

Health and Safety at Work, Etc. Act 1974

Introduction

Prior to 1974, health and safety legislation was reactive. It was enacted in response to problems in particular industries, or particular premises - factories, mines, shops, offices and railway premises. This left large sections of the working population unaffected and unprotected by any safety Regulations. In 1970, a Government Committee was set up, under the Chairmanship of Lord Robens, whose objective was:

"To review the provisions made for the safety and health of persons in the course of their employment and to consider whether any changes are needed..."

The Committee produced the Robens Report which led in turn to the **Health and Safety at Work, etc. Act 1974**. For the first time, the Act covered employers and employees rather than premises and brought a further 7 - 8 million new workers within the ambit of safety legislation.

In recent years, the most significant changes to this Act have been to the offences and penalties set out in Section 33 (see the Health and Safety (Offences) Act 2008 elsewhere in this document), and to the provisions for civil liability as set out in Section 47, which were effectively reversed by the action of Section 69 of the **Enterprise and Regulatory Reform Act 2013**.

Section 2: General Duties of Employers to their Employees

2(1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

2(2) Without prejudice to the generality of an employer's duty under the preceding subsection, the matters to which that duty extends include in particular:

- (a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
- (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
- (d) so far as is reasonably practicable, as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and entrance to and egress from it that are safe and without such risks;
- (e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

2(3) Except in such cases as may be prescribed, it shall be the duty of every employer to prepare and as often as may be appropriate revise a written statement of his general policy with respect to the health and safety at work of his employees and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of all his employees.

*NB - The **Employers' Health and Safety Policy Statements (Exception) Regulations 1975** exempt employers who have fewer than 5 employees from having to comply with this subsection.*

2(4) Regulations made by the Secretary of State may provide for the election in prescribed cases by recognised trade unions (within the meaning of the Regulations) of safety representatives from amongst the employees, and those representatives shall represent the employees in consultations with the employers under subsection (6) below and shall have such other functions as may be prescribed.

2(5) (Repealed by the **Employment Protection Act 1975**)

2(6) It shall be the duty of every employer to consult any such representatives with a view to the making and maintenance of arrangements which will enable him and his employees to co-operate effectively in promoting and developing measures to ensure the health and safety at work of the employees, and in checking the effectiveness of such measures.

2(7) In such cases as may be prescribed it shall be the duty of every employer, if requested to do so by the safety representatives mentioned in subsection (4) above to establish, in accordance with Regulations made by the Secretary of State, a safety committee having the function of keeping under review the measures taken to ensure the health and safety at work of his employees and such other functions as may be prescribed.

Section 3: General Duties of Employers and Self-Employed to Persons other than Employees

3(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.

3(2) It shall be the duty of every self-employed person to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that he and other persons (not being his employees) who may be affected thereby are not thereby exposed to risks to their health or safety.

3(3) In such cases as may be prescribed, it shall be the duty of every employer and every self-employed person, in the prescribed circumstances and in the prescribed manner, to give to persons (not being his employees) who may be affected by the way in which he conducts his undertaking the prescribed information about such aspects of the way in which he conducts his undertaking as might affect their health or safety.

Section 4: Duties of Persons Concerned with Premises to Persons other than their Employees

4(1) This section has effect for imposing on persons duties in relation to those who:

(a) are not their employees; but

(b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there

and applies to premises so made available and other non-domestic premises used in connection with them.

4(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom or of any plant or substance in such premises to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises and any plant or substance in the premises or, as the case may be, provided for use there, is or are safe and without risks to health.

4(3) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to:

(a) the maintenance or repair of any premises to which this section applies or any means of access thereto or egress therefrom; or

(b) the safety of or the absence of risks to health arising from plant or substances in any such premises;

that person shall be treated, for the purposes of subsection (2) above, as being a person who has control of the matters to which his obligation extends.

4(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).

The language of this section is rather long-winded but it deals with the general duties of persons concerned with premises towards persons who are not their employees and recognises that in relation to premises there may be more than one person exercising a degree of control. For example, in a multi-storey building containing several companies or organisations who rent space from a landlord, the individual companies exercise control over their accommodation and must maintain good access to and egress from their parts of the premises. On the other hand, the landlord of the building would be responsible for maintaining access to and egress from the common areas of the premises, lift lobbies, external fire-exits, and plant rooms. Briefly, anyone who has partial control of premises must ensure the safety of any person who enters the premises to carry out work.

