

CONSOLIDATION OF TECHNICAL STANDARDS AND SAFETY ACT
S.Nu. 2002,c.1

(Current to: November 9, 2018)

Note: This Act is not in force until an order is made under section 59.

AS AMENDED BY:

S.Nu. 2017,c.6,s.29-46

s.29-46 in force March 14, 2017

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988* (*Note: The Supplement is in three volumes*).
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

Note: This Act is not in force until an order is made under section 59.

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Note: This Act is not in force until an order is made under section 59.

TECHNICAL STANDARDS AND SAFETY ACT

Purpose

1. The purpose of this Act is to enhance public safety in Nunavut by providing for the efficient and flexible administration of codes and technical standards for electrical installations, boilers and pressure vessels, elevating devices, and gas installations and distribution systems, and for registration of electrical workers, operating engineers, welders, elevating device installers, and gas installers as referred to in this Act and regulations.

Government bound by Act

2. This Act binds the government of Nunavut, its boards, agencies and corporations.

Conflict with other Acts

3. This Act and the regulations made under it prevail over any municipal by-law.

DEFINITIONS

Definitions

4. In this Act,

“Advisory Committee” means the Nunavut Building Advisory Committee established under the *Building Code Act*; (*comité consultatif*)

"chief inspector" means a person appointed as a chief inspector under this Act or a predecessor Act; (*inspecteur en chef*)

"dwelling" means any premises or part of a premises occupied ordinarily as living accommodation; (*logement*)

"inspector" means a person appointed as an inspector under this Act or a predecessor Act; (*inspecteur*)

“investigation” means an investigation, including entry, search and seizure, under section 15.1; (*enquête*)

"permit" means any form of authorization granted under this Act and includes:

- (a) with respect to a person, a certificate, licence or registration; and
- (b) with respect to a thing, an approval, certificate, licence or registration; (*permis*)

"person" means an individual, an association, a partnership, a corporation or a municipality; (*personne*)

"predecessor Act" means any of the following:

- (a) *Electrical Protection Act*;
- (b) *Boilers and Pressure Vessels Act*;
- (c) *Gas Protection Act*; (*loi précédente*)

"seal" means to mark, tag, seal or label, and its noun has a corresponding meaning.
(*apposer les scellés*)

S.Nu. 2017,c.6,s.30.

APPOINTMENT AND POWERS

Appointment

5. (1) The Minister may appoint chief inspectors and inspectors.

Restrictions, limitations and conditions

(2) An appointment is subject to the restrictions, limitations and conditions set out in it.

Document of appointment

6. Chief inspectors and inspectors shall be issued with a document establishing their appointment which they shall produce on request.

Powers of chief inspector

7. (1) A chief inspector has general supervisory and administrative responsibility for all or any part of this Act and the regulations according to the terms of his or her appointment.

Same

- (2) Unless otherwise stated in his or her appointment, a chief inspector:
- (a) may supervise and direct inspectors and other persons responsible for administering or enforcing this Act or the regulations made under it; and
 - (b) is an inspector and may exercise any of the powers and perform any of the duties of an inspector.

Delegation

8. A chief inspector may delegate in writing any of his or her powers or duties to any person subject to the restrictions, limitations and conditions set out in the delegation.

Scope of authority

- 9.** (1) Subject to this Act and the regulations, the chief inspector may:
- (a) approve notices, markings and other forms of identification that are prescribed by the regulations for use in conjunction with equipment or other things;

- (b) approve the granting, term, renewal, posting, transfer and reinstatement of permits;
- (c) decide actions that may be taken or not taken in connection with an accident or incident in order to preserve evidence;
- (d) supervise investigation of an accident or incident involving persons or things to which this Act or the regulations apply;
- (e) provide for service of any notice or safety order required to be given or served under this Act or the regulations;
- (f) evaluate the qualifications of persons to whom this Act or the regulations apply;
- (g) assign identifying symbols to welding operators;
- (h) approve inspections to be carried out by an insurer who meets the requirements prescribed by the regulations;
- (i) approve reports made by insurers;
- (j) evaluate and approve or reject proposed safety procedures filed by distributors under the regulations;
- (k) develop and approve methods of determining the capacity, content and rating of equipment and other things;
- (l) approve the form of labels required or authorized to be affixed to things covered by this Act and regulations;
- (m) approve the labels of other jurisdictions that may be adopted for use under this Act and the regulations;
- (n) approve organizations to test any thing for which standards or specifications are established under this Act.

General or particular

(2) A chief inspector's decision or action under subsection (1) may be general or particular in its application.

