



## HEALTH AND SAFETY AT WORK ORDER 2023

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Statutory Document No. 20XX/XXXX

*Health and Safety at Work, Etc., Act 1977*

## HEALTH AND SAFETY AT WORK ORDER 2023

*Approved by Tynwald:**Coming into Operation:*

The Department of Environment, Food and Agriculture makes the following Order, following consultation with such organisations as it considers represent interests which will be affected by the Order<sup>1</sup>, under section 1(1)(a) of the Health and Safety at Work, Etc., Act 1977.

### 1 Title

This Order is the Health and Safety At Work Order 2023.

### 2 Commencement

If approved by Tynwald, this Order comes into operation on **TBC**<sup>2</sup>.

### 3 Interpretation

In this Order, “**the 1974 Act**” means the Health and Safety at Work etc. Act 1974 (an Act of Parliament)<sup>3</sup>.

### 4 Application

This Order applies to all places within the Island.

### 5 Application of the 1974 Act

The following provisions of Parts I and IV of the 1974 Act, namely —

- (a) sections 1 to 4;
- (b) sections 6 to 10;
- (c) sections 13 to 25;
- (d) sections 26, 27 and 28;
- (e) sections 33 to 38;

<sup>1</sup> As required by section 1(4) of the Health and Safety at Work, Etc., Act 1977.

<sup>2</sup> Tynwald approval is required by section 1(5) of the Health and Safety at Work, Etc., Act 1977.

<sup>3</sup> 1974 c.37.

- (f) sections 40 to 42;
- (g) section 44 to 49;
- (h) sections 51 to 53;
- (i) section 80;
- (j) section 82;
- (k) section 85;
- (l) Schedule 1;
- (m) Schedule 3; and
- (n) Schedule 3A,

apply as part of the law of the Island, subject to the modifications and adaptations specified in the Schedule.

## 6 Revocation

The Health and Safety at Work Order 1998<sup>4</sup> is revoked.

**MADE**

**2023**

**CLARE BARBER**

*Minister for Environment, Food and Agriculture*

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<sup>4</sup> SD 155/98.

## SCHEDULE

[Article 5]

## MODIFICATIONS AND ADAPTATIONS SUBJECT TO WHICH PROVISIONS OF PARTS I AND IV OF THE 1974 ACT APPLY TO THE ISLAND

## PART 1 – GENERAL MODIFICATIONS AND ADAPTATIONS

## 1 General modifications to the 1974 Act

Subject to the specific modifications or adaptations in Part 2, for a matter specified in column 1 of the following table substitute a reference to the matter specified in column 2 opposite of the table.

Column 1	Column 2
the 1974 Act, or any provision of the 1974 Act	the 1974 Act, or the relevant provision of the 1974 Act, as it has effect in the Island
the Health and Safety Commission, the Health and Safety Executive, the Executive, the Secretary of State or a Minister of the Crown	the Department
the Minister for the Civil Service	the Treasury
the United Kingdom	the Island
an industrial tribunal	the Tribunal
any provision of any regulations or order made under any provision of the 1974 Act	the provision as it has effect in the Island

## PART 2 – SPECIFIC MODIFICATIONS

## 2 Section 1 modified

- (1) Section 1 (preliminary) of the 1974 Act is modified as follows.
- (2) In subsection (2), omit “the third column of”.
- (3) After subsection (4) insert –
 

(5) Nothing in this Part shall prejudice any powers conferred on any customs officer by any statutory provision. <b>22</b> .
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## 3 Section 2 modified

- (1) Section 2 (general duties of employers to their employees) is modified as follows.

- (2) In subsection (3), for “in such cases as may be prescribed” substitute **66** where he carries on an undertaking in which for the time being he employs fewer than 5 persons, or such number of persons as may be prescribed **67**.
- (3) In subsection (4), for “appointment in prescribed cases by recognised trade unions (within the meaning of the regulations)” substitute **68** election or appointment, in prescribed cases and in the prescribed manner, **69**.

