

Employment Regulation (Offences) Act

Principal Act

Act. No. 1999-13	<i>Commencement (L.N.1999/098)</i>	12.8.1999
	<i>Assent</i>	6.5.1999
Amending enactments	Relevant current provisions	Commencement date
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Act. 2016-14 s. 7		4.8.2016

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AN ACT TO MAKE FURTHER PROVISION WITH RESPECT TO THE POWERS AND DUTIES OF INSPECTORS APPOINTED TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THE EMPLOYMENT ACT, THE INCOME TAX ACT, THE SOCIAL SECURITY (INSURANCE) ACT, THE SOCIAL SECURITY (EMPLOYMENT INJURIES INSURANCE) ACT, THE MEDICAL (GROUP PRACTICE SCHEME) ACT AND THE SOCIAL SECURITY (OPEN LONG TERM BENEFITS SCHEME) ACT 1997; AND FOR MATTERS CONNECTED THERETO.

Preliminary.

Title, commencement and transitional provisions.

1. (1) This Act may be cited as the Employment Regulation (Offences) Act.

(2) This Act shall come into force at such time as the Minister may appoint by notice in the Gazette, and different times may be appointed for different provisions and different purposes.

(3) Notices made under subsection (2) may contain such transitional provisions as the Minister may deem appropriate.

Interpretation.

2. (1) In this Act and unless the context otherwise provides—

“enactment” means any or all of the following enactments, namely, the Employment Act, the Income Tax Act, the Social Security (Insurance) Act, the Social Security (Employment Injuries Insurance) Act, the Medical (Group Practice Scheme) Act and the Social Security (Open Long Term Benefits Scheme) Act 1997, and any subsidiary legislation made thereunder;

“fixed penalty employment offence” means any offence to which section 4 applies;

“inspector” means an inspector appointed under any of the enactments and shall include a person authorised by the Commissioner of Income Tax under section 3(2) of the Income Tax Act to perform or assist in the performance of any specific duty to which regulation 17 of the Income Tax (Pay As You Earn) Regulations 1989 applies;

“Minister” means the Minister with responsibility for employment;

“prescribed” means prescribed by regulations under this Act.

(2) For the purposes of section 3, the premises and places liable to inspection, are any premises or places where an inspector has reasonable grounds for supposing that there are present in those premises or places, persons who are employed or self-employed.

Inspectors and Fixed Penalty Employment Offences.

Inspectors.

3.(1) Every inspector shall be furnished with a certificate of his appointment, and shall, if so required by any person, produce such certificate for inspection.

(2) An inspector shall, for the purposes of this Act, have power to do all or any of the following—

- (a) to enter at all reasonable times, without warrant, any premises or place liable to inspection under this Act or any other enactment;
- (b) to make such inquiry as may be necessary for ascertaining whether the provisions of this Act or any other enactment are being or have been complied with, in any such premises or place;
- (c) to interview, either alone or in the presence of any other person, as he thinks fit, with respect to any matters on which he may reasonably require information, any person whom he finds in any such premises or place, or whom he has reasonable cause to believe to be or to have been an employed or self-employed person, and to require any such person to be so interviewed.

(3) An employer or self employed person who—

- (a) wilfully, delays or obstructs an inspector in the exercise of his duties under this Act or any other enactment; or
- (b) wilfully, misleads an inspector in any material particular,

is guilty of an offence and shall be sentenced on summary conviction to a fine at level 5 on the standard scale.

Fixed penalty employment offences.

4.(1) This section applies to fixed penalty employment offences.

(2) In this section, “fixed penalty employment offence” shall be construed in accordance with the provisions of Schedule 1.

(3) The Minister may, by notice in the Gazette, add to, remove from, or amend, the provisions of Schedule 1, as the Minister may, from time to time, deem appropriate.

(4) A notice made under subsection (3) may provide that any enactment shall have effect subject to such additions, exceptions or adaptations as are specified in the notice.