Variances

(3) The chief inspector may, in writing, approve variances from the authorized codes, standards, guidelines or procedures:

- (a) if, in the opinion of the chief inspector, the variance would not detrimentally affect the safe use of the thing to which the regulation applies or the health or safety of any person;
- (b) within the limits, if any, that are prescribed by the regulations; and
- (c) subject to such conditions as may be specified by the chief inspector.

Defective or non-conforming things

(4) A chief inspector may:

- (a) authorize the limits of operation and use of things that are found to be defective or that do not conform to the terms of their permits after fabrication, alteration or installation;
- (b) approve the operation and use of such things within such limits as are prescribed by the regulations, or if there are no such limits, as the chief inspector considers safe.

Retention of information

10. (1) A chief inspector may establish the information, records, documents, plans, log books, drawings, instructions, specifications or any other thing to be kept or provided with respect to any matter under this Act or the regulations.

Reports

(2) A chief inspector may give directions for reports, including what information is to be reported, by whom and to whom, and the time, manner and frequency of reporting.

Qualifications and training

11. (1) A chief inspector may, if the regulations do not provide for these matters:

- (a) evaluate the qualifications, training and experience that are required for the granting of a permit to a person to whom this Act or the regulations apply; and
- (b) establish that person's duties and responsibilities.

Equivalency

(2) A chief inspector may recognize training and experience of an applicant for a permit if the chief inspector is of the opinion that such training or experience is equivalent to the requirements of this Act or the regulations.

Re-examination

(3) A chief inspector may establish conditions for the re-examination of applicants who have taken examinations that may be prescribed.

PERMITS

Requirement for permit

12. (1) Except as provided in the regulations, a person is required to obtain a permit in accordance with this Act and the regulations under it before operating, installing or otherwise dealing with any thing to which the regulations apply.

Permits public

(2) Permissions, authorizations, variances, exemptions, requirements, designations and any other matters provided for in this Act or the regulations are public information and shall be disclosed by a chief inspector to the public upon request as prescribed by the regulations.

Permits to carry out activity

13. (1) An applicant who applies to an inspector for a permit to carry out an activity referred to in the regulations is entitled to the permit if all the requirements for it are met.

Refusal to grant permit to carry out activity

(2) An inspector may refuse to grant a permit to an applicant who does not meet the requirements for it.

Permits for things

(3) An applicant who applies to an inspector for a permit required for a thing is entitled to the permit if all the requirements for it are met.

Refusal to grant permit for things

(4) An inspector may refuse to grant a permit for a thing if the applicant or thing does not meet the requirements for it.

Restrictions, limitations and conditions

(5) A permit is subject to the restrictions, limitations and conditions that are prescribed by the regulations and to the restrictions, limitations and conditions, if any, imposed on it by an inspector or chief inspector.

Grounds for refusals or suspensions

14. (1) An inspector may refuse to grant or may suspend, revoke or refuse to renew a permit on any reasonable grounds that cause him or her to believe that the applicant or permit holder:

- (a) will not carry out the activities authorized by the permit in accordance with the law;
- (b) will not carry out the activities authorized by the permit safely;
- (c) has falsified information or intentionally misled an inspector;
- (d) is not competent or lacks necessary skill;
- (e) has failed to comply with the Act, the regulations, the decision or safety order of an inspector or chief inspector, or a restriction, limitation or condition of a permit;
- (f) has obtained the permit through misrepresentation or fraud; or
- (g) has allowed an unauthorized person to carry out the activities authorized by the permit.

Written confirmation

(2) A chief inspector shall issue a written confirmation including reasons with respect to:

- (a) a decision to refuse a permit;
- (b) a decision to revoke, suspend, or refuse to renew a permit;
- (c) the restrictions or conditions to which a permit is subject;
- (d) the filing or non-filing of any document or material required or permitted to be filed with the chief inspector; or
- (e) any other matter that may be prescribed by the regulations or set out in an inspector's decision.

Written confirmation as proof

(3) A confirmation is proof, in the absence of evidence to the contrary, of the facts stated in it, without any proof of appointment or signature.

Written confirmation to permit holder or applicant

(4) A confirmation shall be sent to the permit holder or applicant.

INSPECTIONS AND INVESTIGATIONS

Inspection without warrant

15. Subject to section 15.2, for the purpose of ensuring compliance with this Act, the regulations or an order made under this Act or of determining whether an unsafe condition exists, an inspector may, at any reasonable time and without a warrant

- (a) enter lands, premises or another place;
- (b) enter in or on adjoining structures, lands, premises, or other places necessary for the purpose of conducting an inspection;
- (c) be accompanied and assisted by a person who may be of assistance to him or her in carrying out an inspection;
- (d) deal with records and things in the manner specified in section 17;
- (e) conduct any test, make any inquiry and take any sample, measurement, photograph or video recording that the inspector considers necessary; and
- (f) require the owner or any person performing or responsible for the operation or installation to take and supply at his, her or its expense such tests and samples as the inspector considers necessary.

