



Health and Safety (Offences) Act 2008

CHAPTER 20

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Health and Safety (Offences) Act 2008

2008 CHAPTER 20

An Act to revise the mode of trial and maximum penalties applicable to certain offences relating to health and safety. [16th October 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Health and safety offences: mode of trial and maximum penalty

- (1) In section 33 of the Health and Safety at Work etc. Act 1974 (c. 37) (offences), for subsections (1A) to (4) there is substituted—
 - “(2) Schedule 3A (which specifies the mode of trial and maximum penalty applicable to offences under this section and the existing statutory provisions) has effect.
 - (3) Schedule 3A is subject to any provision made by virtue of section 15(6)(c) or (d).”
- (2) After Schedule 3 to that Act there is inserted the Schedule 3A set out in Schedule 1 to this Act.
- (3) In Article 31 of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9)) (offences), for paragraphs (1A) to (5) there is substituted—
 - “(2) Schedule 3A (which specifies the mode of trial and maximum penalty applicable to offences under this Article and the existing statutory provisions) has effect.
 - (3) Schedule 3A is subject to any provision made by virtue of Article 17(6)(c) or (d).”
- (4) After Schedule 3 to that Order there is inserted the Schedule 3A set out in Schedule 2 to this Act.

2 Consequential amendments and repeals

- (1) Schedules 3 (consequential amendments) and 4 (repeals) have effect.
- (2) The Secretary of State may make any amendments to existing regulations that he or she considers necessary or expedient in consequence of the amendments made by section 1(1) and (2).
- (3) The power conferred by subsection (2) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) The Department concerned (within the meaning given in Article 2(2) of the Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))) may make any amendments to existing regulations that it considers necessary or expedient in consequence of the amendments made by section 1(3) and (4).
- (5) The power conferred by subsection (4) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
Such a rule is subject to negative resolution within the meaning of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (6) In this section “existing regulations” means regulations made before the passing of this Act.

3 Short title, commencement and extent

- (1) This Act may be cited as the Health and Safety (Offences) Act 2008.
- (2) This Act comes into force at the end of the period of three months beginning with the day on which it is passed.
- (3) This Act does not apply to offences committed before it comes into force.
- (4) This Act extends to England and Wales, Scotland and Northern Ireland (except that an amendment or repeal made by this Act has the same extent as the provision to which it relates).

SCHEDULES

SCHEDULE 1

Section 1(2)

NEW SCHEDULE 3A TO THE HEALTH AND SAFETY AT WORK ETC. ACT 1974

“SCHEDULE 3A

OFFENCES: MODE OF TRIAL AND MAXIMUM PENALTY

- 1 The mode of trial and maximum penalty applicable to each offence listed in the first column of the following table are as set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under section 33(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of sections 2 to 6.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of section 7.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(b) consisting of a contravention of section 8.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(b) consisting of a contravention of section 9.	Summarily or on indictment.	A fine not exceeding £20,000.	A fine.
An offence under section 33(1)(c).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(d).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under section 33(1)(e), (f) or (g).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under section 33(1)(h).	Summarily only.	Imprisonment for a term not exceeding 51 weeks (in England and Wales) or 12 months (in Scotland), or a fine not exceeding level 5 on the standard scale, or both.	
An offence under section 33(1)(i).	Summarily or on indictment.	A fine not exceeding the statutory maximum.	A fine.
An offence under section 33(1)(j).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(k), (l) or (m).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under section 33(1)(o).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under the existing statutory provisions for which no other penalty is specified.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

- 2 (1) This paragraph makes transitional modifications of the table as it applies to England and Wales.
- (2) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's powers to imprison), a reference to imprisonment for a term not exceeding 12 months is to be read as a reference to imprisonment for a term not exceeding six months.
- (3) In relation to an offence committed before the commencement of section 281(5) of that Act (alteration of penalties for summary offences), a reference to imprisonment for a term not exceeding 51 weeks is to be read as a reference to imprisonment for a term not exceeding six months."

SCHEDULE 2

Section 1(4)

NEW SCHEDULE 3A TO THE HEALTH AND SAFETY AT WORK (NORTHERN IRELAND) ORDER 1978

“SCHEDULE 3A

OFFENCES: MODE OF TRIAL AND MAXIMUM PENALTY

The mode of trial and maximum penalty applicable to each offence listed in the first column of the following table are as set out opposite that offence in the subsequent columns of the table.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under Article 31(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of Articles 4 to 7.	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(a) consisting of a failure to discharge a duty to which a person is subject by virtue of Article 8.	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(b) consisting of a contravention of Article 9.	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(b) consisting of a contravention of Article 10.	Summarily or on indictment.	A fine not exceeding £20,000.	A fine.
An offence under Article 31(1)(c).	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(d).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under Article 31(1)(e), (f) or (g).	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(h).	Summarily only.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both.	
An offence under Article 31(1)(i).	Summarily or on indictment.	A fine not exceeding the statutory maximum.	A fine.