(5) Notices under subsection (3) may provide for such transitional provisions as the Minister may deem appropriate in the circumstances.

Punishment without prosecution of fixed penalty employment offences.

5. (1) For the purposes of this section and sections 6 and 8, “person” means—

- (a) a self-employed person; or,
- (b) subject to paragraphs 1 and 2 of Schedule 1, the person liable for the commission of an offence to which section 4 applies, in respect of an employed person.

(2) Where an inspector has reason to believe that any person is committing or has committed an offence to which section 4 applies, he may serve that person with a prescribed notice in writing offering the opportunity of the discharge of any liability to conviction of the offence or offences, by payment of a fixed penalty.

(3) Where a person is served with a notice under subsection (2)—

- (a) proceedings shall not be taken against that person for any offence or offences to which the notice relates, until the end of the fourteen days following the date of service of the notice or the day after posting such notice, or such longer period (if any) as may have been specified therein; and
- (b) he shall not be liable to be convicted if the fixed penalty is paid in full before the expiration of the fourteen days following the date of the notice or the day after posting such notice, or such longer period (if any) as may be specified therein, or before the date on which proceedings are begun, whichever event last occurs.

(4) In subsection (3), “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence or offences specified in the notice under subsection (2), and “convicted” shall be construed in like manner.

(5) Payment of a fixed penalty shall be made in full to a prescribed person at a prescribed place, and a certificate signed by the prescribed person that payment of a fixed penalty was or was not made in accordance with this section shall be sufficient evidence in any court of law of the facts stated, unless the contrary is proved.

(6) A notice under subsection (2) shall specify the offence or offences to which the notice relates and give reasonable particulars thereof, and shall state also the period during which, by virtue of subsection (3), proceedings will not be taken for the offence, the amount of the fixed penalty and the address of the prescribed place where the fixed penalty may be paid.

(7) The Minister may make regulations for any purpose incidental to the operation of this section and in particular but without prejudice to the generality of the foregoing, the Minister may make regulations—

- (a) prescribing the form of notice under subsection (2);
- (b) prescribing the duties of the prescribed person, and the information to be supplied to him.

Level and payment of fixed penalties.

6. The fixed penalty for the purposes of section 5 shall be equivalent to three quarters of level 4 on the standard scale, per person in respect of whom a notice under that section is served, except in the case of an offence under regulation 13 of the Employment Regulations 1994 in which case the fixed penalty shall be equivalent to three quarters of level 3 on the standard scale.

Revocation and re-issue of fixed penalty notices.

7.(1) Where—

- (a) an inspector or the Director of Employment has reason to believe that there has been an error or misapprehension on the inspector's part, or the provision to the inspector of incorrect information so as to cause a notice served under section 5(2) to be inaccurate or incorrect in any material particular; or
- (b) the Director of Employment has reason to believe that the serving of a notice operates against the public interest;

the Director of Employment may, before the expiration of the fourteen days following the date of the notice or the day after posting such notice, or such longer period (if any) as may be specified therein, or before the date on which proceedings are begun, whichever event last occurs, revoke the notice.

(2) Following the revocation of a notice by the Director of Employment under subsection (1), the Director of Employment will have a discretion whether to serve a new notice under section 5(2).

Fines imposed on summary conviction for fixed penalty employment offences.

8.(1) Where a fine is imposed by a court on conviction on any person who has not paid a fixed penalty imposed by a notice served on him under section 5(2), that fine—

- (a) shall be treated as a debt owed to the Crown, and, without prejudice to any other remedy, may be recovered summarily as a civil debt; and
- (b) if the convicted person, being a body corporate, fails to pay the fine or a part thereof, that sum, or such part of that sum as remains unpaid, shall be a debt due to the Crown jointly and severally from any directors of the body corporate who knew or could reasonably be expected to have known, of the facts giving rise to conviction.

