

PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

NATIONAL INSTITUTE OF OCCUPATIONAL

SAFETY AND HEALTH ACT, No. 38 OF 2009

[Certified on 23rd July, 2009]

Printed on the Order of Government

Published as a Supplement to Part II of the Gazette of the Democratic

Socialist Republic of Sri Lanka of July 24, 2009

PRINTEDAT THE DEPARTMENTOFGOVERNMENT PRINTING, SRILANKA

TO BEPURCHASED AT THEGOVERNMENT PUBLICATIONSBUREAU, COLOMBO 5

Price : Rs. 10.00 Postage : Rs. 5.00

National Institute of Occupational 1

Safety and Health Act, No. 38 of 2009

[Certified on 23rd July, 2009]

L.D.—O. 24/2007

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL

INSTITUTE OF OCCUPATIONAL SAFETY AND HEALTH FOR THE

FORMULATION OF A POLICY ON OCCUPATIONAL SAFETY AND HEALTH

STANDARDS; TOCREATE AN ENVIRONMENT FOR OCCUPATIONAL SAFETY

AND HEALTH AT ALL WORKPLACES TOPROTECT BOTH THE EMPLOYERS

AND EMPLOYEES; AND FOR MATTERS CONNECTED THEREWITH OR

INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows:—

1. This Act may be cited as the National Institute of Short title.

Occupational Safety and Health Act, No. 38 of 2009 and

shall come into operation on such date as the Minister may

appoint by Order published in the Gazette (hereinafter

referred to as the “appointed date”).

PART I

ESTABLISHMENT OF THENATIONAL INSTITUTE OF OCCUPATIONAL

SAFETY AND HEALTH

2. (1) There shall be established an Institute which shall Establishment of

be called the National Institute of Occupational Safety and the National

Institute of

Health (hereinafter referred to as the “Institute”).

Occupational

Safety and

(2) The Institute shall by the name assigned to it by

Health.

subsection (1) be a body corporate and shall have perpetual

succession and a common seal and may sue and be sued in

such name.

3. (1) The general objects of the Institute shall be— General objects

of the Institute.

(a) to advise the Government in the formulation of a

national policy on occupational safety and health

and on the working environment both for employers

and employees taking into consideration the nature

of the occupation and the safety of the employers

and employees;

2—PL 003679— 4,250 (2/2009)

2 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

(b) to advise the Government on measures required for

the prevention of accidents and injuries relating, to

occupation at work places;

(c) to conduct, undertake and assist in investigations,

study programmes, surveys and research in the field

of occupational safety and health;

(d) to provide advisory services to any institution or

person on the correct use of equipment, hazardous

substances, physical, chemical or biological agents

or products or any other hazards;

(e) to educate and provide necessary training to

employees, occupiers, workers or any other person

required of knowledge and training in occupational

safety and health and related subjects either in

collaboration with any other institution or

university in Sri Lanka or abroad, or by the Institute

and award certificates or diplomas on completion

of such education or training;

(f) to provide required services on the correct use of

equipment, hazardous substances, physical,

chemical, biological agents or products and

psychosocial hazards and avoidance of known

hazards;

(g) (i) to advise the Minister on legislative

requirements with regard to standards, codes,

practices and guidelines in matters relating to

occupational safety and health;

(ii) to evaluate and determine the work process,

the substances and agents, the exposure to

which is be prohibited, limited or made subject

to supervision ;

(h) to undertake or collaborate in the collection,

preparation, dissemination and publishing of

information relating to occupational safety and

health;

National Institute of Occupational 3

Safety and Health Act, No. 38 of 2009

(i) to organize or to sponsor conferences, seminars,

workshops, symposiums or such other similar

programmes and publish papers in connection with

occupational safety and health;

(j) to co-ordinate inter-ministerial projects,

programmes and activities on occupational safety

and health;

(k) to establish and maintain libraries and laboratories

for the purpose of promoting and furthering of the

practice of occupational safety and health;

(l) to develop research and special laboratories;

(m) to liaise and establish links and networks with

relevant National and International Institutions,

Universities or any other organizations in the field

of occupational safety and health; and

(n) to establish national standards in the field of

occupational safety and health.

