

PUBLIC HEALTH ACT 1991

Part 4 Microbial control

Purpose of Part 4

43. (1) The purpose of this Part is to regulate:

- (a) the installation on premises of certain kinds of systems, and
- (b) the operation and maintenance of those kinds of systems installed on premises, whether the installation took place before, or takes place after, the commencement of this Part, in order to prevent or inhibit the growth in the systems of micro-organisms that are liable to cause Legionnaires' disease and other diseases.

(2) The systems comprise:

- (a) air-handling systems, and
- (b) evaporative cooling systems, and
- (c) hot-water systems, and
- (d) humidifying systems, and
- (e) warm-water systems, and
- (f) water-cooling systems, and their associated equipment and fittings.

Definitions

44. In this Part:

“**air-handling system**” means a system designed for the purpose of directing air in a positive and controlled manner to and from specific enclosures by means of air-handling plant, ducts, plenums, air-distribution devices and automatic controls.

“**authorised officer**”, in relation to any premises, means:

- (a) an environmental health officer employed by the local authority for the area in which the premises are situated, or
- (b) an environmental health officer of the Department of Health, or
- (c) a person authorised by the Minister or the Director-General to exercise the powers conferred by this Part on an authorised officer.

“**cooling-tower**” means:

- (a) a device for lowering the temperature of water or other liquid by evaporative cooling, or
- (b) an evaporative condenser which incorporates a device containing a refrigerant or heat exchanger.

“**evaporative cooling system**” means a system that effects a reduction of dry bulb temperature by evaporating water into the air being treated.

“**hot water system**” means a system designed to heat and deliver water at a temperature of at least 60°C at each outlet point.

“**humidifying system**” means a system for adding moisture to air in order to raise its humidity.

“**install**” includes construct.

“**maintain**” includes repair, inspect, carry out preventive servicing and clean.

“**prescribed installation requirements**” means requirements specified in the regulations with respect to the design and installation of a regulated system.

“**prescribed maintenance requirements**” means requirements specified in the regulations with respect to the maintenance of a regulated system.

“**prescribed operating requirements**” means requirements specified in the regulations with respect to the operation of a regulated system.

“regulated premises” means any premises other than premises declared by the regulations not to be regulated premises for the purposes of this Part.

“regulated system” means:

- (a) a system referred to in section 43, or
- (b) any system that is for the treatment of air or water and is declared by the regulations to be a regulated system for the purposes of this Part.

“warm-water system” means a system designed to heat and deliver water at a temperature of less than 60°C at each outlet point.

“water-cooling system” means a cooling tower and its associated equipment and pipe work.

Installation of system

45. (1) The installation on regulated premises of a regulated system must be done in accordance with the prescribed installation requirements.

(2) If a regulated system is installed in contravention of this section, the installer of the system is guilty of an offence.

(3) If a regulated system is installed on regulated premises in contravention of this section, the occupier of the premises at the time of installation of the system is guilty of an offence unless the court is satisfied that the installation was carried out by a person or persons who might reasonably be expected to be competent to do so.

Operation and maintenance of system

46. (1) If the occupier of regulated premises fails, while such an occupier, to ensure that the prescribed operating requirements, or the prescribed maintenance requirements, are complied with in relation to a regulated system installed on the premises, the occupier is guilty of an offence.

(2) It is a defence to proceedings for an offence under this section if the court is satisfied that:

- (a) the occupier engaged a person to carry out the requirements to which the proceedings relate, and
- (b) the person so engaged might reasonably have been expected to be competent to carry out the requirements.

(3) If a contractor:

- (a) is engaged by the occupier of regulated premises to operate a regulated system, and
 - (b) fails to carry out the prescribed operating requirements for the system,
- the contractor is guilty of an offence.

(4) If a contractor:

- (a) is engaged by the occupier of regulated premises to maintain a regulated system, and
 - (b) fails to carry out the prescribed maintenance requirements for the system,
- the contractor is guilty of an offence.

(5) This section applies to a regulated system whether installed before or after the commencement of this Part.

Powers of authorised officers

47. (1) An authorised officer who believes on reasonable grounds that a regulated system has been, or is being, installed on any regulated premises may:

- (a) enter the premises at any reasonable time in order to find out whether or not a system on the premises is a regulated system, and
- (b) inspect and test any system on the premises, and
- (c) investigate whether or not the prescribed operating requirements, and the prescribed maintenance requirements, have been complied with in relation to any regulated system on the premises, and
- (d) require the production of, and inspect, any records required by the regulations to be kept in relation to the operation and maintenance of any regulated system on the premises.

(2) Section 72 (Powers of entry) applies in relation to the exercise of the powers conferred by this section.

Directions to carry out maintenance requirements

48. (1) The Director-General, or a local authority, may serve on the occupier of regulated premises in which a regulated system is installed a notice:

- (a) directing that a specified prescribed maintenance requirement for the system be complied with before a date stated in the notice, and
- (b) if appropriate, directing that the system not be operated until the Director-General, or the local authority, is satisfied that the requirement has been complied with.

(2) A notice under this section may be served:

- (a) only if the Director-General, or the local authority, believes on reasonable grounds that the requirement to which the notice relates is not being, or has not been, complied with, and
- (b) in the case of a local authority, only if the premises are within the area for which it is the local authority.

(3) Service of a notice under this section does not preclude proceedings for an offence under section 46.

Failure to comply with directions

49. (1) If the directions given in a notice served under section 48 are not complied with:

- (a) the Director-General, if the notice was served by the Director-General, or
- (b) the local authority that served the notice,

may make arrangements for the doing of such work as may be necessary in order to comply with the requirements of the notice other than the time required for compliance.

(2) An employee assigned, or contractor engaged, by the Director-General or a local authority to do any work on regulated premises in accordance with those arrangements may, at any reasonable time, enter the premises and do the work or have it done.

(3) An amount equal to the cost of carrying out work in accordance with those arrangements may be recovered from the occupier of the premises:

- (a) as a debt due to the Crown if the arrangements were made by the Director-General, or
- (b) as a debt due to the local authority if the arrangements were made by the local authority.

(4) An occupier of regulated premises is guilty of an offence if a regulated system on the premises is operated in contravention of a direction given in a notice served on the occupier under this section.

(5) Section 72 (Powers of entry) applies in relation to the exercise of the powers of entry on premises conferred by this section.

Proceedings for offences under Part 4

50. (1) Proceedings for an offence under this Part are to be disposed of summarily either:

- (a) before a Local Court constituted by a Magistrate sitting alone, or
- (b) before the Supreme Court in its summary jurisdiction.

(2) A person convicted by a Local Court of an offence under this Part is liable to a penalty not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months, or both.

(3) A person convicted by the Supreme Court of an offence under this Part is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

(4) Proceedings for an offence under this Part may be commenced at any time within, but not later than, 2 years after the time at which the offence is alleged to have been committed.