Section 5: Duty of Persons in Control of Premises in Relation to Harmful Emissions into the Atmosphere

This section has been repealed and its requirements are now contained in the **Environmental Protection Act 1990**.

Section 6: General Duties of Manufacturers, etc. as Regards Articles and Substances for Use at Work

NB: S6 was amended by the **Consumer Protection Act 1987**.

Articles for use at work

(1) Any person who designs, manufactures, imports or supplies any article for use at work (or any article of fairground equipment) shall:

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being set, used, cleaned or maintained by a person at work;

(b) carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty in (a) above;

(c) take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all such times of setting, using, cleaning, maintaining and when being dismantled, or disposed of; and

(d) take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of the preceding paragraph as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

(1A) It shall be the duty of any person who designs, manufactures, imports or supplies any article of fairground equipment:

(a) to ensure, so far as is reasonably practicable, that the article is so designed and constructed that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public;

(b) to carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the duty imposed on him by the preceding paragraph;

(c) to take such steps as are necessary to secure that persons supplied by that person with the article are provided with adequate information about the use for which the article is designed or has been tested and about any conditions necessary to ensure that it will be safe and without risks to health at all times when it is being used for or in connection with the entertainment of members of the public; and

(d) to take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information provided to them by virtue of the preceding paragraph as are necessary by reason of its becoming known that anything gives rise to a serious risk to health or safety.

Duty on designers and manufacturers to carry out research

(2) It shall be the duty of any person who undertakes the design or manufacture of any article for use at work or of any article of fairground equipment to carry out or arrange for the carrying out of any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of risks to health or safety to which the design or article may give rise.

Duties on installers of articles for use at work

(3) It shall be the duty of any person who erects or installs any article for use at work in any premises where the article is to be used by persons at work or who erects or installs any article of fairground equipment to ensure, so far as is reasonably practicable, that nothing about the way in which the article is erected or installed makes it unsafe or a risk to health at any time when it is being set, used, cleaned, or maintained by someone at work.

Substances for use at work

(4) Every person who manufactures, imports or supplies any substance shall:

- ◆ ensure, so far as is reasonably practicable, that the substance will be safe and without risks to health at all times when it is being used, handled, processed, stored, or transported by any person at work or in premises to which S4 applies;
- ◆ carry out or arrange for the carrying out of such testing and examination as may be necessary for the performance of the above duties;
- ◆ take such steps as are necessary to secure that a person supplied by that person with the substance is provided with adequate information about:
 - ▶ any risks to health or safety to which the inherent properties of the substance may give rise;
 - ▶ the results of any relevant tests which have been carried out on or in connection with the substance;
 - ▶ any conditions necessary to ensure that the substance will be safe and without risk to health at all times when it is being used, handled, processed, stored, transported and disposed of; and
- ◆ take such steps as are necessary to secure, so far as is reasonably practicable, that persons so supplied are provided with all such revisions of information as are necessary by reason of it becoming known that anything gives rise to a serious risk to health or safety.

(5) Any person who manufactures any substance must carry out, or arrange for the carrying out of, any necessary research with a view to the discovery and, so far as is reasonably practicable, the elimination or minimisation of any health and safety risks at all times when the substances are being used, handled, processed, stored, or transported by someone at work.

NB: There is no duty on suppliers of industrial articles and substances to research.

(6) Nothing in the preceding provisions of this section shall be taken to require a person to repeat any testing, examination or research which has been carried out otherwise than by him or at his instance in so far as it is reasonable to rely on the results thereof for the purposes of those provisions.

(7) Any duty imposed on any person by any of the preceding provisions of this section shall extend only to things done in the course of a trade, business or other undertaking carried on by him (whether for profit or not) and to matters within his control.