S.Nu. 2017,c.6,s.31.

Entry and search for the purpose of investigation

15.1. (1) Subject to section 15.2, if an inspector believes, on reasonable grounds, that an offence under this Act has been committed, the inspector may enter and search any lands, premises or other place for the purpose of obtaining evidence in relation to that offence under this Act if

- (a) the occupant or person in charge of the place consents;
- (b) the entry or search is authorized by a warrant; or
- (c) with respect to a place that is not a dwelling, the inspector has reasonable grounds to believe that distance, urgency, the likelihood of removal or destruction of the evidence and other relevant factors do not reasonably permit the obtaining of a warrant or consent.

Powers during search

(2) In carrying out a search under this section, an inspector may

- (a) be accompanied and assisted by a person who may be of assistance to him or her in carrying out an investigation;
- (b) conduct any test, make any inquiry and take any sample, measurement, photograph or video recording that the inspector considers necessary;
- (c) use or cause to be used any computer system and examine any data contained in or available on the computer system;

- (d) on giving a receipt, seize any document, data or thing if
 - (i) the seizure is authorized by a warrant, or
 - (ii) distance, urgency, the likelihood of the removal or destruction of the document, data or thing as evidence or other relevant factors do not reasonably permit the obtaining of a warrant.

Power of seizure

- (3) The power to seize under paragraph (2)(d) includes the power to
 - (a) reproduce or cause to be reproduced any document or data;
 - (b) print or export any document or data for examination or copying; and
 - (c) use or cause to be used any copying equipment at the building or place to make copies of the document or data.

S.Nu. 2017,c.6,s.31.

Entry into dwelling

15.2. (1) Despite paragraphs 15(1)(a) and (b) and subsection 15.1(1), an inspector shall not enter a dwelling except

- (a) with the consent of the occupier;
- (b) under the authority of a warrant; or
- (c) where the inspector has reasonable grounds to believe that exigent circumstances exist.

Informing occupier

(2) An inspector who wishes to enter a dwelling with the consent of the occupier shall inform the occupier that he or she may refuse his or her consent.

Definition of "exigent circumstances"

(3) For the purpose of paragraph (1)(c), "exigent circumstances" means that the conditions for obtaining a warrant would result in an immediate and serious danger to persons or property or in the removal, loss or destruction of evidence. S.Nu. 2017,c.6,s.31.

Warrant

16. (1) On an application that may be made without notice to the occupier or owner, a justice of the peace or judge may issue a warrant authorizing the entry of a place by any person referred to in the warrant if the justice or judge is satisfied that

- (a) an inspector cannot obtain the occupier's or owner's consent to enter a private dwelling or has been refused entry to a private dwelling; and
- (b) there are reasonable grounds to believe that entry to the dwelling is necessary to further an inspection, investigation or proceeding under this Act.

Reasonable force

(2) A person authorized to enter a place under a warrant issued under subsection (1) may use such force as is reasonably necessary to execute the warrant and may call on peace officers to assist in its execution. S.Nu. 2017,c.6,s.31.

Powers of inspector

- 17.** (1) In carrying out an inspection, an inspector may:
- (a) exercise such powers and act in such manner as is set out in this Act and the regulations;
 - (b) require that a record or thing be produced for inspection; and
 - (c) on notice in writing to the appropriate person, immediately remove any thing for the purpose of making any examination, test or inquiry that may be necessary to determine whether this Act or the regulations are being complied with.

Request in writing

(2) An inspector who requires that a record or other thing be produced for inspection must do so in writing and state the nature of the record or thing required.

Requirement to produce

(3) If an inspector requires that a record or other thing be produced for inspection, the person who has custody of it shall produce it and, in the case of a record, shall provide any assistance that is reasonably necessary to interpret it or to produce it in readable form.

Access to and return of removed record or thing

- (4) A record or other thing that has been removed for review and copying shall:
- (a) be made available to the person from whom it was removed, on request, at a time and place convenient for both the person and the inspector; and
 - (b) be returned to the person within a reasonable time.

True copy of record

(5) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Receipt for thing removed or seized

(6) An inspector who removes or seizes a record or thing shall provide a receipt to the appropriate person.

Sealing

(7) An inspector conducting an inspection may seal any thing where the thing is capable of being sealed. S.Nu. 2017,c.6,s.32.

Information, records, documents or data

17.1. The powers under sections 15, 15.1 and 17 may not be used with respect to information, records, documents or data except to the extent that doing so is

- (a) necessary for the purposes of an inspection or investigation; or
- (b) authorized by a warrant.

S.Nu. 2017,c.6,s.32.1.