#### 4 Section 10 modified

For section 10 (establishment of the Executive), including the preceding cross-heading, substitute —

**66** *The Health and Safety Tribunal*

#### 10 Health and Safety Tribunal

- (1) A Health and Safety Tribunal (in this Act referred to as “the Tribunal”) must be constituted for the purposes of this Act.
- (2) Subject to subsection (5)(g), the Tribunal must be appointed in accordance with the Tribunals Act 2006 (an Act of Tynwald) and consist of —
- (a) a chairperson;
  - (b) 2 other members appointed by the Appointments Commission, one from each of the following panels of the Employment and Equality Tribunal —
    - (i) the employer panel; and
    - (ii) the employee panel.
- (3) An appeal may be made to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.
- (4) The Department may make rules as to the institution and conduct of proceedings before the Tribunal.
- (5) Rules under subsection (4) may (without prejudice to the generality of that subsection) include provision —
- (a) for prescribing the procedure to be followed on any appeal, application, reference or complaint or other proceedings before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties thereto;
  - (b) for treating the Department (either generally or in such circumstances as may be specified in the rules) as a party to any proceedings before the Tribunal where it would not

- otherwise be a party, and entitling it to appear and be heard accordingly;
- (c) for requiring persons to attend to give evidence and produce relevant documents, and for authorising oaths to be administered to witnesses;
  - (d) for enabling a party to proceedings before the Tribunal to obtain an order for discovery and inspection of relevant documents, or for further and better particulars, as might be granted by the High Court;
  - (e) for making a person who without reasonable excuse fails to comply with any requirement imposed under paragraph (c), or any requirement as to discovery and inspection of documents imposed under paragraph (d), guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale;
  - (f) for enabling the Tribunal to review its decisions and to revoke or vary its orders and awards in such circumstances as may be determined in accordance with the rules;
  - (g) for the appointment of one or more assessors as additional members of the Tribunal for the purposes of any proceedings before it, where the proceedings are under a statutory provision enabling one or more assessors to be appointed;
  - (h) for the award of fees, costs and expenses (other than allowances payable to members of the Tribunal), and for taxing or otherwise settling any such fees, costs or expenses (and in particular for enabling such costs to be taxed in the High Court);
  - (i) for the registration and proof of decisions, orders and awards of the Tribunal.
- (6) Rules under subsection (4) may enable the Tribunal to sit in private for the purpose of hearing evidence which in its opinion relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public, or hearing evidence from any person (“P”) which in its opinion is likely to consist of –
- (a) information which P could not disclose without contravening a prohibition imposed by or under a statutory provision; or
  - (b) information which has been communicated to P in confidence, or which P has otherwise obtained in consequence of the confidence reposed in P by another person; or

- (c) information the disclosure of which would cause substantial injury to any undertaking of P's or in which P works.
- (7) In subsection (2) "Employment and Equality Tribunal" means the tribunal constituted under section 103 of the Equality Act 2017 (an Act of Tynwald) and "the employer panel" and "the employee panel" have the meanings given in Schedule 17 to that Act.

*Powers of the Department* **22**.

**5 Section 13 modified**

- (1) Section 13 (powers of the Executive) is modified as follows.
- (2) In subsection (1), for ", including a function conferred on it under this subsection" substitute **23** "under this Act or any relevant statutory provisions" **22**.
- (3) Omit subsections (4) to (6A) and (11).

**6 Section 14 modified**

- (1) Section 14 (power of the Commission to direct investigations and inquiries) is modified as follows.
- (2) Omit subsection (1)(a).
- (3) In subsection (2)(b), after "another person" insert **24** "who in the opinion of the Department is suitably qualified" **22**.
- (4) In subsection (2A), omit ", with the consent of the Secretary of State,".
- (5) Omit subsection (4A).

**7 Section 15 modified**

- (1) Section 15 (health and safety regulations) is modified as follows.
- (2) In subsection (1), for "50" substitute **25** "82(3) to (5)" **22**.
- (3) Omit subsections (1A) and (1B).
- (4) In subsection (3)(c), omit ", subject to subsection (3A),".
- (5) Omit subsections (3A) to (3C) and (9).

**8 Section 16 modified**

- (1) Section 16 (approval of codes of practice by the Executive) is modified as follows.
- (2) In subsection (1A) —
- (a) in paragraph (b), omit the words from ", except so far" to "Act 2005"; and



- (b) in paragraph (c), omit the words from “that are not” to “Act 1993”; and
- (c) after paragraph (c) insert —
  - ☐(d) regulations applied to the Island under section 1(1)(b) of the Health and Safety at Work, Etc., Act 1977 (an Act of Tynwald) ☐.
- (3) For subsection (2) substitute —
  - ☐(2) The Department shall not approve a code of practice under this section unless it has had consultations with such organisations as it considers represent interests which will be affected by the code. ☐.
- (4) In subsection (5) —
  - (a) omit “with the consent of the Secretary of State”; and
  - (b) for “seeking his consent shall consult the same government departments and other bodies” substitute ☐ doing so shall consult such organisations ☐.