Custom-built articles

(8) Where a person designs, manufactures, imports or supplies an article for use at work or an article of fairground equipment and does so for or to another [person] on the basis of a written undertaking by that other [person] to take specified steps sufficient to ensure, so far as is reasonably practicable, that the article will be safe and without risks to health at all times when being set, used, cleaned, or maintained by persons at work, the undertaking shall have the effect of relieving the designer or manufacturer etc. from the duty specified in Section 6(1)(a), to such extent as is reasonable, having regard to the terms of the undertaking.

Importers liable for offences of foreign manufacturers and designers

In order to give added protection to industrial users from unsafe imported products this new subsection has been introduced which in effect makes importers of unsafe products liable for the acts or omissions of foreign designers and manufacturers.

(8A) Nothing in subsection (7) or (8) above shall relieve any person who imports any article or substance from any duty in respect of anything which:

(a) in the case of an article designed outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who designed the article; or

(b) in the case of an article or substance manufactured outside the United Kingdom, was done by and in the course of any trade, profession or other undertaking carried on by, or was within the control of, the person who manufactured the article or substance.

(9) Where a person (“the ostensible supplier”) supplies any article or substance for use at work to another (“the customer”) under a hire-purchase agreement, conditional sale agreement or credit-sale agreement, and the ostensible supplier:

(a) carries on the business of financing the acquisition of goods by other means of such agreements; and

(b) in the course of that business acquired his interest in the article or substance supplied to the customer as a means of financing its acquisition by the customer from a third person (the effective supplier),

the effective supplier and not the ostensible supplier shall be treated for the purposes of this section, as supplying the article or substance to the customer, and any duty imposed by the preceding provisions of this section on suppliers shall accordingly fall on the effective supplier and not on the ostensible supplier.

(10) For the purposes of this section an absence of safety or a risk to health shall be disregarded insofar as it can be shown that the absence of safety or risk to health was not reasonably foreseeable.

In determining whether any duty is owed under subsections (1), (1A) or (4) above, regard will be had to any relevant information or advice which has been provided to any person by the designer, manufacturer, importer or supplier.

Note: Section 6 is a very long section later amended by the **Consumer Protection Act 1987**. Looking at the requirements of the section, one can see that responsibility for safety goes right back to the drawing board stage. Where a designer is negligent in his design of a machine or other article for use at work, he can be held liable at criminal law under **HSWA**. Manufacturers, importers and suppliers are in exactly the same position. They have a definite duty to ensure that, whatever they are dealing with, they must carry out the necessary research with a view to discovering and, so far as is reasonably practicable, eliminating or minimising any risk to health or safety to which any manufactured article or substance might give rise.

There is provision in the section for the transfer of liability by written undertaking which simply means that the responsibility placed on a supplier or manufacturer etc. to ensure that an article or substance is safe may be shifted to another person provided there is a clear written agreement to that effect. This covers situations where an article has been ordered to a customer's own specification or is to become a component part of another

article. Installers and erectors of equipment and machinery for use at work must ensure, so far as is reasonably practicable, that no health and safety hazards arise from the method of erection or installation.

Section 7: Employees' Duties

7. It shall be the duty of every employee while at work:

- (a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and
- (b) as regards any duty or requirement imposed on his employer or any other person by or under any of the relevant statutory provisions, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Note: Both acts and omissions are included. Thus, failure of an employee to wear protective clothing, for example, or failure to check machinery which he/she is responsible for checking, would render him/her liable to prosecution under this section. Similarly, skylarking, horseplay and taking unsafe shortcuts in his work would leave an employee open to prosecution. 'Work' and 'at work' are worthy of explanation. 'Work' means work as an employee or as a self-employed person. Employees are 'at work' throughout the time when they are doing something which is part of their employment. This may include, for example, travelling between different sites or buildings. Self-employed persons are at work throughout the time they devote to work as a self-employed person. The definition of work has been extended to include training provided under government and other schemes by the **Health and Safety (Training for Employment) Regulations 1989**.

Section 8: Duty Not to Interfere with or Misuse Things Provided Pursuant to Certain Provisions

8. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.

Note: The term "no person" implies that the duty is not limited to employees. **Any** person so interfering could be liable under this section. Interference with fire-fighting or first-aid equipment would fall into this category.