Entry and inspection

18. Every person shall:

- (a) furnish all necessary means in his or her power to facilitate any entry, inspection, examination, test or inquiry by an inspector in the exercise of his or her powers and the carrying out of his or her duties; and
- (b) pay the fees required by the Act or the regulations for an inspection, reinspection, examination, test or inquiry.

Obstruction

19. No person shall:

- (a) hinder, obstruct or interfere with an inspector conducting an inspection or investigation;
- (b) refuse to answer questions on matters relevant to an inspection; or
- (c) provide the inspector with information on matters relevant to an inspection or an investigation that the person knows to be false or misleading.

S.Nu. 2017,c.6,s.33.

Exclusion of liability

20. No proceeding shall be commenced in any court against an inspector, a chief inspector, the Advisory Committee or a member of the Advisory Committee for anything done or omitted in good faith by them in the exercise of their powers or the carrying out of their duties under this Act or the regulations. S.Nu. 2017,c.6,s.34.

Report

21. Following an inspection or investigation, the inspector shall make a report to the chief inspector about the inspection or investigation in the form and with the content required by the chief inspector. S.Nu. 2017,c.6,s.35.

Compliance

22. (1) If an inspector finds that any provision of this Act or the regulations is being contravened, or that a thing is unsafe or is not being operated or used in accordance with the permit relating to it, the inspector may:

- (a) serve the person he or she believes to be the contravener or that person's supervisor or employer, or both, with a decision in writing setting out the nature of the contravention and indicating how to correct it;

- (b) specify whether the contravention must be corrected immediately or within the time limit specified in the decision; or
- (c) seal any thing to which this Act or the regulations apply where there is or may be a demonstrable threat to public safety, whether or not the thing is subject to a permit.

Revoking decision or consent

(2) An inspector may revoke a decision, or consent to the removal of a seal, if he or she is satisfied that a potential danger has been averted or corrected, that all provisions of this Act or the regulations are being complied with or that a thing is being operated in accordance with the permit relating to it, as the case may be.

Immunity

(3) Any person who receives an inspector's decision under subsection (1) or (2) and complies with it or who has made all reasonable efforts to comply with it is not guilty of an offence in respect of the contravention that formed the basis of the decision.

S.Nu. 2017,c.6,s.36.

Compliance order

23. (1) If a chief inspector has reasonable grounds to believe that a contravention under section 22(1) is continuing or that any person is failing to comply with any provision of this Act or the regulations, the chief inspector may apply to the Nunavut Court of Justice for an order directing compliance.

Just order

(2) In an application under subsection (1), the court may make any order that it considers just.

Application not restricted

(3) The chief inspector may make an application under subsection (1) even if a penalty or some other sanction has been applied against the person in respect of the failure to comply and regardless of any other rights the person may have.

Appeal

(4) An appeal lies to a single judge of the Court of Appeal of Nunavut within 30 days from an order made under subsection (2). S.Nu. 2017,c.6,s.37.

Use of sealed things

24. (1) A chief inspector shall determine the operation and use of things that have been sealed by an inspector.

Use and removal of seals

(2) A chief inspector shall determine the use and removal of seals.

Operation or use of sealed thing

(3) No person shall operate, use or cause or allow the operation or use of a thing in contravention of a decision issued under section 22 or where the thing has been sealed.

Prohibition respecting seals

- (4) No person shall remove a seal affixed by an inspector:
- (a) without the inspector's consent; or
 - (b) except as provided in the regulations.

Exception

(5) Subsection (4) does not apply when the decision to affix the seal has been revoked.

Certificate of approval

25. A chief inspector may issue a certificate of approval with respect to things that have been inspected and found capable of being used or operated safely and may also cancel such a certificate.

SAFETY ORDERS

Use of force

26. An inspector may use such force as is reasonably necessary to enter without a warrant and inspect any place where he or she has reason to believe there is an immediate threat to public safety.

Safety orders

27. (1) An inspector or chief inspector may give a safety order to any person or class of persons with respect to any matter governed by this Act that pertains to safety.

Scope of safety order

(2) The safety order may require that any thing or part of a thing, or class of things, be dealt with as set out in the order, including:

- (a) being shut down;
- (b) being used only in accordance with the order; and
- (c) not being used.

Orally or in writing

(3) The safety order may be given orally or in writing, and may be made without prior notice.

Written order

(4) A safety order that is given orally shall be provided in writing as soon as practicable in the circumstances and in no case later than seven days after the oral order is given.

Commencement of order

(5) The safety order is effective immediately but may be suspended pending a hearing under subsection (6) with the consent of the inspector who made it.

Hearing

(6) On the request of the person affected by the safety order, the chief inspector shall hold a hearing on the matter.