(2) The Institute shall advise the Minister in addition to

advise relating to the matter specified in paragraph (g) of

subsection (1), on all or any of the matters specified in

subsection (1), and on any other matter that may be referred

to the Institution, from time to time, by the Minister.

4. (1) The Institute shall have the power to do all such Powers of the

acts as may be necessary for the discharge of any or all of its Institute.

functions specified in section 3 of this Act.

(2) The Institute without prejudice to the generality of

the powers conferred on it by subsection (1), may—

(a) assess and evaluate, from time to time, the standards

to be maintained in workplaces or working

environments and advise the Minister on the

legislative requirements relating to such standards,

and to provide advisory services to occupiers,

4 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

workers or any other persons, when requested to do

so, on all matters relating to occupational safety

and health and working environment;

(b) levy and charge a fee for services rendered or

facilities or equipments provided by the Institute

to any other institution, organization or any other

person;

(c) acquire, hold, take or give on lease or hire,

mortgage, pledge, sell or otherwise dispose of any

movable or immovable property for the purpose of

discharging the functions of the Institute; and

(d) to enter into and execute, by the Institute or any

other officer or agent authorized in that behalf by

the Institute, all such contracts or agreements as

may be necessary for the discharge of the functions

of the Institute.

PART II

THEGOVERNING COUNCIL OF THE INSTITUTE

Constitution of 5. (1) The Institute shall have a Governing Council

the Governing (hereinafter referred to as the “Council”) in which the powers

Council.

and duties of the Institute shall subject to the provisions of

this Act, be vested in.

(2) The Council shall consist of—

(a) seven members appointed by the Minister

(hereinafter referred to as the “appointed

members”)—

(i) two of whom shall be representatives of

employer’s organizations;

(ii) two of whom are representing the workers’

organization;

(iii) three persons distinguished in the fields of

occupational safety and health and who shall

be members of any Institution established

National Institute of Occupational 5

Safety and Health Act, No. 38 of 2009

under the provisions of an Act, the functions

of which include safety or health.

(b) the following ex-officio members:—

(i) the person for the time being holding office

as the Secretary to the Minister of the

Ministry in charge of the subject of Labour,

who shall be the Chairman of the Council;

(ii) the person for the time being holding office

as the Commissioner-General of Labur, who

shall be the Vice Chairman of the Council;

(iii) the person for the time being holding office

as the Commissioner of Labour (Industrial

Safety);

(iv) the person for the time being holding office

as the Commissioner of Labour

(Occupational Hygiene);

(v) one member, being an officer not below the

rank of a Senior Assistant Secretary

nominated by the Minister in charge of the

subject of Finance;

(vi) one member, being an officer not below the

rank of a Senior Assistant Secretary

nominated by the Minister in charge of the

subject of Health;

(vii) one member, being an officer not below the

rank of a Senior Assistant Secretary

nominated by the Minister in charge of the

subject of Industries;

(viii) one member, being an officer not below the

rank of a Senior Assistant Secretary

nominated by the Minister in charge of the

subject of Agriculture; and

6 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

(ix) the person for the time being holding office

as the Director-General of the Institute.

Secretary to the 6. There shall be a Secretary to the Council who shall

Council. keep and maintain records of the Council. The Council shall

appoint a Director of the Institute as the Secretary.

The term of 7. (1) Every appointed member of the Council shall,

office of the unless he vacates office earlier by death, resignation or

members of the

removal, hold office for a term of three years from the date of

Council.

his appointment and unless he has been removed from office

shall be eligible for reappointment.

(2) Any appointed member may, at any time resign from

office by a letter addressed to that effect to the Minister.

Such resignation shall take effect upon it being accepted by

the Minister, in writing.

(3) Where an appointed member is temporarily unable to

discharge the functions of his office by reason of ill health,

absence from Sri Lanka or any other reason, the Minister

may appoint another person to act in his place.