Section 9: Duty Not to Charge Employees for Things Done or Provided Pursuant to Certain Specific Requirements

No employer shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any specific requirement of the relevant statutory provisions.

Note: For example, this covers such matters as provision of PPE at the employer's expense.

Section 15: Health and Safety Regulations and Approved Codes of Practice

- (1) Subject to the provisions of Section 50, the Secretary of State shall have power to make Regulations under this section for any of the general purposes of this Part (and Regulations so made are in this Part referred to as "health and safety regulations").
- (2) Without prejudice to the generality of the preceding subsection, health and safety regulations may for any of the general purposes of this Part make provision for any of the purposes mentioned in Schedule 3.
- (3) Health and safety regulations:
 - (a) may repeal or modify any of the existing statutory provisions;
 - (b) may exclude or modify in relation to any specified class of case any of the provisions of Sections 2 to 9 or any of the existing statutory provisions;
 - (c) may make a specified authority or class of authorities responsible, to such an extent as may be specified, for the enforcement of any of the relevant statutory provisions.

Section 19: Appointment of Inspectors

This section empowers enforcing authorities to appoint inspectors. Inspectors are entitled to exercise the powers specified in their written instrument of appointment. Inspectors may, when seeking to exercise their powers, be required to produce their instrument of appointment (i.e. the letter etc. that shows they are an enforcing authority inspector).

Section 20: Powers of Inspectors

- (1) Subject to the provisions of Section 19 and this section, an inspector may, for the purpose of carrying into effect any of the relevant statutory provisions within the field of responsibility of the enforcing authority which appointed him, exercise the powers set out in subsection 2 below.
- (2) The powers of an inspector referred to in the preceding subsection are the following, namely:
 - (a) At any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in subsection (1) above.
 - (b) To take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty.
 - (c) Without prejudice to the preceding paragraph, on entering any premises by virtue of paragraph (a) above to take with him:
 - (i) any other person duly authorised by his (the inspector's) enforcing authority; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised.
 - (d) To make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in subsection (1) above.
 - (e) As regards any premises which he has power to enter, to direct that those premises or any part of them, or anything therein, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (d) above.
 - (f) To take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (d) above.
 - (g) To take samples of any articles or substances found in any premises which he has power to enter, and of the atmosphere in or in the vicinity of any such premises.
 - (h) In the case of any article or substance found in any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause danger to health or safety, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless this is in the circumstances necessary for the purpose mentioned in subsection (1) above).
 - (i) In the case of any such article or substance as is mentioned in the preceding paragraph, to take possession of it and retain it for so long as is necessary for all or any of the following purposes, namely:
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under any of the relevant statutory provisions or any proceedings relating to a notice under Section 21 or 22.
 - (j) To require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any

persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers.

- (k) To require the production of, inspect, and take copies of or of any entry in:
 - (i) any books or documents which by virtue of any of the relevant statutory provisions are required to be kept; and
 - (ii) any other books or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above.
 - (l) To require any person to afford him such facilities and assistance with respect to any matter or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this section.
 - (m) Any other power which is necessary for that purpose mentioned in subsection (1) above.
- (3) The Secretary of State may by Regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2)(g) above (including provision as to the way in which samples that have been so taken are to be dealt with).
 - (4) Where an inspector proposes to exercise the power conferred by subsection (2)(h) above in the case of an article or substance found in any premises, he shall, if so requested by a person who at the time is present in and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of the State.
 - (5) Before exercising the power conferred by subsection (2)(h) above in the case of any article or substance, an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.
 - (6) Where under the power conferred by subsection(2)(i) above an inspector takes possession of any article or substance found in any premises, he shall leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it.
 - (7) No answer given by a person in pursuance of a requirement imposed under subsection (2)(j) above shall be admissible in evidence against that person or the spouse or civil partner of that person in any proceedings.
 - (8) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal or professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, for the production of documents in an action in the Court of Session.

Section 21: Improvement Notices

If an inspector is of the opinion that a person:

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Part referred to as an "improvement notice") stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under Section 24) as may be specified in the notice.

