section 1)

INTERPRETATION OF EXPRESSION "FACTORY"

(1) Subject to the provisions of this Act, the expression "factory" means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely—

(a) the making of any article or of part of any article;

(b) the altering, repairing, ornamenting, finishing, cleaning or washing, or the breaking up or demolition of any article; or

(c) the adapting for sale of any article;

being premises in which, or within the close or curtilage or precincts of which, the work is carried on 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; and (whether or not they are factories by reason of the foregoing definition) the expression "factory" also includes the following premises in which persons are employed in manual labour, that is to say—

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

(e) any premises in which the business of sorting any articles is carried on as a preliminary to the work carried on in any factory or incidentally to the purposes of any factory;

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

(g) any laundry carried on as ancillary to another business, or incidentally to the purposes of any public institutions;

(h) any premises in which the construction, reconstruction or repair of locomotives, 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 any premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out;

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

(j) any premises in which the business of making or mending nets is carried on incidentally to the fishing industry;

(k) any premises in which mechanical power is used in connection with the making or repair of articles of metal or wood incidentally to any business carried on by way of trade or for purposes of gain;

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

(m) any waterworks or other premises in which mechanical power is used for the purposes of, or in connection with, a public water supply;

(n) any irrigation works in which mechanical power is used and any pumping station used in connection with any irrigation works;

(o) any quarry;

(p) any salt works.

(2) Any line or siding (not being part of a railway) which is used in connection with and for the purposes of a factory, shall be deemed to be part of the factory; if any such line or siding is used in connection with more than one factory belonging to different occupiers, the line or siding shall be deemed to be a separate factory.

(3) A part of a factory may, with the approval in writing of the Factory Inspector, be taken to be a separate factory and 2 or more factories may, with the like approval, be taken to be a single factory.

(4) Any workplace in which, with the permission of or under agreement with the owner or occupier, 2 or more persons carry on any work which would constitute the workplace a factory, if the persons working therein were in the employment of the owner or occupier, shall be deemed to be a factory for the purposes of this Act, and, in the case of any such workplace not being a tenement factory or part of a tenement factory, the provisions of this Act shall apply as if the owner or occupier of the workplace were the occupier of the factory and the persons working therein were persons employed in the factory.

(5) No premises in or adjacent to and belonging to any mine (not being a quarry), being premises in which the only process carried on is a process ancillary to the getting, dressing or preparation for sale of minerals shall be deemed to be a factory.

(6) Where a place situated within the close, curtilage, or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act, but shall, if otherwise it would be a factory, be deemed to be a separate factory.

(7) Premises shall not be excluded from the definition of a factory by reason only that they are open air premises.

(8) Where the inspector, by certificate in writing, so directs as respects all or any purposes of this Act, different branches or departments of work carried on in the same factory shall be deemed to be different factories.

(9) Any premises belonging to or in the occupation of Her Majesty's Government or any department thereof, or of the Government of Anguilla or any department thereof, or of any local authority, shall not be deemed not to be a factory, and building operations or works of engineering construction undertaken by or on behalf of Her Majesty's Government or any department thereof, or the Government of Anguilla or any department thereof, or of any local authority, shall not be excluded from the operation of this Act, by reason only that the work carried on thereat is not carried on by way of trade or for purposes of gain.

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SCHEDULE 2

(Section 12)

PARTICULARS TO BE SUBMITTED BY OCCUPIER, OR INTENDING OCCUPIER, OF A FACTORY

1. Name of the occupier or intending occupier of the factory.

2. Address and location of the factory.

3. Nature of the work carried on, or proposed to be carried on, in the factory.

4. Whether mechanical power is used or intended to be used and, if so, its nature.

5. Whether steam boilers are used or intended to be used and, if so, the following particulars in respect of each such boiler—

(a) type, description and distinctive number;

(b) country and year of manufacture;

(c) date of the last thorough examination and name of the person by whom the examination was made;

(d) maximum permissible working pressure in pounds per square inch.

6. Total number of persons employed, or intended to be employed, in the factory.

7. Where persons are employed, or intended to be employed, in shifts, the maximum number employed, or intended to be employed, at any one time.

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