## 9 Section 18 modified

- (1) Section 18 (authorities responsible for enforcement of the relevant statutory provisions) is modified as follows.
- (2) In subsection (1), omit “or by regulations under subsection (2) below”.
- (3) Omit subsections (1A) to (4B).
- (4) In subsection (5) —
  - (a) omit “the Office for Nuclear Regulation or a local authority”; and
  - (b) in paragraph (b), omit “except where that authority is the Office of Rail and Road,”.
- (5) Omit subsection (6).
- (6) In subsection (7) —
  - (a) in paragraph (a) —
    - (i) omit “or the Office for Nuclear Regulation”; and
    - (ii) omit “or by regulations under subsection (2) above”; and
  - (b) in the text following paragraph (b) —
    - (i) omit “or section 95 of the Energy Act 2013 (power for Office for Nuclear Regulation to arrange for exercise of functions by others)”;
    - (ii) omit “or the Office for Nuclear Regulation”; and
    - (iii) omit “or the Office for Nuclear Regulation (as the case may be)”.

**10 Section 19 modified**

- (1) Section 19 (appointment of inspectors) is modified as follows.
- (2) For subsections (1) and (2) substitute —
  - █(1) There shall be employed as inspectors (under whatever title the Department may from time to time determine) —
    - (a) by the Public Services Commission in accordance with section 5 of the Public Services Commission Act 2015 (an Act of Tynwald); or
    - (b) by the Department, on such terms and conditions as the Department thinks fit,  
persons having suitable qualifications for carrying into effect the relevant statutory provisions within the Department's field of responsibility.
  - (1A) Every other enforcing authority may appoint inspectors (under whatever title it may from time to time determine) persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this subsection.
  - (2) An enforcing authority shall by an instrument in writing specify, in relation to each of its inspectors, which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by that inspector; and an inspector shall be entitled to exercise only such of those powers as are so specified, and only within the field of responsibility of the authority concerned.
  - (2A) An instrument made under subsection (2) shall not be valid unless it carries the photograph and signature of the inspector, and is signed by a person authorised to do so by the enforcing authority; and an instrument purporting to be so made in relation to any person and complying with this subsection shall be evidence that he has been duly appointed an inspector by that authority and is entitled to exercise the powers specified therein within the authority's field of responsibility. █.

**11 Section 20 modified**

- (1) Section 20 (powers of inspectors) is modified as follows.
- (2) In subsection (2) —
  - (a) in paragraph (m), for “which is” substitute █ which appears to the enforcing authority on a report of the inspector to be █; and
  - (b) at the end insert —
    - █,

but before exercising any powers by virtue of paragraph (j) above an inspector shall inform the person concerned of the requirements of that paragraph; and an inspector may not exercise any powers by virtue of paragraph (k) above in respect of any books referred to in paragraph (k)(ii) above which relate to the trading or profit and loss accounts of any undertaking unless he is authorised for the purpose by an order of the High Court. **22**.

(3) After subsection (2) insert —

**22**(2A) Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing, that admission to premises specified in the information is reasonably required by an inspector for any purpose specified in subsection (1) above, the justice may by warrant under his hand authorise the inspector to enter the premises, by force if need be.

(2B) A warrant under subsection (2A) above —

- (a) may not be granted unless the justice is satisfied that the inspector has reasonable cause to apprehend a serious obstruction in the execution of his duty; and
- (b) shall continue in force until the purpose for which the entry is required has been satisfied.

(2C) A person who in the exercise of a right of entry conferred by this section enters any premises from which the occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

(2D) A person who in the exercise of a right conferred by this section causes damage while effecting entry to any premises or any part thereof shall make good that damage without charge to the owner or occupier of the premises. **22**.

(4) In subsection (8) omit “or, as the case may be, on an order for the production of documents in an action in the Court of Session”.

(5) After subsection (8) insert —

**22**(8A) An inspector shall inform any person who on reasonable grounds requests him to do so of his powers under this section. **22**.

(6) In subsection (9) for “**telecommunications** operator” substitute **22**communications provider **22**.