Section 22: Prohibition Notices

- (1) This section applies to any activities which are being or are about to be carried on by or under the control of any person, being activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities as so carried on, apply.

- (2) If as regards any activities to which this section applies an inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Part referred to as a "prohibition notice").
- (3) A prohibition notice shall:
- (a) state that the inspector is of the said opinion;
 - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
 - (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
 - (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) above and any associated contraventions of provisions so specified in pursuance of paragraph (c) above have been remedied.
- (4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) above shall take effect:
- (a) at the end of the period specified in the notice; or
 - (b) if the notice so declares, immediately.

Section 23: Supplementary Provisions to Sections 21 and 22

- (1) In this section "a notice" means an improvement notice or a prohibition notice.
- (2) The notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions:
- (a) may be framed to any extent by reference to any approved code of practice; and
 - (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.
- (3) Where any of the relevant statutory provisions apply to a building or any matter connected with a building and an inspector proposes to serve an improvement notice relating to a contravention of that provision in connection with that building or matter, the notice shall not direct any measures to be taken to remedy the contravention of that provision which are more onerous than those necessary to secure conformity with the requirements of any building regulations for the time being in force to which that building or matter would be required to conform if the relevant building were being newly erected unless the provision in question imposes specific requirements more onerous than the requirements of any such building regulations to which the building or matter would be required to conform as aforesaid.
- In this subsection "the relevant building", in the case of a building, means the building, and, in the case of a matter connected with the building, means the building with which the matter is connected.
- (4) Before an inspector serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he shall consult the fire and rescue authority.
- In this subsection "fire and rescue authority", in relation to premises, means:
- (a) where **RRFSO** applies, the enforcing authority within the meaning given by article 25 of that Order;
 - (b) in any other case, the fire and rescue authority under the **Fire and Rescue Services Act 2004** for the area where the premises are (or are to be) situated.
- (5) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served:
- (a) the notice may be withdrawn by the inspector at any time before the end of the period specified therein in pursuance of Section 21 or Section 22(4) as the case may be; and
 - (b) the periods so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Section 23 contains parallel, but separate, provisions for Scotland and for Wales.

Section 24: Appeal Against Improvement or Prohibition Notice

- (1) In this section "a notice" means an improvement notice or a prohibition notice.
- (2) A person on whom a notice is served may within such period from the date of its service as may be prescribed appeal to an employment tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.
- (3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, then:
 - (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
 - (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).
- (4) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this section.

Section 25: Power to Deal with Cause of Imminent Danger

- (1) Where, in the case of any article or substance found by him in any premises which he has power to enter, an inspector has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious personal injury, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) Before there is rendered harmless under this section:
 - (a) any article that forms part of a batch of similar articles; or
 - (b) any substance,the inspector shall, if it is practicable for him to do so, take a sample thereof and give to a responsible person at the premises where the article or substance was found by him, a portion of the sample marked in a manner sufficient to identify it.
- (3) As soon as may be after any article or substance has been seized and rendered harmless under this section, the inspector shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall:
 - (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
 - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the inspector cannot after reasonable enquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under the preceding paragraph.

Section 28: Restrictions on the Disclosure of Information

- (1) In this and the two following subsections:
 - (a) "relevant information" means information obtained by a person under Section 27(1) or furnished to any person under Section 27A above, by virtue of Section 43A(6) below or in pursuance of a requirement imposed by any of the relevant statutory provisions ; and
 - (b) "the recipient" in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

