



HOUSE OF REPRESENTATIVES

Supplementary Order Paper

Tuesday, 24 February 1998

HEALTH AND SAFETY IN EMPLOYMENT AMENDMENT BILL

Proposed Amendments

Hon MAX BRADFORD, in Committee, to move the following amendments:

Clause 1A: To insert, after *clause 1*, the following clause:

1A. Duties of persons who control places of work—The principal Act is amended by repealing section 16, and substituting the following section:

“16. (1) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms—

“(a) People in the vicinity of the place (including people in the vicinity of the place solely for the purpose of recreation or leisure);

“(b) People who are lawfully at work in the place—

“(i) As employees of the person; or

“(ii) As contractors engaged by the person; or

“(iii) As subcontractors to a contractor engaged by the person; or

“(iv) As employees of a contractor or subcontractor to whom subparagraph (ii) or subparagraph (iii) applies.

“(2) A person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms people—

“(a) Who are in the place with the express or implied consent of the person; and

“(b) Who—

“(i) Have paid the person (directly or indirectly) to be there or to undertake an activity there; or

“(ii) Are there to undertake activities that include buying or inspecting goods from whose sale the person derives or would derive (directly or indirectly) any gain or reward.

“(3) A person who—

“(a) Controls a place of work (other than a home occupied by the person); and

“(b) Knows of any significant hazard that—

“(i) Is in, or is likely to arise in, the place of work; and

“(ii) Arises from work that is being carried on, or has been carried on, for gain or reward in the place of work; and

“(iii) Would not, in the ordinary course of events, be reasonably expected to be in, or to be likely to arise in, a place of work of that type; and

“(c) Either—

“(i) Expressly authorises any other person to be in the place of work; or

“(ii) Has personally received oral advice that any other person will, under the authority of any enactment, be working in the place of work; and

“(d) Is not obliged, in relation to that other person, to comply with **subsection (1) or subsection (2)**—

must take all practicable steps to warn that other person of the significant hazard.

“(4) Except in the case of the practicable steps required by this section to be taken in relation to any person described in **subsection (2) or subsection (3) (c) (i)**, this section does not impose on any person who controls a place of work any duty in respect of any person who is in the place of work solely for the purpose of recreation or leisure.

“(5) The warning required to be given to a person to whom **subsection (3) (c) (i)** applies—

“(a) Must be given to that person at the time at which the express authority to be in the place of work is given to that person; but

“(b) If the express authority is given in respect of a group of persons or a body of persons, whether corporate or unincorporate, it is sufficient if the warning is given at that time to a representative or member of that group or body of persons.

“(6) The oral advice required by **subsection (3) (c) (ii)** must be given by the person who will be working in the place of work or by that person’s employer.”

Clause 4: To omit from subclause (2) (b) the word “approved”, and substitute the word “preferred”.

Clause 4A: To insert, after *clause 4*, the following clause:

4A. Other offences—(1) Section 50 (a) of the principal Act is amended by inserting, after the expression “section 14”, the words “or **section 16 (3)**”.

(2) Section 50 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) Every person who fails to comply with **section 16 (3)** commits an offence, and is liable on summary conviction to a fine not exceeding \$10,000.”

EXPLANATORY NOTE

Clause 1A: The principal object of the principal Act (as set out in section 5 (1)) is “to provide for the prevention of harm to employees at work”.

Section 16 of the principal Act, as enacted in 1992, imposes on every person who controls a place of work (not being a home occupied by the person) a duty to take all practicable steps to ensure that people in the place of work, and people in the vicinity of the place of work, are not harmed by any hazard that is or arises in the place of work.

The new *clause 1A* now proposed repeals section 16, and substitutes a new section. *Subsections (1) to (3)* of the new *section 16* now rely on the definition of the term “person who controls a place of work” (which definition is set out in section 2 (1) of the principal Act). The subsections are accordingly expressed to place obligations, not on the owner, lessee, sublessee, occupier, or person in possession of a place of work, but on every person who controls a place of work (other than a home occupied by the person).