Same

(7) Following a hearing under subsection (6), the chief inspector may confirm, vary or rescind a safety order.

Rescinding safety order

(8) Where an inspector or chief inspector is satisfied that the conditions justifying a safety order no longer exist, the inspector or chief inspector may rescind the safety order.

S.Nu. 2017,c.6,s.38.

Chief inspector's safety order

28. In cases where there is or may be a demonstrable threat to public safety, a chief inspector may make a safety order with respect to the following matters if they have not otherwise been provided for in this Act or the regulations:

- (a) providing for the form and location of notices, markings or other forms of identification to be used in conjunction with equipment or other things that are prescribed in the regulations; or
- (b) providing for the authorization of the design, fabrication, processing, handling, installation, operation, access, use, repair, maintenance, inspection, location, construction, removing, alteration, service, testing, filling, replacement, blocking, dismantling, destruction, removal from service and transportation of any thing, whether new or used, or a part of a thing, and any equipment or attachment used in connection with it.

Suspension for failure to comply with safety order

29. (1) The chief inspector may, without prior notice or the holding of a hearing, suspend any permit granted to a person who fails to comply with a safety order.

Reinstatement of suspended permit

(2) A suspended permit shall not be reinstated unless the applicant provides proof of having complied with all outstanding safety orders affecting the applicant under that permit, in addition to satisfying all other requirements for the reinstatement of the permit.

Statutory Instruments Act does not apply

30. The *Statutory Instruments Act* does not apply to safety orders issued by an inspector or chief inspector under this Act or the regulations.

Provisional suspension or refusal to renew where safety involved

31. (1) An inspector may, by notice to a permit holder and without a hearing, provisionally suspend or refuse to renew a permit where the carrying on of the operations under the permit is, in the inspector's opinion, an immediate threat to public safety or the safety of any person or property.

Content of notice

(2) The notice under subsection (1) shall state the inspector's reasons for the decision to provisionally suspend or refuse to renew the permit and inform the permit holder of the right to a hearing before the chief inspector if the holder applies for the hearing within 15 days after being served with the notice.

Requirement to provide information

32. If an inspector receives a complaint alleging non-compliance with a permit, the permit holder shall, on request, provide the inspector with any information respecting the circumstances of the complaint that the inspector requires.

Examination under oath

33. For the purpose of an inspection or an investigation under this Act, a chief inspector may, by notice in writing, require the attendance of any person at the time and place named in the notice and may examine the person under oath regarding any matter pertaining to the inspection or investigation.

Notice of refusal

34. (1) Subject to subsection (2), if an inspector refuses to grant a permit, or decides to suspend, revoke or refuse to renew a permit, the inspector shall serve notice of the refusal or decision, together with written reasons, on the applicant or permit holder.

Exception

- (2) A notice of refusal is not required:
- (a) in the case of a provisional suspension of a permit or a refusal to renew a permit under section 31;
 - (b) in the case of a suspension for a failure to pay under section 53.

Service

(3) An inspector may serve the notice of refusal personally or by registered mail addressed to the applicant or permit holder at the last address known to the inspector, by fax or by any other form of electronic transmission if there is a record that the notice has been sent.

Registered mail

(4) If registered mail is used, the notice shall be deemed to have been served on the seventh day after the day of mailing unless the person on whom notice is being served establishes to the inspector that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice until a later date.

Fax or electronic transmission

(5) If a fax or other form of electronic transmission is used, the notice shall be deemed to have been served on the day after the fax or other transmission was sent unless the person on whom notice is being served establishes to the inspector that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice until a later date.

HEARINGS

Right to hearing

35. (1) A notice of refusal shall inform the applicant or permit holder that he or she has the right to a hearing before the chief inspector if he or she requests the hearing within 15 days after being served with the notice.

Failure to request hearing

(2) If the applicant or permit holder does not request a hearing, the inspector's refusal to grant a permit shall be deemed to be confirmed.

Holding hearing

(3) If the applicant or permit holder requests a hearing, the chief inspector shall set a time for and hold the hearing after issuing a notice of hearing to the applicant or permit holder.

Extension

(4) The chief inspector to whom a request for a hearing is made may extend the time for making the request either before or after the 15-day period if he or she is satisfied that:

- (a) there are reasonable grounds for applying for the extension; and
- (b) there are apparent grounds for granting to the applicant or permit holder the relief sought at the hearing.

Directions

(5) In granting an extension, the chief inspector may give any directions he or she considers appropriate.

Chief inspector's hearing

36. (1) Any person affected by an inspector's decision, the affixing of a seal or a requirement to pay fees for an inspection, examination, test or inquiry may request at any time that a chief inspector hold a hearing into the matter.

