



Wages Councils Act 1979

1979 CHAPTER 12

PART IV

MISCELLANEOUS

Offences and enforcement

- 21 Criminal liability of agent and superior employer, and special defence open to employer**
- (1) Where the immediate employer of any worker is himself in the employment of some other person and that worker is employed on the premises of that other person, that other person shall for the purposes of Part III and this Part of this Act be deemed to be the employer of that worker jointly with the immediate employer.
 - (2) Where an employer is charged with an offence under Part III or this Part of this Act, he shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person to whose act or default he alleges that the offence in question was due brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of that other person, that other person may be convicted of the offence, and, if the employer further proves that he has used all due diligence to secure that the provisions of Part III and this Part of this Act and any relevant regulation or order made thereunder are complied with, he shall be acquitted of the offence.
 - (3) Where a defendant seeks to avail himself of the provisions of subsection (2) above—
 - (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him if he gives evidence and any witnesses called by him in support of his pleas and to call rebutting evidence;
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

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- (4) Where it appears to an officer acting for the purposes of Part III and this Part of this Act that an offence has been committed in respect of which proceedings might be taken under this Act against an employer, and the officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2) above, the officer may cause proceedings to be taken against that other person without first causing proceedings to be taken against the employer.

In any such proceedings the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of, the offence with which the employer might have been charged.

- (5) Subsections (2) to (4) above shall not apply to Scotland, but—
- (a) where an offence for which an employer is, under this Act, liable to a fine was due to an act or default of an agent of the employer or other person, then, whether proceedings are or are not taken against the employer, that agent or other person may be charged with and convicted of the offence, and shall be liable on conviction to the same punishment as might have been inflicted on the employer if he had been convicted of the offence ;
 - (b) where an employer who is charged with an offence under this Act proves to the satisfaction of the court that he has used due diligence to secure compliance with the provisions of Part III and this Part of this Act and any relevant regulation or order made thereunder and that the offence was due to the act or default of some other person, he shall be acquitted of the offence.

22 Officers

- (1) The Secretary of State, with the approval of the Minister for the Civil Service as to numbers and salaries, may appoint officers to act for the purposes of Part III and this Part of this Act, and may, in lieu of or in addition to appointing any officers under this section, arrange with any government department that officers of that department shall act for the said purposes.
- (2) Every officer acting for the purposes of Part III and this Part of this Act shall be furnished by the Secretary of State with a certificate of his appointment or authority so to act, and, when so acting, shall, if so required by any person affected, produce the certificate to him.
- (3) An officer acting for the purposes of Part III and this Part of this Act shall have power for the performance of his duties—
 - (a) to require the production of wages sheets or other records of wages kept by an employer, and records of payments made to homeworkers by persons giving out work, and any other such records as are required by this Act to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
 - (b) to require the production of any licence or certificate granted under the Transport Act 1968, and of any records kept in pursuance of Part VI of the Transport Act 1968 or of the applicable Community rules within the meaning of the said Part VI, and to examine any such licence, certificate or records and copy it or them or any material part thereof;
 - (c) to require any person giving out work and any home-worker to give any information which it is in his power to give with respect to the names and

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addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work ;

- (d) at all reasonable times to enter any premises at which any employer to whom an order under section 14 above applies carries on his business (including any place used, in connection with that business, for giving out work to homeworkers and any premises which the officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for workers);
- (e) to inspect and copy any material part of any list of home-workers kept by an employer or person giving out work to homeworkers;
- (f) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under Part III or this Part of this Act, any person whom he has reasonable cause to believe to be or to have been a worker to whom an order under section 14 above applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business, and to require every such person to be so examined, and to sign a declaration of the truth of the matters in respect of which he is so examined:

Provided that no person shall be required under paragraph (f) above to give any information tending to criminate himself or, in the case of a person who is married, his or her wife or husband.

- (4) In England or Wales, an officer acting for the purposes of Part III and this Part of this Act may institute proceedings for any offence under this Act and may, although not of counsel or a solicitor, conduct any such proceedings:

Provided that an officer may not conduct proceedings for an offence under section 24 below unless he instituted those proceedings.

- (5) An officer acting for the purposes of Part III and this Part of this Act who is authorised in that behalf by general or special directions of the Secretary of State may, if it appears to him that a sum is due from an employer to a worker on account of the payment to him of remuneration less than the statutory minimum remuneration, institute on behalf of and in the name of that worker civil proceedings for the recovery of that sum and in any such proceedings the court may make an order for the payment of costs by the officer as if he were a party to the proceedings.

The power given by this subsection for the recovery of sums due from an employer to a worker shall not be in derogation of any right of the worker to recover such sums by civil proceedings.

- (6) Any person who obstructs an officer acting for the purposes of Part III and this Part of this Act in the exercise of any power conferred by this section, or fails to comply with any requirement of such an officer made in the exercise of any such power, shall be liable on summary conviction to a fine not exceeding £100:

Provided that it shall be a defence for a person charged under this subsection with failing to comply with a requirement to prove that it was not reasonably practicable to comply therewith.

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23 Penalties for false entries in records, producing false records or giving false information

If any person makes or causes to be made or knowingly allows to be made any entry in a record required by this Act to be kept by employers, which he knows to be false in a material particular, or for purposes connected with Part III or the preceding provisions of this Part of this Act produces or furnishes, or causes or knowingly allows to be produced or furnished, any wages sheet, record, list or information which he knows to be false in a material particular, he shall be liable on summary conviction to a fine not exceeding £400 or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

24 Power to obtain information

- (1) The Secretary of State may, for the purpose of, or in connection with the enforcement of, an order under section 14 above, by notice in writing require an employer within the field of operation of a council making such an order to furnish such information as may be specified or described in the notice.
- (2) A notice under this section may specify the way in which, and the time within which, it is to be complied with, and may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information which he has been required to furnish by a notice under subsection (1) above, he shall be liable on summary conviction to a fine not exceeding £100.
- (4) If a person, in purporting to comply with a requirement of a notice under subsection (1) above, knowingly or recklessly makes any false statement he shall be liable on summary conviction to a fine not exceeding £400.
- (5) Section 21 above shall not apply in relation to an offence under this section.
- (6) Where an offence under this section 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.
- (7) Where the affairs of the body corporate are managed by its members, subsection (6) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.