(2) A person served with a notice under section 5(2) who fails to remedy the act or omission constituting the offence or offences in respect of which the notice has been served, shall be sentenced on summary conviction, in addition to any other fine, to a fine fixed at level 4 on the standard scale in respect of each week or part thereof during which the offence or offences continued, commencing from the date of service of the notice.

Final Provisions.

Offences by bodies corporate.

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

(2) In this section, and in section 8(1)(b), “director”, in relation to a body corporate whose affairs are managed by its members, means a member of that body corporate.

Regulations with respect to operation of Act.

10. (1) The Minister may make regulations prescribing anything that needs to be prescribed, and making such further provision as appears to him necessary or expedient for the purposes of this Act or any other enactment.

(2) Regulations made under this section may provide that any of the provisions of this Act have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Regulations with respect to enactments.

11. (1) The Minister may make regulations providing for the issue of certificates to any person or category of person, certifying compliance with all or any of the enactments.

(2) Certificates issued pursuant to regulations made under this section shall constitute evidence in any court of law of any facts contained therein.

(3) Regulations made under this section may provide for such ancillary matters, including, but without prejudice to the generality of the foregoing, for such fees, offences and penalties therefor as the Minister may deem appropriate.

Consequential amendments.

12. The provisions of Schedule 2 shall have effect.

SCHEDULE 1

Sections 4 and 5

FIXED PENALTY EMPLOYMENT OFFENCES

1. Any person an inspector has reason to believe is liable for any act or omission, or a series of acts or omissions, contrary to any one or more of the provisions listed in paragraph 3, shall have committed a single fixed penalty employment offence.

2. For the purposes of this Act, an employer shall be liable for any fixed penalty employment offence committed in respect of an employee. For the purposes of ascertaining liability for a fixed penalty employment offence, any person working—

(a) in any business or commercial premises in pursuance of an activity in progress constituting the business ordinarily carried on in those premises shall, for the purposes of this Act, be—

(i) in the employment of the person by whom the employed person was engaged or contracted; and,

(ii) in the employment of the person who carries on business in those premises,

Provided that where the person referred to in sub-paragraph (a)(i) has his principal place of business in Gibraltar, liability for a fixed penalty offence shall not attach to the person referred to in sub-paragraph (a)(ii);

(b) in any business or commercial premises in pursuance of an activity in progress not constituting the business ordinarily carried on in those premises shall, for the purposes of this Act, be—

(i) in the employment of the person who remunerates him for his work; and

(ii) in the employment of the person who carries on business in those premises,

Provided that where the person referred to in sub-paragraph (b)(i) has his principal place of business in Gibraltar, liability for a fixed penalty offence shall not attach to the person referred to in sub-paragraph (b)(ii);

(c) at a building or construction site or at a site other than those covered under sub-paragraphs (a) and (b) above, in pursuance of an activity in progress carried on at that site, shall, for the purposes of this Act, be—

- (i) in the employment of the person by whom the employed person was engaged or contracted; and,
- (ii) in the employment of the principal contractor on that site,

Provided that where the person referred to in sub-paragraph (c)(i) has his principal place of business in Gibraltar, liability for a fixed penalty offence shall not attach to the person referred to in sub-paragraph (c)(ii).

3. The provisions referred to in paragraph 1 are as follows–

OFFENCES RELATING TO INCOME TAX LEGISLATION

Offences by employers

Regulation 8(2A) of the Income Tax (Pay As You Earn) Regulations 1989 (Duty to register).

Offences by the self-employed

Section 57(2) of the Income Tax Act (Duty to give notice to the Commissioner that a person is chargeable for tax purposes).

OFFENCES RELATING TO SOCIAL SECURITY LEGISLATION

Offences by employers

Regulation 3 of the Employment Injuries (Contributions) Regulations (Duty to register).

Offences by employers and the self-employed

Regulation 3 of the Employment Injuries (Contributions) Regulations as applied by regulation 4(1) of the Social Insurance (Contributions) Regulations (Duty to register).