(7) For subsection (10) substitute —

**22**(10) In subsection (9) —

“communications data”, in relation to a communications provider, electronic communications network or a electronic communication service, means entity data or events data —


- (a) which is (or is to be or is capable of being) held or obtained by, or on behalf of, a communications provider and –
  - (i) is about an entity to which a electronic communications service is provided and relates to the provision of the service,
  - (ii) is comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a electronic communications network by means of which the communication is being or may be transmitted, or
  - (iii) does not fall within sub-paragraph (i) or (ii) but does relate to the use of a electronic communications service or a electronic communication network,
- (b) which is available directly from a electronic communication network and falls within sub-paragraph (ii) of paragraph (a), or
- (c) which –
  - (i) is (or is to be or is capable of being) held or obtained by, or on behalf of, a communications operator,
  - (ii) is about the architecture of a electronic communication network, and
  - (iii) is not about a specific person,

but does not include any content of a communication;

“postal operator” means a person providing a postal service to persons in the Island;

“postal service” means a service that –

- (a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether in the Island or elsewhere) of postal items, and
- (b) has as its main purpose, or one of its main purposes, to make available, or to facilitate, a means of transmission from place to place of postal items containing communications; and

“communications provider” has the same meaning given to in the Communication Act 2021. .

## 12 Section 22 modified

- (1) Section 22 (prohibition notices) is modified as follows.

- (2) In subsection (4)(b), for “the notice so declares, immediately” substitute **“immediately**, where an inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent **”**.

### 13 Section 23 modified

- (1) Section 23 (provisions supplementary to ss. 21 and 22) is modified as follows.
- (2) In subsection (4) —
  - (a) for “fire and rescue authority” substitute **“Department of Home Affairs”**; and
  - (b) omit the words “In this subsection” to the end.
- (3) Omit subsection (6).

### 14 Section 24 modified

- (1) Section 24 (appeal against improvement or prohibition notice) is amended as follows.
- (2) In subsection (2) —
  - (a) for “an employment tribunal” substitute **“the Tribunal”**; and
  - (b) for “the tribunal”, in both places those words occur, substitute **“the Tribunal”**.
- (3) In subsection (3)(b), for “the tribunal” substitute **“the Tribunal”**.
- (4) In subsection (4) —
  - (a) after “One or more” insert **“suitably qualified”**; and
  - (b) for “ an employment tribunal” substitute **“the Tribunal”**.

### 15 Section 27 modified

- (1) Section 27 (obtaining of information by the Commission, the Executive, enforcing authorities etc.) is modified as follows.
- (2) In subsection (1) —
  - (a) in paragraph (b), omit “other than the Office for Nuclear Regulation”;
  - (b) in the text following paragraph (b), omit “may, with the consent of the Secretary of State,”; and
  - (c) for ““consent” includes a general consent extending to cases of any stated description” substitute **““functions” means functions under this Act”**.
- (3) Omit subsections (2) to (4).

**16 Section 28 modified**

- (1) Section 28 (restrictions on disclosure of information) is modified as follows.
- (2) In subsection (1)(a), omit from “, other than” to “below or”.
- (3) In subsection (3) —
  - (a) in paragraph (a), for “the Office for Nuclear Regulation, the Environment Agency, the Scottish Environment Protection Agency, the Natural Resources Body for Wales, a government” substitute **“any other”**;
  - (b) in paragraph (c) —
    - (i) at the end of sub-paragraph (i) insert **“or”**;
    - (ii) omit sub-paragraph (ii); and
    - (iii) in sub-paragraph (iv), for “a chief officer of police” substitute **“the Chief Constable”**; and
  - (c) in paragraph (f)(i), for “2000” substitute **“2015 (an Act of Tynwald)”**.
- (4) In subsection (4) —
  - (a) for “the Office for Nuclear Regulation, the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, a government” substitute **“any other”**; and
  - (b) omit the words from “, and also, in the case” to the end.
- (5) In subsection (5) —
  - (a) in paragraph (a), for the words from “, of the Office for” to “government department” substitute **“or of the other department”**; and
  - (b) in paragraph (b), omit “, a water undertaker, a sewerage undertaker, a water authority, a river purification board or a water development board”.
- (6) Omit subsection (6).
- (7) In subsection (9A), for “2000” substitute **“2015 (an Act of Tynwald)”**.
- (8) Omit subsections (9B) and (10).

**17 Section 33 modified**

In section 33(1) (offences) —

- (a) in paragraph (h), omit “or to obstruct a customs officer in the exercise of his powers under section 25A”; and
- (b) in paragraph (j), omit “27(4) or”.

**18 Section 34 modified**

- (1) Section 34 (extension of time for bringing summary proceedings) is modified as follows.
- (2) In subsection (1) —
  - (a) in paragraph (c) —
    - (i) for “an investigation under Part 1 of the Coroners and Justice Act 2009 is conducted into” substitute **63**an inquest under the Coroners of Inquests Act 1987 (an Act of Tynwald) is held touching **62**; and
    - (ii) at the end, omit “or”;
  - (b) omit paragraph (d); and
  - (c) for the words after paragraph (d) substitute —

**64**and it appears from the report or, in a case falling within paragraph (c) above, from the proceedings at the inquest, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the report or inquest, 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) above, within three months of the conclusion of the inquest. **65**.
- (3) Omit subsections (5) and (6).

