



# Health and Safety at Work etc. Act 1974

## 1974 CHAPTER 37

### PART I

#### HEALTH, SAFETY AND WELFARE IN CONNECTION WITH WORK, AND CONTROL OF DANGEROUS SUBSTANCES AND CERTAIN EMISSIONS INTO THE ATMOSPHERE

##### *Provisions as to offences*

### 33 Offences

- (1) It is an offence for a person—
- (a) to fail to discharge a duty to which he is subject by virtue of sections 2 to 7 ;
  - (b) to contravene section 8 or 9 ;
  - (c) to contravene any health and safety regulations or agricultural health and safety regulations or any requirement or prohibition imposed under any such regulations (including any requirement or prohibition to which he is subject by virtue of the terms of or any condition or restriction attached to any licence, approval, exemption or other authority issued, given or granted under the regulations);
  - (d) to contravene any requirement imposed by or under regulations under section 14 or intentionally to obstruct any person in the exercise of his powers under that section;
  - (e) to contravene any requirement imposed by an inspector under section 20 or 25 ;
  - (f) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of section 20(2) require an answer ;
  - (g) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as modified on appeal);
  - (h) intentionally to obstruct an inspector in the exercise or performance of his powers or duties ;

- (i) to contravene any requirement imposed by a notice under section 27(1);
  - (j) to use or disclose any information in contravention of section 27(4) or 28 ;
  - (k) to make a statement which he knows to be false or recklessly to make a statement which is false where the statement is made—
    - (i) in purported compliance with a requirement to furnish any information imposed by or under any of the relevant statutory provisions; or
    - (ii) for the purpose of obtaining the issue of a document under any of the relevant statutory provisions to himself or another person ;
  - (l) intentionally to make a false entry in any register, book, notice or other document required by or under any of the relevant statutory provisions to be kept, served or given or, with intent to deceive, to make use of any such entry which he knows to be false ;
  - (m) with intent to deceive, to forge or use a document issued or authorised to be issued under any of the relevant statutory provisions or required for any purpose thereunder or to make or have in his possession a document so closely resembling any such document as to be calculated to deceive;
  - (n) falsely to pretend to be an inspector ;
  - (o) to fail to comply with an order made by a court under section 42.
- (2) A person guilty of an offence under paragraph (d), (f), (h) or (n) of subsection (1) above, or of an offence under paragraph (e) of that subsection consisting of contravening a requirement imposed by an inspector under section 20, shall be liable on summary conviction to a fine not exceeding £400.
- (3) Subject to any provision made by virtue of section 15(6)(d) or by virtue of paragraph 2(2) of Schedule 3, a person guilty of an offence under any paragraph of subsection (1) above not mentioned in the preceding subsection, or of an offence under subsection (1) (e) above not falling within the preceding subsection, or of an offence under any of the existing statutory provisions, being an offence for which no other penalty is specified, shall be liable—
- (a) on summary conviction, to a fine not exceeding £400;
  - (b) on conviction on indictment—
    - (i) if the offence is one to which this sub-paragraph applies, to imprisonment for a term not exceeding two years, or a fine, or both ;
    - (ii) if the offence is not one to which the preceding sub-paragraph applies, to a fine.
- (4) Subsection (3)(b)(i) above applies to the following offences—
- (a) an offence consisting of contravening any of the relevant statutory provisions by doing otherwise than under the authority of a licence issued by the Executive or the appropriate Agriculture Minister something for the doing of which such a licence is necessary under the relevant statutory provisions;
  - (b) an offence consisting of contravening a term of or a condition or restriction attached to any such licence as is mentioned in the preceding paragraph;
  - (c) an offence consisting of acquiring or attempting to acquire, possessing or using an explosive article or substance (within the meaning of any of the relevant statutory provisions) in contravention of any of the relevant statutory provisions;
  - (d) an offence under subsection (D) above consisting of contravening a requirement or prohibition imposed by a prohibition notice ;

- (e) an offence under subsection (1)(j) above.
- (5) Where a person is convicted of an offence under subsection (1)(g) or (o) above, then, if the contravention in respect of which he was convicted is continued after the conviction he shall (subject to section 42(3)) be guilty of a further offence and liable in respect thereof to a fine not exceeding £50 for each day on which the contravention is so continued.
- (6) In this section "forge" has, for England and Wales, the same meaning as in the Forgery Act 1913.