(4) The Minister, in consultation with the relevant

Minister in charge of the subject, when required, may, if he

thinks it expedient to do so, remove from office, any

appointed member for reasons assigned therefor, and

thereupon such member shall deemed to have vacated his

office.

(5) In the event of vacation of office, resignation or

removal of any member, the Minister may appoint a suitable

person to act in his place. Any member so appointed shall

hold office for the unexpired period of the term of office of

the member whom he succeeds.

Disqualification 8. A person shall be disqualified from being appointed

for membership or continuing as an appointed member of the Council—

of Council.

(1) if he is or becomes a Member of Parliament,

Provincial Council or any local authority; or

National Institute of Occupational 7

Safety and Health Act, No. 38 of 2009

(2) if he is under any law in force in Sri Lanka or in any

other country, found or declared to be of unsound

mind; or

(3) is a person who, having being declared an insolvent,

or a bankrupt under any law in force in Sri Lanka or

in another country, is an undischarged insolvent or

bankrupt; or

(4) if he is serving or has served a sentence of

imprisonment imposed by any court of law in Sri

Lanka or in any other country.

9. (1) The Chairman of the Council shall summon a Meetings.

meeting of the Council at least once in every three months.

(2) The Chairman shall summon a special meeting of the

Council within fourteen days after being requested in writing

to do so by seven members of the Council and shall specify

in such notice the business to be dealt with at such meeting.

(3) The Chairman shall give at least seven days notice in

writing of every meeting of the Council to each of the

members and shall specify in such notice the business to be

dealt with at such meeting.

(4) The Chairman or in his absence the Vice-Chairman

shall preside at all meetings of the Council.

(5) The quorum at any meeting of the Council shall be

seven members.

(6) All questions for decision by the Council shall be

decided by a vote of majority of members present and voting.

In case of an equality of votes, the presiding officer shall

have a casting vote.

(7) The proceedings at every meeting of the Council shall

be recorded.

(8) Subject to the provisions herein, the Council may

make rules determining the procedure to be followed at

meetings of the Council.

8 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

(9) No act, decision or proceedings of the Board shall be

deemed to be invalid by reason of the existence of any

vacancy in the Council or any defect in the appointment or

nomination of election of a member thereof.

Director-General 10. (1) There shall be appointed by the Council a person

of the Institute. to be the Director-General of the Institute (hereinafter

referred to as the “Director- General”) who possesses

sufficient knowledge and at least ten years experience in the

practice of occupational safety and health.

(2) The Director-General shall be a full time officer of the

Institute and shall subject to the direction of the Council, be

responsible for the implementation of the decisions of the

Council and shall discharge such other duties as may be

assigned to him.

(3) The Council may, for reasons assigned therefor,

remove from office the Director-General appointed under

subsection (1).

Directors of the 11. There shall be appointed by the Council such number

Institute. of persons to be Directors of the Institute, as shall be necessary

for the efficient administration of the Institute. The persons

so appointed shall possess seven years experience in a

position with similar function as such Director and possess

sufficient knowledge as is relevant to such position.

Appointment of 12. (1) The Institute may appoint to the staff of the

staff. Institute such officers and servants as it may deem necessary

for the efficient exercise, perform and discharge of its powers,

duties and functions under this Act.

(2) The Institute may subject to the other provisions of

this Act—

(a) exercise disciplinary control of officers and servants

of the Institute;

National Institute of Occupational 9

Safety and Health Act, No. 38 of 2009

(b) fix the wages, salaries or other remuneration of the

staff; and

(c) determine the terms and conditions of service of

the officers and servants of the Institute.

13. (1) At the request of the Council, any officer in the Appointment of

public service may with the consent of that officer and the Public officers

to the Institute.

Chairman of the public Service Commission, be temporarily

appointed to the staff of the Institute for such period as may

be determined by the Council or, with like consent, be

permanently appointed to such staff.

(2) Where any officer in public service is temporarily

appointed to the staff of the Institute, the provisions of

subsection (2) of section 14 of the National Transport

Commission Act, No. 37 of 1991 shall mutatis mutandis

apply to, and in relation to, such officer.