**19 Section 38 modified**

In section 38 (restriction on institution of proceedings in England and Wales) —

- (a) in the heading, omit “in England and Wales”;
- (b) omit “, in England and Wales,”;
- (c) omit “, the Environment Agency or the Natural Resources Body for Wales”; and
- (d) for “Director of Public Prosecutions” substitute **66**Attorney General **67**.

**20 Section 41 modified**

In section 41 (evidence), in both places it occurs, omit “or in Scotland sufficient evidence”.

**21 Section 42 modified**

- (1) Section 42 (power of court to order cause of offence to be remedied or, in certain cases, forfeiture) is modified as follows.

- (2) In subsection (4), for “the following subsection” substitute **“**subsection (5)**”**.
- (3) After subsection (4) insert —
  - “**(4A) Subject to subsection (5), the court by or before which a person is convicted of an offence under any of the relevant statutory provisions in respect of any radioactive substance or any machine or apparatus intended to produce ionising radiations may order that the substance, machine or apparatus be forfeited.**”**
- (4) In subsection (5), for “the preceding subsection” substitute **“**subsection (4) or (4A)**”**.

## 22 Section 44 modified

- (1) Section 44 (appeals in connection with licensing provisions in the relevant statutory provisions) is modified as follows.
- (2) In subsection (1), for “Secretary of State” substitute **“**Tribunal**”**.
- (3) Omit subsections (2) to (6).
- (4) After subsection (7) insert —
  - “**(7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of any proceedings before the Tribunal under this section.**”**

## 23 Section 45 modified

- (1) Section 45 (default powers) is modified as follows.
- (2) In subsection (1) —
  - (a) for “a local authority” substitute **“**an authority other than the Department**”**;
  - (b) for “that local authority” substitute **“**that authority**”**; and
  - (c) for “make a report to the Secretary of State” substitute **“**cause an inquiry to be held; and the provisions of sections 2 and 5 of the Inquiries (Evidence) Act 2003 apply**”**.
- (3) Omit subsection (2).
- (4) In subsection (3) —
  - (a) for “a local inquiry” substitute **“**an inquiry**”**;
  - (b) for “a local authority” substitute **“**an authority**”**; and
  - (c) for “he” substitute **“**the Department**”**.
- (5) In subsection (5) —
  - (a) for “he” substitute **“**it**”**; and
  - (b) omit “by mandamus”.



- (6) In subsection (9), for “he” substitute **“it”**.
- (7) In subsection (10), for “him” substitute **“it”**.
- (8) In subsection (11), for “a local authority” substitute **“an authority”**.
- (9) Omit subsection (12).

## 24 Section 46 modified

- (1) Section 46 (service of notices) is modified as follows.
- (2) In subsection (3)(b), omit “or, in Scotland, the firm”.
- (3) In subsection (4), omit “and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section,”.
- (4) In subsection (5), omit “and section 7 of the Interpretation Act 1978”.

## 25 Section 47 modified

In section 47 (civil liability), omit subsection (1)(c).

## 26 Section 47A inserted

After section 47, insert —

### **47A Avoidance of certain contract terms**

A contract shall be void and of no effect in so far as it purports to preclude any person from doing such acts as may be necessary to comply with any requirement of the relevant statutory provisions or to render him liable to any penalty or forfeiture for so doing.

## 27 Section 48 modified

- (1) Section 48 (application to Crown) is modified as follows.
- (2) In subsection (4) —
  - (a) for “Secretary of State” substitute **“Council of Ministers”**; and
  - (b) for “him” substitute **“it”**.
- (3) Omit subsections (5) and (6).

## 28 Section 49 modified

In section 49(2) (adaptation of enactments to metric units or appropriate metric units), for “authority making the regulations” substitute **“Department”**.

## 29 Section 51A modified

- (1) Section 51A (application of Part to police) is modified as follows.