### **34 Extension of time for bringing summary proceedings**

- (1) Where—
  - (a) a special report on any matter to which section 14 of this Act applies is made by virtue of subsection (2) (a) of that section ; or
  - (b) a report is made by the person holding an inquiry into any such matter by virtue of subsection (2) (b) of that section; or
  - (c) a coroner's inquest is held touching the death of any person whose death may have been caused by an accident which happened while he was at work or by a disease which he contracted or probably contracted at work or by any accident, act or omission which occurred in connection with the work of any person whatsoever; or
  - (d) a public inquiry into any death that may have been so caused is held under the Fatal Accidents Inquiry (Scotland) Act 1895 or the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1906,and it appears from the report or, in a case falling within paragraph (c) or (d) above, from the proceedings at the inquest or inquiry, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the report, inquest or inquiry, summary proceedings against any person liable to be proceeded against in respect of the contravention may be commenced at any time within three months of the making of the report or, in a case falling within paragraph (c) or (d) above, within three months of the conclusion of the inquest or inquiry.
- (2) Where an offence under any of the relevant statutory provisions is committed by reason of a failure to do something at or within a time fixed by or under any of those provisions, the offence shall be deemed to continue until that thing is done.
- (3) Summary proceedings for an offence to which this subsection applies may be commenced at any time within six months from the date on which there comes to the knowledge of a responsible enforcing authority evidence sufficient in the opinion of that authority to justify a prosecution for that offence ; and for the purposes of this subsection—
  - (a) a certificate of an enforcing authority stating that such evidence came to its knowledge on a specified date shall be conclusive evidence of that fact; and
  - (b) a document purporting to be such a certificate and to be signed by or on behalf of the enforcing authority in question shall be presumed to be such a certificate unless the contrary is proved.
- (4) The preceding subsection applies to any offence under any of the relevant statutory provisions which a person commits by virtue of any provision or requirement to which he is subject as the designer, manufacturer, importer or supplier of any thing ; and in that subsection "responsible enforcing authority" means an enforcing authority

within whose field of responsibility the offence in question lies, whether by virtue of section 35 or otherwise.

- (5) In the application of subsection (3) above to Scotland—
- (a) for the words from " there comes " to " that offence " there shall be substituted the words " evidence, sufficient in the opinion of the enforcing authority to justify a report to the Lord Advocate with a view to consideration of the question of prosecution, comes to the knowledge of the authority ";
  - (b) at the end of paragraph (b) there shall be added the words “and
  - (c) section 23(2) of the Summary Jurisdiction (Scotland) Act 1954 (date of commencement of proceedings) shall have effect as it has effect for the purposes of that section.”.

### **35 Venue**

An offence under any of the relevant statutory provisions committed in connection with any plant or substance may, if necessary for the purpose of bringing the offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for the offence, be treated as having been committed at the place where that plant or substance is for the time being.

### **36 Offences due to fault of other person**

- (1) Where the commission by any person of an offence under any of the relevant statutory provisions is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.
- (2) Where there would be or have been the commission of an offence under section 33 by the Crown but for the circumstance that that section does not bind the Crown, and that fact is due to the act or default of a person other than the Crown, that person shall be guilty of the offence which, but for that circumstance, the Crown would be committing or would have committed, and may be charged with and convicted of that offence accordingly.
- (3) The preceding provisions of this section are subject to any provision made by virtue of section 15(6).

### **37 Offences by bodies corporate**

- (1) Where an offence under any of the relevant statutory provisions committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a 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) Where the affairs of a body corporate are managed by its members, the preceding subsection 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.

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*Status: This is the original version (as it was originally enacted).*

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### **38 Restriction on institution of proceedings in England and Wales**

Proceedings for an offence under any of the relevant statutory provisions shall not, in England and Wales, be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions.

### **39 Prosecutions by inspectors**

- (1) An inspector, if authorised in that behalf by the enforcing authority which appointed him, may, although not of counsel or a solicitor, prosecute before a magistrates' court proceedings for an offence under any of the relevant statutory provisions.
- (2) This section shall not apply to Scotland.

### **40 Onus of proving limits of what is practicable etc.**

In any proceedings for an offence under any of the relevant statutory provisions consisting of a failure to comply with a duty or requirement to do something so far as is practicable or so far as is reasonably practicable, or to use the best practicable means to do something, it shall be for the accused to prove (as the case may be) that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

### **41 Evidence**

- (1) Where an entry is required by any of the relevant statutory provisions to be made in any register or other record, the entry, if made, shall, as against the person by or on whose behalf it was made, be admissible as evidence or in Scotland sufficient evidence of the facts stated therein.
- (2) Where an entry which is so required to be so made with respect to the observance of any of the relevant statutory provisions has not been made, that fact shall be admissible as evidence or in Scotland sufficient evidence that that provision has not been observed.

### **42 Power of court to order cause of offence to be remedied or, in certain cases, forfeiture**

- (1) Where a person is convicted of an offence under any of the relevant statutory provisions in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.
- (2) The time fixed by an order under subsection (1) above may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this subsection, as the case may be.
- (3) Where a person is ordered under subsection (1) above to remedy any matters, that person shall not be liable under any of the relevant statutory provisions in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (2) above.

*Status: This is the original version (as it was originally enacted).*

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- (4) Subject to the following subsection, the court by or before which a person is convicted of an offence such as is mentioned in section 33(4)(c) in respect of any such explosive article or substance as is there mentioned may order the article or substance in question to be forfeited and either destroyed or dealt with in such other manner as the court may order.
- (5) The court shall not order anything to be forfeited under the preceding subsection where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.