(3) Where any officer in public service is permanently

appointed to the staff of the Institute, the provisions of

subsection (3) of section 14 of the National Transport

Commission Act, No. 37 of 1991 shall, mutatis mutandis

apply to, and in relation to such officer.

(4) Where the Institute employs an person who has

entered into a contract with Government by which he has

agreed to serve the Government for a specific period, any

period of service to the Institute by that person shall be

regarded as service to the Government for the purpose of

discharging the obligations of that person under such

contract.

(5) At the request of the Council, a member of the Local

Government Service or any officer of any Local Authority

may with the consent of that member, officer or employee be

temporarily appointed to the staff of the Institute for such

period as may be determined by the Institute, or with like

10 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

consent be permanently appointed to such staff on such terms

and conditions including those relating to pension or

provident fund rights as may be agreed upon by the Institute

and the Local Government Service Advisory Board or the

Local Authority, as the case may be.

(6) Where a person is temporarily appointed to the staff

of the Institute under subsection (5) of this section, that

person shall be subject to the same disciplinary control as

any other member of the staff.

Delegation of 14. (1) The Director-General may with the approval of

powers. the Council, and whenever he considers it necessary to do

so, delegate in writing to any officer of the Institute any

power of function conferred or assigned to him under this

Act and such officer shall exercise and discharge any power

or function subject to the direction and control of the

Director-General.

(2) Notwithstanding any such delegation, the Institute

may continue to exercise or perform or discharge any such

power, duty or function.

Collection of 15. The Director-General may by notice in writing

Information. require any occupier or head of Institution in Government

or private sector to furnish to the Institute, within such time

as may be specified in that notice, all such information

relating to the functions of the Institution concerning

occupational safety and health within the purview of such

Institution to enable to exercise and discharge of his powers

and functions of the Institute under this Act.

PART III

FUND AND THE FINANCES OF THE INSTITUTE

Fund of the 16. (1) The Institute shall have its own fund (hereinafter

Institute. referred to as the “Fund”).

National Institute of Occupational 11

Safety and Health Act, No. 38 of 2009

(2) There shall be paid into the Fund—

(a) all sums of money as may be voted from time to

time by Parliament for the use of the Institute and

any funds provided to the Institute by the

Government by way of grant, loan or otherwise;

(b) the proceeds of any cess levied and collected

under this Act;

(c) all sums that may be received by the Institute by

way of fees and charges;

(d) all sums that may be received by the Institute as

income from any investments made by the

Institute;

(e) all sums that may be received by the Institute in

exercise, performance and discharge of its powers,

duties and functions; and

(f) all sums as may be received by the Institute by

way of loans, donations, gifts or grants from any

source whatsoever whether from Sri Lanka or

outside Sri Lanka.

(3) There shall be paid out of the Fund—

(a) the remuneration payable to the members of the

Governing Council as may be determined by the

Minister with the concurrence of the Minister in

charge of the subject of Finance;

(b) the salaries, allowances and such other fees or

payments payable to lecturers, consultants, experts,

officers, servants and employees of the Institute;

and

(c) all sums as are required to defray any expenditure

incurred by the Institute in the exercise, performance

and discharge of its powers, duties and functions

under this Act.

12 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

Financial year 17. (1) The financial year of the Institute shall be the

and audit of calendar year.

accounts.

(2) The Institute shall cause to be prepared in respect

of each financial year a statement of receipts and payments,

a statement of income and expenditure, a statement of

assets and liabilities and a statement of investments showing

the face value, purchase price and market value of each

of the investments. A copy of each of the statements

prepared under this subsection shall be transmitted to the

Minister before the thirtieth day of September of the

succeeding year.

(3) The provisions of Article 154 of the Constitution

relating to the audit of the accounts of public corporations

shall apply to and in relation to the audit of accounts of the

Institute.

Report to be 18. The Institute shall prepare an annual report of the

tabled in work of the Institute and forward such report before the lapse

Parliament.

of the year succeeding the year to which such report relates,

to the Minister who shall table such report in Parliament.