<i>Offence</i>	<i>Mode of trial</i>	<i>Penalty on summary conviction</i>	<i>Penalty on conviction on indictment</i>
An offence under Article 31(1)(j).	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(k), (l) or (m).	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under Article 31(1)(n).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under Article 31(1)(o).	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under the existing statutory provisions for which no other penalty is specified.	Summarily or on indictment.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.”

SCHEDULE 3

Section 2

CONSEQUENTIAL AMENDMENTS

Explosives Act 1875 (c. 17)

- 1 (1) In section 40(9)(d) (importation of certain explosives) so far as that provision continues to apply, despite its repeal, by virtue of –
- (a) regulation 27(17) of the Manufacture and Storage of Explosives Regulations 2005 (S.I. 2005/1082), or
 - (b) regulation 26(18) of the Manufacture and Storage of Explosives Regulations (Northern Ireland) 2006 (S.R. 2006/425),
- the reference to penalties specified in section 33(3) of the Health and Safety at Work etc. Act 1974 or Article 31(4) of the Health and Safety at Work (Northern Ireland) Order 1978 is to be read as a reference to penalties specified in the final item of Schedule 3A to that Act or Schedule 3A to that Order (mode of trial and penalty for offence under “existing statutory provisions” for which no other penalty is specified).
- (2) In section 43 (specially dangerous explosives) –
- (a) in the sentence beginning “A person who manufactures” as it extends to England and Wales and Scotland, for “and liable to the penalties specified in section 33(3) of the Health and Safety at Work etc. Act 1974” there is substituted “and liable as mentioned in the final item of Schedule 3A to the Health and Safety at Work etc. Act 1974 (mode of trial and penalty for offence under “existing statutory provisions” for which no other penalty is specified)”;
 - (b) in that sentence as it extends to Northern Ireland, for “and liable to the penalties specified in Article 31(4) of the Health and Safety at Work (Northern Ireland) Order 1978” there is substituted “and liable

- as mentioned in the final item of Schedule 3A to the Health and Safety at Work (Northern Ireland) Order 1978 (mode of trial and penalty for offence under “existing statutory provisions” for which no other penalty is specified”);
- (c) in the sentence beginning “If any explosive is imported or sold”, for “and liable to the penalties specified in section 33(3) of” there is substituted “and liable as mentioned in the final item of Schedule 3A to”.

Health and Safety at Work etc. Act 1974 (c. 37)

- 2 (1) In section 15 (health and safety regulations), subsection (6)(e) is omitted.
- (2) In section 42 (remedy and forfeiture), after subsection (3) there is inserted –
- “(3A) Subsection (4) applies where a person is convicted of 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.”
- (3) In subsection (4) of that section, for the words from “a person” to “there mentioned” there is substituted “the person is convicted of the offence”.

Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))

- 3 (1) In Article 17 (health and safety regulations), paragraph (6)(e) is omitted.
- (2) In Article 39 (remedy and forfeiture), after paragraph (3) there is inserted –
- “(3A) Paragraph (4) applies where a person is convicted of 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.”
- (3) In paragraph (4) of that Article, for the words from “a person” to “there mentioned” there is substituted “the person is convicted of the offence”.

Activity Centres (Young Persons’ Safety) Act 1995 (c. 15)

- 4 In section 2 (offences), in subsection (4)(f), for “, and (2) to (4)” there is substituted “and (2) (and the related provisions of Schedule 3A)”.

Activity Centres (Young Persons’ Safety) (Northern Ireland) Order 1998 (S.I. 1998/1069 (N.I. 5))

- 5 In Article 4 (offences), in paragraph (4)(f), for “, (2), (2A), (4) and (5)” there is substituted “and (2) (and the related provisions of Schedule 3A)”.

SCHEDULE 4

Section 2

REPEALS

<i>Short title and reference</i>	<i>Extent of repeal</i>
Health and Safety at Work etc. Act 1974 (c. 37)	Section 15(6)(e).
Health and Safety at Work (Northern Ireland) Order 1978 (S.I. 1978/1039 (N.I. 9))	Article 17(6)(e).
Offshore Safety Act 1992 (c. 15)	Section 4.
Offshore, and Pipelines, Safety (Northern Ireland) Order 1992 (S.I. 1992/1728 (N.I. 17))	Article 6.

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