- (2) Subject to the following subsection, no relevant information shall be disclosed without the consent of the person by whom it was furnished.
- (3) The preceding subsection shall not apply to:
- (a) disclosure of information to the Executive, the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, a government department or any enforcing authority;
 - (b) without prejudice to paragraph (a) above, disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions;
 - (c) without prejudice to paragraph (a) above, disclosure by the recipient of information to:
 - (i) an officer of a local authority who is authorised by that local authority to receive it;
 - (ii) an officer of a water undertaker, sewerage undertaker, water authority or water development board who is authorised by that undertaker, authority or board to receive it;
 - (iii) (deleted) ;
 - (iv) a constable authorised by a chief officer of police to receive it;
 - (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case;
 - (e) disclosure of information for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Section 14(2) or (2A), or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of Section 14(2) or (2A);
 - (f) any other disclosure of information by the recipient, if:
 - (i) the recipient is, or is acting on behalf of a person who is, a public authority for the purposes of the **Freedom of Information Act 2000**, and
 - (ii) the information is not held by the authority on behalf of another person.
- (4) In the preceding subsection any reference to the Executive, the Environment Agency, Natural Resources Wales, the Scottish Environment Protection Agency, a government department or an enforcing authority includes respectively a reference to an officer of that body or authority (including, in the case of an enforcing authority, any inspector appointed by it), and who, in the case of a reference to the Commission, includes a reference to:
- (a) a person performing any functions of the Executive on its behalf by virtue of Section 13(3);
 - (b) an officer of a body which is so performing any such functions; and
 - (c) an adviser appointed in pursuance of Section 13(7).
- (5) A person to whom information is disclosed in pursuance of any of paragraphs (a) to (e) of subsection (3) above shall not use the information for a purpose other than:
- (a) in a case falling within paragraph (a) of that subsection, a purpose of the Executive or the Environment Agency or of Natural Resources Wales or of the Scottish Environment Protection Agency or of the government department in question, or the purposes of the enforcing authority in question in connection with the relevant statutory provisions, as the case may be;
 - (b) in the case of information given to an officer of a body which is a local authority, a water undertaker, a sewerage undertaker, a water authority, a river purification board or a water development board, the purposes of the body in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the protection of the environment;
 - (c) in the case of information given to a constable, the purposes of the police in connection with the relevant statutory provisions or any enactment whatsoever relating to public health, public safety or the safety of the State.

- (6) References in subsections (3) and (5) above to a local authority include the Inner London Education Authority and a joint authority established by Part IV of the **Local Government Act 1985**, an economic prosperity board established under Section 88 of the **Local Democracy, Economic Development and Construction Act 2009**, a combined authority established under Section 103 of that Act, an authority established for an area in England by an order under Section 207 of the **Local Government and Public Involvement in Health Act 2007** (joint waste authorities) and the London Fire and Emergency Planning Authority.
- (7) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by Section 14(4)(a) or 20 (including, in particular, any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except:
- (a) for the purposes of his functions; or
 - (b) for the purposes of any legal proceedings or any investigation or inquiry held by virtue of Section 14(2) or 2(A) or for the purposes of a report of any such proceedings or inquiry or of a special report made by virtue of Section 14(2) or 2(A); or
 - (c) with the relevant consent.

In this subsection "the relevant consent" means, in the case of information furnished in pursuance of a requirement imposed under Section 20, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

- (8) Notwithstanding anything in the preceding subsection an inspector shall, in circumstances in which it is necessary to do so for the purposes of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare, give to such persons or their representatives the following descriptions of information, that is to say:
- (a) factual information obtained by him as mentioned in that subsection which relates to those premises or anything which was or is therein or was or is being done therein; and
 - (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions,
- and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.
- (9) Notwithstanding anything in subsection (7) above, a person who has obtained such information as is referred to in that subsection may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of relevant facts observed by him in the course of exercising any of the powers referred to in that subsection.
- (9A) Subsection (7) above does not apply if:
- (a) the person who has obtained any such information as is referred to in that subsection is, or is acting on behalf of a person who is, a public authority for the purposes of the **Freedom of Information Act 2000** or a Scottish public authority for the purposes of the **Freedom of Information (Scotland) Act 2002**, and
 - (b) the information is not held by the authority on behalf of another person.

(10) The Broads Authority and every National Park authority shall be deemed to be local authorities for the purposes of this section.

Notes:

In reading Section 28, references are made to the following sections and subsections:

Section 27(1) "a person under Section 27(1)" is a person on whom a notice has been served by the Executive requiring him/her to furnish such information as is specified in the notice.

Section 14(2) "any investigation or inquiry held by virtue of Section 14(2)" is a reference to the Executive's power to investigate and make a special report (or authorise another person to do so) or to direct that an enquiry be held.