PART IV

GENERAL

Rules of the 19. The Institute may make rules in respect of the

Institute. administration of the affairs of the Institute and in relation

to its officers and servants, including their appointments,

promotions, remuneration, disciplinary control and of grant

of leave to them. Every such rule shall be published in the

Gazette.

Power to make 20. (1) The Minister may make regulations in respect of

regulations. matters which are required to be prescribed or in respect of

which regulations are authorized to be made or where it is

necessary for giving effect to the principles of this Act.

National Institute of Occupational 13

Safety and Health Act, No. 38 of 2009

(2) Every regulation made under subsection (1), shall be

published in the Gazette and shall come into operation on

the date of such publication or on such later date as may be

specified in the regulation.

(3) Every regulation shall, as soon as practicable, after its

publication in the Gazette, be brought before Parliament

for approval. Any regulation which is not so approved shall

be deemed to be rescinded from the date of its disapproval

but without prejudice to anything previously done

thereunder.

(4) The Notification of the date on which any regulation

is so rescinded shall be published in the Gazette.

21. The seal of the Institute shall be in the custody of Seal of the

such person as the Council may decide from time to time Institute.

and may be altered in such manner as may be determined by

the Council. It shall not be affixed to any instrument or

document except in the presence of two members of the

Institute both of whom shall sign the instrument or document

in token of their presence. The Council shall maintain a

register of all documents to which the seal of the Institute is

affixed.

22. It shall be lawful for the Director-General or an Power of entry

and inspection.

officer or agent authorized in that behalf by the

Director-General to enter any work place at all reasonable

hours and to do all such acts as may be required to perform

all or any of the functions and duties of the Institute. Every

officer or agent so authorized shall be issued with such a

certificate of appointment, or authorization as may be

prescribed, and, when visiting any workplace or premises in

order to perform any function or act under this Act, shall if so

required produce such certificate or authority to the occupier

or to the person holding responsibility of the workplace or

premises.

14 National Institute of Occupational

Safety and Health Act, No. 38 of 2009

Acquisition of 23. Where any immovable property is required to be

immovable acquired for any specific purpose of the Institute and the

property under

Minister by order published in the Gazette approves of the

the Land

Acquisition Act. proposed acquisition for that purpose, that property shall be

deemed to be required for a public purpose and may

accordingly be acquired under the Land Acquisition Act

(Chapter 420).

Expenses to be 24. (1) Any expenses incurred by the Institute in any

paid out of Fund

suit or prosecution brought against the Institute, shall be

of the Institute.

paid out of the Fund of the Institute and any costs paid to or

recovered by the Institute in any such suit or prosecution,

shall be credited to the Fund of the Institute.

(2) Any expenses incurred by any member of the Council

or any officer or servant of the Institute in any suit or

prosecution brought against him before any Court in respect

of any act which is done or purported to be done by such

person under this Act or on the direction of the Council

shall, if the Court holds that such act was done in good faith,

be paid out of the Fund of the Institute, unless such expenses

are recovered by him in such suit or prosecution.

Sinhala text to 25. In the event of any inconsistency between the

prevail in case

Sinhala and Tamil texts of this Act, the Sinhala text shall

of inconsistency.

prevail.

Interpretation. 26. For the purposes of this Act unless the context

otherwise requires the “occupier” means any person who

manages or administers the affairs of the government or any

private establishment, institution, public corporation or

statutory body, factory or any industry and includes any

Authority to whom the function of management or

administration is delegated.

National Institute of Occupational 15

Safety and Health Act, No. 38 of 2009

Annual subscription of English Bills and Acts of the Parliament Rs. 885 (Local), Rs. 1,180

(Foreign), Payable to the SUPERINTENDENT, GOVERNMENT PUBLICATIONS BUREAU, DEPARTMENT OF

GOVERNMENT INFORMATION, NO. 163, KIRULAPONA MAWATHA, POLHENGODA, COLOMBO 05 before 15th

December each year in respect of the year following.