Regulation 3 of the Employment Injuries (Contributions) Regulations as applied by regulation 3(1) of the Social Security (Open Long Term Benefits) (Contributions) Regulations 1997 (Duty to register).

OFFENCES RELATING TO EMPLOYMENT LEGISLATION

Offences by employers

Regulation 4 of the Employment Regulations 1994 (Duty to notify Director of vacancy).

Regulation 6 of the Employment Regulations 1994 (Duty to notify Director of intention to engage an entitled worker).

Regulation 7 of the Employment Regulations 1994 (Duty to apply to Director for a permit in relation to a non-entitled worker).

Regulation 13 of the Employment Regulations 1994 (Duty to notify Director of termination).

Regulation 15A(4) of the Employment Regulations 1994 (Duty to notify Director of temporary employment of detached workers).

Offences by employers and the self-employed

Section 3 of the Business Trades and Professions (Registration) Act 1989 (Duty to register).

SCHEDULE 2

Section 12

CONSEQUENTIAL AMENDMENTS**1. AMENDMENTS TO INCOME TAX LEGISLATION**

1.1. Section 57 of the Income Tax Act is amended by inserting after subsection (2) the following subsection -

- “(3) Any person who -
- (i) contrary to subsection (2), fails to give notice to the Commissioner that he is chargeable; or
 - (ii) contrary to subsection (2), fails to give notice to the Commissioner of his arrival in Gibraltar,

shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale.”.

1.2. For regulation 8(2) of the Income Tax (Pay As You Earn) Regulations 1989 there shall be inserted the following sub-regulations -

“(2) Every employer shall, in respect of each of his employees who has not lodged Part II of a PAYE allowances certificate, deduct from their gross emoluments tax in accordance with code “X” of the tax-tables.

(2A) Every employer shall give notice in writing to the Commissioner of the engagement of any employee, which shall specify the full name and address of the employee, the date of commencement of the employment and the terms of the employment.”.

1.3. Regulation 19 of the Income Tax (Pay As You Earn) Regulations 1989 shall be amended as follows -

- (a) after the reference “19” there shall be inserted the reference -

“(1)”;

- (b) after regulation 19(1), there shall be inserted the following sub-regulation -

“(2) Any employer who fails to give notice to the Commissioner of the engagement of any employee in accordance with regulation 8(2A), shall be guilty

of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale.”.

2. AMENDMENTS TO SOCIAL SECURITY LEGISLATION

2.1. For regulation 9 of the Employment Injuries (Contributions) Regulations there shall be substituted the following regulation -

“Penalty.

9. A person who contravenes any requirements of this Part shall be sentenced on summary conviction for each offence to a fine at level 4 on the standard scale, or where the offence consists of continuing any such contravention after conviction thereof, to a fine at level 4 on the standard scale together with a further fine at level 4 on the standard scale for every week or part thereof on which it is so continued.”.

3. AMENDMENTS TO EMPLOYMENT LEGISLATION

3.1. The Employment Regulations 1994 shall be amended by inserting after regulation 25 the following regulation -

“Offences.

26.(1) A failure by an employer to comply with the requirements of any of the provisions of these Regulations shall be an offence.

(2) Subject to sub-regulation (3) and unless the context otherwise provides, a person found guilty of an offence contrary to subsection (1) shall be sentenced on summary conviction to a fine at level 4 on the standard scale.

(3) A person found guilty of an offence contrary to regulation 13 of the Employment Regulations 1994 shall be sentenced on summary conviction to a fine at level 3 on the standard scale.”.

3.2. Section 6 of the Business Trades and Professions (Registration) Act 1989 shall be amended as follows -

(a) after the reference “6.” there shall be inserted -

“(1) Subject to subsection (2),”; and

(b) after subsection (1), there shall be inserted the following subsection -

“(2) Any person who contravenes or fails to comply with any provision of section 3 shall be guilty of an offence and shall be sentenced on summary conviction to a fine at level 4 on the standard scale.”.