The obligations imposed by *subsections (1) and (2)* of the new *section 16* are more onerous than the obligations imposed by *subsection (3)* of the new section.

Subsection (1) of the new section provides that a person who controls a place of work (other than a home occupied by the person) must take all practicable steps to ensure that no hazard that is or arises in the place harms—

- (a) People in the vicinity of the place (including people in the vicinity of the place solely for the purpose of recreation or leisure);
- (b) People who are lawfully at work in the place—
 - (i) As employees of the person; or
 - (ii) As contractors engaged by the person; or
 - (iii) As subcontractors to a contractor engaged by the person; or
 - (iv) As employees of a contractor or subcontractor to whom *subparagraph (ii)* or *subparagraph (iii)* applies.

Subsection (2) of the new section imposes duties of the same standard. It provides that a person who controls such a place of work must take all practicable steps to ensure that no hazard that is or arises in the place of work harms people—

- (a) Who are in the place with the express or implied consent of the person; and
- (b) Who—
 - (i) Have paid the person (directly or indirectly) to be there or to undertake an activity there; or
 - (ii) Are there to undertake activities that include buying or inspecting goods from whose sale the person derives or would derive (directly or indirectly) any gain or reward.

Subsection (3) of the new section imposes less onerous duties than those imposed by *subsections (1) and (2)*. Those less onerous duties are imposed only in certain cases and only in cases to which *subsections (1) and (2)* do not apply. Those less onerous duties require that, in the circumstances set out in the section, warning must be given of certain significant hazards. *Subsection (3)* provides that a person who—

- (a) Controls a place of work (other than a home occupied by the person); and
- (b) Knows of any significant hazard that—
 - (i) Is in, or is likely to arise in, the place of work; and
 - (ii) Arises from work that is being carried on, or has been carried on, for gain or reward in the place of work; and
 - (iii) Would not, in the ordinary course of events, be reasonably expected to be in, or to be likely to arise in, a place of work of that type; and
- (c) Either—
 - (i) Expressly authorises any other person to be in the place of work; or
 - (ii) Has personally received oral advice that any other person will, under the authority of any enactment, be working in the place of work; and
- (d) Is not obliged in relation to that other person, to comply with *subsection (1)* or *subsection (2)*,—

must take all practicable steps to warn the other person of the significant hazard.

Subsection (4) of the new section provides that, except in the case of the practicable steps required by the section to be taken in relation to any person described in *subsection (2)* or *subsection (3) (c) (i)*, section 16 does not impose on any person who controls a place of work any duty in respect of any person who is in the place of work solely for the purpose of recreation or leisure.

Subsection (5) of the new section provides that where the person in charge of a place of work expressly authorises another person to be in that place, the warning required by *subsection (3) (c) (i)* to be given to the person so authorised—

- (a) Must be given at the time at which that express authority is given; but

(b) If the express authority is given in respect of a group of persons, whether corporate or unincorporate, it is sufficient if the warning is given at that time to a representative or member of that group or body of persons.

Subsection (6) of the new section provides that the oral advice required by *subsection (3) (c) (ii)* (being oral advice that a person will, under the authority of an enactment, be working in the place of work) must be given by the person who will be working in the place of work or by that person's employer.

Clause 4: The proposed amendment corrects a typographical error.

Clause 4A: This new clause effects amendments that are related to the provisions of the new *section 16* (which is set out in the new *clause 1A*). Under *section 50 (a)* of the principal Act, the penalty for the offence of failing to comply with *section 16* is a fine not exceeding \$50,000 if the failure caused any person serious harm, or a fine not exceeding \$25,000 in any other case.

Under the amendments now proposed to *section 50* of the principal Act, the penalty for failing to give a warning under the proposed new *section 16 (3)* will be a fine not exceeding \$10,000.