- (2) In subsection (1) —
  - (a) after “of constable” insert **63**, special constable **62**; and
  - (b) for “relevant officer” substitute **63** Chief Constable **62**.
- (3) Omit subsection (2).
- (4) In subsection (2A), for “relevant officer, as defined by subsection (2)(a) or (c) above” substitute **63** Chief Constable shall **62**.
- (5) In subsection (2B) —
  - (a) for “, in a case in which the relevant officer, as so defined,” substitute **63** the Chief Constable **62**; and
  - (b) for “office holder”, in both places it occurs, substitute **63** Chief Constable **62**.
- (6) In subsection (2C) —
  - (a) for “office holder” substitute **63** Chief Constable **62**;
  - (b) omit “, in relation to the relevant officer”; and
  - (c) in paragraph (a), for “or other position mentioned in subsection (2) above as the office or position of that officer” substitute **63** of Chief Constable **62**.
- (7) For subsection (2E) substitute —
 

**63** (2E) Those provisions are section 14(1) of the Police Act 1993 (an Act of Tynwald). **62**.
- (8) Omit subsections (2F) to (4).

### 30 Section 52 modified

In section 52(1)(bb), after “constable” insert **63** or special constable **62**.

### 31 Section 53 modified

- (1) Section 53 (general interpretation of Part I) is modified as follows.
- (2) In subsection (1) —
  - (a) after the definition of “credit-sale agreement” insert —
 

**63** “**Customs and Excise**” means the Customs and Excise Division of the Treasury; **62**;
  - (b) in the definition of “customs officer”, for “1979” substitute **63** 1986 (an Act of Tynwald) **62**;
  - (c) omit the definition of “the Executive”;
  - (d) in the definition of “the existing statutory provisions”, for “the provisions of the Acts mentioned in Schedule 1 which are specified in the third column of that Schedule and of” substitute **63** the enactments specified in Schedule 1 and **62**;

- (e) in the definition of “hire-purchase agreement”, in paragraph (a) —
    - (i) omit “or (in Scotland) hired”; and
    - (ii) omit “or hired”;
  - (f) after the definition of “inspector” insert —
    - ☒ “**ionising radiation**” means the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometres or less or a frequency of  $3 \times 10^{15}$  hertz or more capable of producing ions directly or indirectly; ☒;
  - (g) omit the definition of “local authority”;
  - (h) omit the definitions of “nuclear safeguards purposes”, “nuclear safety purposes” and “nuclear security purposes”;
  - (i) omit the definition of “the ONR’s purposes”;
  - (j) for the definition of “the radioactive material transport purposes” substitute —
    - ☒ “**radioactive substance**” means any substance which contains one or more radionuclides whose activity cannot be disregarded for the purposes of radiation protection; ☒;
  - (k) omit the definition of “railway safety purposes”; and
  - (l) after the definition of “supply” insert —
    - ☒ “**the Tribunal**” means the Health and Safety Tribunal constituted by section 10. ☒.
- (3) After subsection (1) insert —
- ☒ (1A) In this Part and Schedule 3A, “advocate”, “Attorney General”, “Chief Constable”, “constable”, “High Court”, “local authority” and “summary conviction” have the meanings given by the Interpretation Act 2015 (an Act of Tynwald).
  - (1B) In this Part, “special constable” has the meaning given by the Police Act 1993 (an Act of Tynwald). ☒.

### 32 Section 80 modified

- (1) Section 80 (general power to repeal or modify Acts and instruments) is modified as follows.
- (2) In subsection (1) —
  - (a) after “Regulations made” insert ☒ by the Department ☒; and
  - (b) for “authority making the regulations” substitute ☒ Department ☒.
- (3) In subsection (2) —
  - (a) in paragraph (a), for “this Act or in any other Act passed before or in the same Session as this Act” substitute ☒ any Act of Tynwald passed before the 31st July 1980 ☒;

- (b) in paragraph (b), for “before the passing of this Act” substitute “of Tynwald before 31st July 1980”; and
  - (c) in paragraph (c), after “Act”, in both places it occurs, insert “of Tynwald”.
- (4) Omit subsections (2A) and (4).

### 33 Section 82 modified

- (1) Section 82 (general provisions as to interpretation and regulations) is modified as follows.
- (2) In subsection (1) –
- (a) for paragraph (a) substitute –
    - “(a) “Department” means the Department of Environment, Food and Agriculture; and
  - (b) after paragraph (c) insert –
    - “(ca) “statutory provision” has the meaning given by the Interpretation Act 2015 (an Act of Tynwald);
- (3) In subsection (3) –
- (a) omit “or II”; and
  - (b) omit paragraph (b).
- (4) Omit subsections (3A) and (3B).
- (5) For subsection (4) substitute –
- “(4) Before the Department makes any order, rules or regulations under this Act it shall consult such organisations as it considers represent interests affected by the order, rules or regulations.
  - (5) An order, rules or regulations under this Act shall not have effect unless approved by Tynwald.

### 34 Section 85 modified

In section 85 (short title and commencement), omit subsections (2) and (3).

