

Health and Safety at Work (Offences) Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, provided by the Department for Work and Pensions with the consent of Lawrie Quinn, the Member in Charge of the Bill, will be published separately as Bill 38-EN.

Health and Safety at Work (Offences) Bill

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TO

Make provision about the prosecution and punishment of offences which are, or are treated as being, offences under the Health and Safety at Work etc. Act 1974 or the Employers' Liability (Compulsory Insurance) Act 1969.

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

- (1) In section 33 of the Health and Safety at Work etc. Act 1974 (c. 37) (offences) the following shall be substituted for subsections (1A) to (4)—
- “(2) Schedule 6A (which specifies the mode of trial and maximum penalty for the offences specified) shall have effect. 5
- (3) Schedule 6A is subject to any provision made by virtue of section 15(6)(c) or (d).
- (4) If regulations under section 2(2) of the European Communities Act 1972 (c. 68) apply this section (whether expressly or by implication) paragraph 1(1)(d) of Schedule 2 to that Act (maximum penalty) shall not apply.” 10
- (2) Before Schedule 7 there shall be inserted the new Schedule 6A which is set out in Schedule 1 to this Act.

2 Employers' insurance offences

- (1) Section 5 of the Employers' Liability (Compulsory Insurance) Act 1969 (c. 57) (offence of failure to insure) shall be amended as follows. 15
- (2) The words “on any day” shall cease to have effect.
- (3) For “level 4 on the standard scale” substitute “£20,000”.
- (4) At the end of the section (which becomes subsection (1)) insert—

- “(2) The Secretary of State may by order substitute an increased amount for the amount for the time being specified in subsection (1).
- (3) An order under subsection (2) –
- (a) shall be made by statutory instrument,
 - (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament, and 5
 - (c) shall not apply to an offence committed before the order comes into force.
- (4) Notwithstanding section 127(1) of the Magistrates’ Courts Act 1980 (c. 43) (time limit for summary proceedings) an information relating to an offence under this section which is triable by a magistrates’ court in England and Wales may be tried if laid – 10
- (a) within the period of five years beginning with the date on which the offence is alleged to have been committed, and
 - (b) within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge. 15
- (5) Notwithstanding section 136(1) of the Criminal Procedure (Scotland) Act 1995 (c. 46) (time limit for commencement of statutory summary offences) proceedings for an offence under this section may be commenced in Scotland – 20
- (a) within the period of five years beginning with the date on which the offence is alleged to have been committed, and
 - (b) within the period of six months beginning with the date on which evidence sufficient in the opinion of the prosecutor to justify the proceedings comes to his knowledge. 25
- (6) For the purposes of subsections (4) and (5) –
- (a) a certificate of the prosecutor stating the date mentioned in subsection (4)(b) or (5)(b) shall be conclusive evidence of it, and
 - (b) a document purporting to be a certificate under paragraph (a) shall be treated as such unless the contrary is proved.” 30
- 3 Amendments and repeals**
- (1) Schedule 2 (consequential amendments) shall have effect.
 - (2) The enactments listed in Schedule 3 are hereby repealed to the extent specified.
- 4 Commencement** 35
- (1) This Act shall have effect in relation to an offence committed or alleged to have been committed after the end of the period of two months beginning with the day on which this Act is passed.
 - (2) Section 33(4) of the Health and Safety at Work etc. Act 1974 (c. 37) (as inserted by section 1 above) shall have effect in relation to regulations whenever made. 40
- 5 Extent**
- This Act does not extend to Northern Ireland.

6 Short title

This Act may be cited as the Health and Safety at Work (Offences) Act 2003.

SCHEDULES

SCHEDULE 1

Section 1

NEW SCHEDULE 6A TO THE HEALTH AND SAFETY AT WORK ETC. ACT 1974 - PROSECUTION AND PUNISHMENT

SCHEDULE 6A

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PROSECUTION AND PUNISHMENT

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

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Item	Offence	Mode of trial	Penalty on summary conviction	Penalty on conviction on indictment
8	An offence under section 33(1)(h).	Summary only.	Imprisonment for a term not exceeding six months, a fine not exceeding level 5 on the standard scale, or both.	/
9	An offence under section 33(1)(i).	Either way.	A fine not exceeding the statutory maximum.	A fine.
10	An offence under section 33(1)(j).	Either way.	Imprisonment for a term not exceeding six months, a fine not exceeding the statutory maximum, or both.	Imprisonment for a term not exceeding two years, a fine, or both.
11	An offence under section 33(1)(k), (l) or (m).	Either way.	Imprisonment for a term not exceeding six months, a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, a fine, or both.
12	An offence under section 33(1)(n).	Summary only.	A fine not exceeding level 5 on the standard scale.	/
13	An offence under section 33(1)(o).	Either way.	Imprisonment for a term not exceeding six months, a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, a fine, or both.
14	An offence under any of the existing statutory provisions, being an offence for which no other penalty is specified.	Either way.	Imprisonment for a term not exceeding six months, a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding two years, a fine, or both.

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SCHEDULE 2

Section 3

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CONSEQUENTIAL AMENDMENTS

The Explosives Act 1875 (c. 17)

- 1 (1) The Explosives Act 1875 shall be amended as follows.
- (2) In section 40(9)(d) (explosives other than gunpowder) (so far as that paragraph continues to have effect) the reference to section 33(3) of the Health and Safety at Work etc. Act 1974 (c. 37) (offences: penalties) shall be treated as a reference to Item 14 of Schedule 6A to that Act.
- (3) In section 43 (importation or sale of specially dangerous explosives) for “section 33(3) of” substitute “Item 14 of Schedule 6A to”.

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

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- 2 (1) The Health and Safety at Work etc. Act 1974 shall be amended as follows.
- (2) Section 15(6)(e) (power to increase penalties for offences under regulations made for offshore purposes) shall cease to have effect.

- (3) In section 42 (remedy and forfeiture) –
- (a) after subsection (3) insert –
- “(3A) Subsection (4) below applies to an offence –
- (a) which is an offence under section 33(1)(c) or under any of the existing statutory provisions, and 5
- (b) which consists of acquiring, 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 those provisions.”, and 10
- (b) in subsection (4) for “section 33(4)(c)” substitute “subsection (3A) above”.

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

- 3 In section 2(4)(f) of the Activity Centres (Young Persons’ Safety) Act 1995 (power to apply or replicate provisions of the Health and Safety at Work etc. Act 1974) for “to (4)” there shall be substituted “(and the related provisions of Schedule 6A)”. 15

SCHEDULE 3

Section 3

SCHEDULE TITLE

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Employers’ Liability (Compulsory Insurance) Act 1969 (c. 57)	In section 5, the words “on any day”.	20
Health and Safety at Work etc. Act 1974 (c. 37)	Section 15(6)(e).	25
Employment Protection Act 1975 (c. 71)	In Schedule 15, in paragraph 11, the words from “and in subsection (4)(a)” to the end.	
Offshore Safety Act 1992 (c. 15)	Section 4.	

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*Presented by Lawrie Quinn
supported by
Mr Tony Lloyd, Mr Michael Clapham,
Mr Roy Beggs, Mr Frank Doran,
Mr Richard Allan, Mr Bob Laxton, Ian Stewart,
Mr Malcolm Savidge, Rob Marris, Mr Andrew
Dismore and Judy Mallaber.*

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