In writing

(2) The request for a hearing is not required to be in writing but, if the chief inspector so requires, the grounds for the request shall be specified in writing before the hearing takes place.

Holding hearing

(3) On receiving a request, the chief inspector shall hold a hearing as soon as is reasonably possible, but such a request does not affect the operation of the decision objected to pending disposition of the hearing.

Powers during hearing

- (4) In a hearing under subsection (1), the chief inspector may:
- (a) make any inquiries that he or she thinks fit; and
 - (b) require and take evidence under oath or affirmation.

Opportunity to achieve compliance

37. (1) Notice of a hearing shall afford to the applicant or permit holder a reasonable opportunity to show or to achieve compliance with all lawful requirements for the granting, retention or renewal of the permit before the hearing.

Opportunity to examine

(2) An applicant or permit holder shall be given an opportunity to examine before a hearing any written or documentary evidence that will be produced or any reports whose contents will be given in evidence at the hearing.

Recording of evidence

38. (1) The oral evidence taken before the chief inspector at a hearing shall be recorded at the request of the applicant, the permit holder or the chief inspector.

Costs

(2) The recording shall be at the cost of the person making the request and, where copies of the transcript are requested, they shall be provided at the cost of the person making the request.

Decision

39. (1) After a hearing, the chief inspector may refuse to grant the permit or may revoke, suspend or refuse to renew the permit if the permit holder is in contravention of this Act, the regulations, an inspector's decision or a restriction, limitation or condition in the permit.

Effective time

- (2) A revocation, suspension or refusal to renew under subsection (1) takes effect
- (a) where, in the chief inspector's opinion, there is or may be a threat to public safety or to the safety of any person or property, immediately;
 - (b) in any other case, the later of the date of the final decision in a hearing and the expiration of the period for filing an appeal.

Decision

- (3) After a hearing, the chief inspector may:
- (a) substitute his or her decision for that of the inspector;
 - (b) revoke the inspector's decision if the chief inspector is satisfied
 - (i) that a demonstrable threat to public safety does not exist, or
 - (ii) that all provisions of this Act, the regulations or an inspector's order are being complied with or that the thing is being operated in accordance with the permit relating to it; or
 - (c) confirm the inspector's decision if the chief inspector is not satisfied under clause (b).

Seals

(4) After a hearing, the chief inspector may in writing confirm the affixing of seals or direct the inspector to remove them.

(5) **Repealed, S.Nu. 2017,c.6,s.39(b).**

(6) **Repealed, S.Nu. 2017,c.6,s.39(b).** S.Nu. 2017,c.6,s.39.

REVIEW AND APPEAL

Application to Advisory Committee

40. (1) A person aggrieved by the decision of a chief inspector made following a hearing may apply to the Advisory Committee for a ruling on any of the following grounds:

- (a) the denial, non-renewal, cancellation or suspension of a permit;
- (b) the imposition of conditions or restrictions on a permit;
- (c) the incorrect application of a rule in a code, standard, guideline or procedure adopted in accordance with paragraph 56(1)(q) or section 57.

Disposal of article

(2) If an application or appeal relates to the destruction of an article, neither the appellant nor the respondent shall dispose of the article pending the application or appeal.

Application of *Building Code Act*

(3) The relevant procedure under the *Building Code Act* applies to applications and rulings under this section.

No stay

(4) Despite subsection 17(7) of the *Building Code Act* or any order made under that subsection, an application for a ruling of the Advisory Committee pursuant to subsection (1) respecting an order made under section 27 or a decision respecting such an order does not operate as a stay of the order or the decision. S.Nu. 2017,c.6,s.40.

Appeal

41. The ruling of the Advisory Committee may be appealed to the Nunavut Court of Justice in the manner set out in section 19 of the *Building Code Act*. S.Nu. 2017,c.6,s.40.

42. Repealed, S.Nu. 2017,c.6,s.40.

43. Repealed, S.Nu. 2017,c.6,s.40.

44. Repealed, S.Nu. 2017,c.6,s.40.

45. Repealed, S.Nu. 2017,c.6,s.40.

46. Repealed, S.Nu. 2017,c.6,s.40.

DISCLOSURE OF INFORMATION

Disclosure of information

47. (1) An inspector, other than a chief inspector, shall not disclose to any person any information, record, report or statement obtained under the powers conferred under this Act and the regulations except for the purposes of carrying out his or her duties or powers under the Act and regulations.

Inspectors compellable

(2) An inspector is a compellable witness in a civil proceeding respecting any information, record, report or statement obtained under the powers conferred under this Act or the regulations.

Exception

(3) Notwithstanding subsection (2), and subject to subsection (4), a chief inspector may:

- (a) on reasonable grounds, refuse to permit an inspector to attend as a witness; or
- (b) require that an inspector's attendance as a witness be subject to such conditions as are reasonable and necessary for the proper administration of this Act and the regulations, including requiring the payment of a fee for the inspector's attendance as set out in the schedule of fees listed in the regulations.