### 35 Schedule 1 modified

For the table in Schedule 1 (existing enactments which are relevant statutory provisions) substitute –

“(a)

AT number	Short title
1 of 1909	The Factories and Workshops Act 1909
4 of 1909	The White Phosphorus Matches Prohibition Act 1909
3 of 1923	The Mechanical Contrivances Regulation Act 1923
2 of 1928	The Dangerous Goods Act 1928

2 of 1930	The Employment of Women, Young Persons and Children Act 1930
3 of 1931	The Factories and Workshops (Amendment) Act 1931
2 of 1934	The Boiler Act 1934
3 of 1936	The Factories and Workshops Amendment Act 1936
3 of 1939	The Factories and Workshops Amendment Act 1939
10 of 1950	The Mines and Quarries Regulation Act 1950
4 of 1954	The Dangerous Goods Act 1954
1 of 1961	The Agriculture (Poisonous Substances) Act 1961
29 of 1974	The Agriculture (Safety, Health and Welfare Provisions) Act 1974
3 of 1982	Schedules 6 (inspection of railways) and 7 (railway accidents) to the Isle of Man Passenger Transport Act 1982
11 of 2013	The Sunbeds Act 2013

22.

### 36 Schedule 3 modified

- (1) Schedule 3 (subject-matter of health and safety regulations) is modified as follows.
- (2) In paragraph 2(2), for “Customs and Excise Acts 1979” substitute 23 Customs and Excise Acts 1986 (within the meaning of the Customs and Excise Management Act 1986 (an Act of Tynwald)) 24.

### 37 Schedule 3A modified

- (1) Schedule 3A (offences: mode of trial and maximum penalty) is modified as follows.
- (2) For the table substitute —

25

Offence	Mode of trial	Penalty on summary conviction	Penalty on conviction on information
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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or	Imprisonment for a term not exceeding two years, or a fine, or both.

virtue of section 7.		both.	
An offence under section 33(1)(b) consisting of a contravention of section 8.	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	A fine not exceeding 4 times level 5 on the standard scale.	A fine.
An offence under section 33(1)(c).	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(h).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under section 33(1)(i).	Summarily or on information.	A fine not exceeding 4 times level 5 on the standard scale.	A fine.
An offence under section 33(1)(j).	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the	Imprisonment for a term not exceeding two years, or a fine, or both.

		standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

22.

(3) Omit paragraph 2.

### *EXPLANATORY NOTE*

*(This note is not part of the Order)*

This Order revokes and replaces the Health and Safety at Work Order 1998 [SD 155/98]. It applies certain provisions of Parts I and IV of the Health and Safety at Work etc. Act 1974 of Parliament (“the Act”) to the Island subject to modifications and adaptations specified in the Order. The Order incorporates amendments made to Parts I and IV of the Act after the Health and Safety at Work Order 1998 came into operation by the following Acts of Parliament:

- the Environmental Protection Act 1990<sup>5</sup>;
- the Police (Health and Safety) Act 1997<sup>6</sup>;
- the Employment Rights (Dispute Resolution) Act 1998<sup>7</sup>;
- the Civil Partnership Act 2004<sup>8</sup>;
- the Fire and Rescue Services Act 2004<sup>9</sup>;
- the Serious Organised Crime and Police Act 2005<sup>10</sup>;
- the Health and Safety (Offences) Act 2008<sup>11</sup>; and
- the Enterprise and Regulatory Reform Act 2013<sup>12</sup>.

The Order also incorporates amendments made to the Act by the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004<sup>13</sup> (of Parliament).

The following changes in the law are made:

- (a) Section 5 (general duty of persons in control of certain premises in relation to harmful emissions into atmosphere) of the Act is repealed and is consequently no longer applied to the Island;
- (b) Section 6 (general duties of manufacturers etc. as regards articles and substances for use at work) is applied to the Island such that the general duties of

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<sup>5</sup> 1990 c. 43.

<sup>6</sup> 1997 c. 42.

<sup>7</sup> 1998 c. 8.

<sup>8</sup> 2004 c. 33.

<sup>9</sup> 2004 c. 21.

<sup>10</sup> 2005 c. 15.

<sup>11</sup> 2008 c. 20.

<sup>12</sup> 2013 c. 24.