Section 13(3) refers to the Executive's power to make agreements with any government department or other person for that department or person to perform any of the functions of the Executive, with or without payment.

Section 13(7) refers to the Executive's power to appoint persons or committees to provide advice to the Executive on any of its functions and to pay appropriate remuneration for such service.

Section 14(4)(a) refers to the Executive's power to confer on persons making inquiries on their behalf powers of entry and inspection.

Section 20 refers to the powers of inspectors (see above).

Sections 29-32 - Special Provisions Relating to Agriculture

Repealed by the **Employment Protection Act 1975**.

Section 33: Offences Under the Law

Note: References to "a person" in this section should be read as either a natural or a legal person (e.g. a company).

(1) It is an offence for a person:

- (a) to fail to discharge a duty to which he is subject by virtue of Sections 2-7;
- (b) to contravene Section 8 or 9;
- (c) to contravene any 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 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; (*NB: Section 14 - Power of the Executive to direct investigations and inquiries*);
- (e) to contravene any requirement imposed by an inspector under Section 20 or 25 (*NB: Section 20 - Powers of inspectors; Section 25 - Inspectors' powers to deal with cause of imminent danger*);
- (f) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which the 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 or to obstruct a customs officer in the exercise of his powers under Section 25A;
- (i) to contravene any requirement imposed by a notice under Section 27(1) (*NB: Section 27(1) - Obtaining of information by the Executive*);
- (j) to use or disclose any information in contravention of Section 27(4) or 28 (*NB: Section 27 - Obtaining of information by the Executive; Section 28 - Restrictions on disclosure of information*);
- (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 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 pretending to be an inspector;

- (o) to fail to comply with an order made by a court under Section 42 (*NB Section 42 - Power of court to order cause of offence to be remedied or forfeiture*).

Sections (1A), (2), (3) and (4) have been replaced with Schedule 3A - see the **Health and Safety (Offences) Act 2008**.

Section 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 the 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) (*NB: Section 15(6) deals with making of health and safety regulations*).

Section 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.

Section 39: Prosecution by Inspectors

An inspector authorised by the enforcing authority which appointed him may, although not being a barrister or solicitor, prosecute before a magistrates' court proceedings for an offence under any of the relevant statutory provisions.

This does not apply in Scotland.

Section 40: Onus of Proof

In any proceedings for an offence under any of the relevant statutory provisions involving a failure to comply with a duty or requirement:

- ◆ to do something so far as is practicable,
- ◆ to do something so far as is reasonably practicable, or
- ◆ to use the best means to do something,

it shall be for the accused to prove 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.

Section 47: Civil Liability

Note: This section was amended by the **Enterprise and Regulatory Reform Act 2013**, the main effect of which in this context is to limit the ability to bring claims for a breach of statutory duty.

- (1) Nothing in this Part shall be construed:
 - (a) as conferring a right of action in any civil proceedings in respect of any failure to comply with any duty imposed by Sections 2 to 7 or any contravention of Section 8; or
 - (b) as affecting the operation of Section 12 of the **Nuclear Installations Act 1965** (right to compensation by virtue of certain provisions of that Act).
- (2) Breach of a duty imposed by a statutory instrument containing (whether alone or with other provision) health and safety regulations shall not be actionable except to the extent that regulations under this section so provide.

(2A) Breach of a duty imposed by an existing statutory provision shall not be actionable except to the extent that regulations under this section so provide (including by modifying any of the existing statutory provisions).

(2B) Regulations under this section may include provision for:

- (a) a defence to be available in any action for breach of the duty mentioned in subsection (2) or (2A);
- (b) any term of an agreement which purports to exclude or restrict any liability for such a breach to be void.

(3) No provision made by virtue of Section 15(6)(b) shall afford a defence in any civil proceedings.

(4) Subsections (1)(a), (2) and (2A) above are without prejudice to any right of action which exists apart from the provisions of this Act, and subsection (2B)(a) above is without prejudice to any defence which may be available apart from the provisions of the regulations there mentioned.

[Subsections (5) and (6) repealed by the **Enterprise and Regulatory Reform Act 2013**.]

(7) The power to make regulations under this section shall be exercisable by the Secretary of State.