Exception to exception

(4) Subsection (3) does not apply if:

- (a) a court orders that the inspector attend as a witness;
- (b) the proceeding is a proceeding under the *Criminal Code*; or
- (c) the Government of Nunavut is a party to the proceeding.

Decision in writing

(5) A chief inspector shall provide in writing his or her decision, including the reasons for the decision, to refuse to permit an inspector to attend as a witness or to require that an inspector's attendance as a witness be subject to conditions. S.Nu. 2017,c.6,s.41.

Disclosure

48. A chief inspector may disclose or publish information, records, reports or statements obtained under the powers conferred under this Act and the regulations.

OFFENCES AND PENALTIES

Offence

49. (1) Every person is guilty of an offence who:

- (a) contravenes or fails to comply with any provision of this Act or the regulations;

- (b) knowingly makes a false statement or furnishes false information under this Act or the regulations;
- (c) contravenes or fails to comply with a term or condition of a permit;
- (d) contravenes or fails to comply with a decision or safety order of an inspector or chief inspector; or
- (e) obstructs an inspector in the pursuit of his or her duties as authorized by the Act or the regulations.

Penalties

(2) A person who commits an offence under this Act or the regulations is liable on conviction to a fine of not more than \$25,000 or to imprisonment for a term of not more than one year, or to both, or, if that person is a body corporate, to a fine of not more than \$100,000.

Duty of director or officer

50. (1) Every director or officer of a body corporate has a duty to take all reasonable care to prevent the body corporate from committing an offence under this Act or the regulations.

Penalties

(2) Every director or officer of a body corporate who has a duty under subsection (1) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both.

Separate offence

51. Where a person contravenes any of the provisions of this Act, the regulations, or any notice or safety order made under them on more than one day, the continuance of the contravention on each succeeding day shall be deemed to constitute a separate offence.

Administrative penalty

52. (1) An inspector may apply to a chief inspector for an administrative penalty to be applied against a person where it appears to the inspector that the person

- (a) is not complying or has not complied with
 - (i) this Act or the regulations,
 - (ii) a term or condition of a permit, or
 - (iii) a decision or safety order of an inspector or chief inspector;
- (b) is obstructing or has obstructed an inspector in the pursuit of his or her duties as authorized by this Act and the regulations; or
- (c) has made a false statement or furnished false information under this Act or the regulations.

Same

(2) A chief inspector may order that a person pay a prescribed administrative penalty where the chief inspector is satisfied that the person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c).

Separate administrative penalty

- (3) An order under subsection (2) may provide for the payment of
- (a) a separate administrative penalty for each occurrence of an act or omission; and
 - (b) a separate administrative penalty for each provision of this Act or regulations, each term or condition of a permit, or each provision of a decision or safety order that is or was not complied with.

Appeal

(4) A person who considers himself or herself aggrieved by an order of the chief inspector under subsection (2) may, within 30 days after the order comes to the person's attention, appeal the order to the Nunavut Court of Justice.

Questions on appeal

(5) The questions on appeal under this section shall be limited to jurisdiction and whether the person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c).

Conduct of appeal

- (6) In an appeal under this section
- (a) the standard of review is reasonableness;
 - (b) a finding of fact or the discharge of a presumption is to be made on a balance of probabilities;
 - (c) no proof of intention, negligence or other mental element is required for a finding that a person, by act or omission, did or continues to do anything referred to in paragraphs (1)(a) to (c); and
 - (d) no defence of due diligence or other defence based on a mental element shall be admitted or used to rebut a finding that a person, by act or omission, did or continues to do anything referred to in paragraphs 1)(a) to (c).
- S.Nu. 2017,c.6,s.42.

Consequences of default in payment

53. (1) If a permit holder or an applicant for a permit is in default of the payment of a fee, an administrative penalty, a cost or other charge owing to the Government of Nunavut, or a fine imposed on conviction for an offence under this Act, a chief inspector may:

- (a) suspend the holder's permit; or
- (b) refuse to renew the holder's permit or to grant a permit to the applicant.

Reversing suspension

(2) If a permit is suspended under clause (1)(a), the permit holder is entitled to have the permit reinstated on providing proof to the chief inspector that the permit holder is no longer in default.

Reversing refusal

(3) If an application for a permit or for the renewal of a permit is refused under clause (1)(b), the applicant is entitled to the permit on providing proof to the inspector or chief inspector that the applicant is no longer in default.

No notice or hearing required

(4) A chief inspector is not required to give notice or to hold a hearing before acting under subsection (1).

Payment does not constitute admission

53.1. The payment of an administrative penalty

- (a) does not constitute an admission of the act or omission for which the administrative penalty was imposed; and
 - (b) shall not be used as evidence in the prosecution of any offence.
- S.Nu. 2017,c.6,s.43.

Administrative penalty does not preclude conviction

54. A person against whom an administrative penalty has been levied under this Act or the regulations may also be charged with, and convicted of, an offence under this Act for the same matter.

Time limit

55. No proceeding in respect of an alleged offence under this Act or the regulations may be commenced after six months following the date on which the facts that gave rise to the alleged offence were discovered by an inspector or chief inspector.

REGULATIONS

Regulations

56. (1) The Commissioner upon the recommendation of the Minister may make regulations for the purpose of:

- (a) prescribing any matter or thing required or permitted to be prescribed under this Act or otherwise referred to as being prescribed under this Act;
- (b) regulating, governing and providing for the authorization of the design, fabrication, processing, handling, installation, operation, access, use, repair, maintenance, inspection, location, construction, removing, alteration, service, testing, filling, replacement, blocking, dismantling, destruction, removal from service and transportation of any thing, whether new or used, or a part of a thing, and any equipment or attachment used in connection with it;
- (c) prohibiting any person from doing anything that is not in compliance with this Act or the regulations;
- (d) establishing the powers, duties and responsibilities of chief inspectors;

- (e) classifying:
 - (i) any thing or part of a thing referred to in this Act or the regulations, and any equipment or attachment used in connection with it,
 - (ii) qualifications required of persons under this Act or the regulations, and
 - (iii) permits;
- (f) exempting any person or thing or any class of persons or things from the application of any part of this Act or the regulations, and establishing the conditions of exemption;
- (g) establishing and requiring the payment of fees and other amounts;
- (h) establishing qualifications, training, experience, duties and responsibilities of persons to whom this Act and the regulations apply;
- (i) defining accident and classes of accidents and requiring the reporting of accidents;
- (j) authorizing the isolation of things by means of seals or otherwise;
- (k) prohibiting the sale, purchase, renting, installation or use of any thing to which this Act or the regulations apply that does not bear the label of an organization approved by the chief inspector;
- (l) establishing a system of authorization numbers to be used for the identification of things and requiring inspectors and insurers to use such numbers for stamping or otherwise permanently identifying every thing inspected by them that does not have such a number;
- (m) requiring welding operators to weld according to procedures approved by a chief inspector and to imprint the symbols assigned to them by a chief inspector on equipment or other things that they weld;
- (n) governing the conduct of persons in or about elevating devices;
- (o) requiring owners of pipelines to develop procedures for locating pipelines that shall be approved by the chief inspector;
- (p) requiring every person who welds on a pipeline to obtain a permit as required by the Act and regulations;
- (q) adopting new codes and standards from time to time and requiring the chief inspector to notify the public of the adoption of the new codes and standards;
- (r) requiring distributors to file proposed safety procedures and requiring that distributors comply with safety procedures that have been approved by a chief inspector;
- (s) prescribing administrative penalties, including by range;
- (t) providing for any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

General or particular

- (2) A regulation under subsection (1) may be general or particular in its application.

Different requirements

(3) A regulation may establish different requirements for different classes of person, premises or activity. S.Nu. 2017,c.6,s.44.

Codes and standards

57. (1) The Commissioner may make regulations upon the recommendation of the Minister:

- (a) adopting by reference, in whole or in part and with such changes as he or she considers necessary, any code, standard, guideline or procedure, and requiring compliance with the thing as adopted;
- (b) amending or repealing codes and standards adopted by reference by a regulation before or after this section came into force.

Codes and standards as amended

(2) If a regulation under subsection (1) so provides, a code, standard, guideline or procedure adopted by reference shall be a reference to the code, standard, guideline or procedure as amended or replaced from time to time, and whether the amendment was made before or after the regulation was adopted.

Transitional

(3) Codes and standards adopted by reference under a predecessor Act to which this section applies are continued in force until repealed and may be amended or varied as provided in this section.

Advisory Committee

(4) The Advisory Committee may receive applications and make recommendations to amend any code, standard, guideline or procedure adopted under this section in the manner provided for in section 20 of the *Building Code Act*. S.Nu. 2017,c.6,s.45.

Statutory Instruments Act

57.1. The *Statutory Instruments Act* does not apply to an order or decision made or form approved under this Act. S.Nu. 2017,c.6,s.46.

REPEAL

Repeal

58. *The Boilers and Pressure Vessels Act, the Electrical Protection Act, and the Gas Protection Act are repealed.*

COMING INTO FORCE

Coming into force

59. **This Act comes into force on a day to be fixed by order of the Commissioner.**