<sup>13</sup> S.I. 2004/3363.



manufactures of articles etc. for use at work is extended to manufacturers of fairground equipment;

- (c) Section 16 (approval of codes of practice by the Executive) is modified to permit the Department to approve a code of practice for regulations applied to the Island under section 1(1)(b) of the Health and Safety at Work, Etc., Act 1977;
- (d) Section 28 (restrictions on disclosure of information) is modified to update the provisions with regard to the Freedom of Information Act 2015;
- (e) Section 42 (power of court to order cause of offence to be remedied or, in certain cases, forfeiture) is applied to the Island in order to extend the power of a court by which a person is convicted of an offence involving an explosive substance, to order that substance to be forfeited or destroyed;
- (f) Section 45 (default powers) is applied to the Island in order to permit the Department of Environment, Food and Agriculture to hold an inquiry into the fulfilment of delegated functions by another enforcing authority and allow the Department of Environment, Food and Agriculture, by order, to re-assume those functions;
- (g) Section 47 (civil liability) is modified to remove the right of civil action against employers and other duty-holders for breach of statutory duty in relation to certain health and safety legislation, other than where such a right is specifically provided for; and
- (h) Section 51A (application of Part to police) is applied to the Island to establish the Chief Constable as the employer of police officers, special constables and police cadets, for the purposes of the Act.



## ANNEX

### HEALTH AND SAFETY AT WORK ETC. ACT 1974

An Act to make further provision for securing the health, safety and welfare of persons at work, for protecting others against risks to health or safety in connection with the activities of persons at work, for controlling the keeping and use and preventing the unlawful acquisition, possession and use of dangerous substances, and for controlling certain emissions into the atmosphere; to make further provision with respect to the employment medical advisory service; to amend the law relating to building regulations, and the Building (Scotland) Act 1959; and for connected purposes.

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

### *Preliminary*

#### **1 Preliminary**

- (1) The provisions of this Part shall have effect with a view to –
  - (a) securing the health, safety and welfare of persons at work;
  - (b) protecting persons other than persons at work against risks to health or safety arising out of or in connection with the activities of persons at work;
  - (c) controlling the keeping and use of explosive or highly flammable or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances.
- (2) The provisions of this Part relating to the making of health and safety regulations and the preparation and approval of codes of practice shall in particular have effect with a view to enabling the enactments specified in ~~the third column of~~ Schedule 1 and the regulations, orders and other instruments in force under those enactments to be progressively replaced by a system of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under those enactments.
- (3) For the purposes of this Part risks arising out of or in connection with the activities of persons at work shall be treated as including risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking and the condition of premises so used or any part of them.

- (4) References in this Part to the general purposes of this Part are references to the purposes mentioned in subsection (1) above.
- (5) **Nothing in this Part shall prejudice any powers conferred on any officer of customs and excise by any statutory provision.**

### *General duties*

## **2 General duties of employers to their employees**

- (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) 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 without risks to health and the provision and maintenance of means of access 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.
- (3) ~~Except in such cases as may be prescribed~~ **where he carries on an undertaking in which for the time being he employs fewer than 5 persons, or such number of persons 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 of his employees.
- (4) Regulations made by the ~~Secretary of State~~ **Department** may provide for the ~~appointment in prescribed cases by recognised trade unions (within~~

~~the meaning of the regulations)~~ **election or appointment, in prescribed cases and in the prescribed manner**, 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.

- (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.
- (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~~ **Department**, 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.

### **3 General duties of employers and self-employed to persons other than their employees**

- (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.
- (2) It shall be the duty of every self-employed person who conducts an undertaking of a prescribed description to conduct the 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.
- (2A) A description of undertaking included in regulations under subsection (2) may be framed by reference to —
  - (a) the type of activities carried out by the undertaking, where those activities are carried out or any other feature of the undertaking;
  - (b) whether persons who may be affected by the conduct of the undertaking, other than the self-employed person (or his employees), may thereby be exposed to risks to their health or safety.
- (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.

#### **4 General duties of persons concerned with premises to persons other than their employees**

- (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.

- (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.
- (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) 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).

#### **6 General duties of manufacturers etc. as regards articles and substances for use at work**

- (1) It shall be the duty of any person who designs, manufactures, imports or supplies any article for use at work or 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 set, used, cleaned or maintained by a person at work;

- (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 such times as are mentioned in paragraph (a) above and when it is being dismantled or disposed of; 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.
- (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.
- (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 any risks to health or safety to which the design or article may give rise.

- (3) It shall be the duty of any person who erects or installs any article for use at work in any premises where that 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 such time as is mentioned in paragraph (a) of subsection (1) or, as the case may be, in paragraph (a) of subsection (1) or (1A) above.
- (4) It shall be the duty of any person who manufactures, imports or supplies any substance —
  - (a) to 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 a person at work or in premises to which section 4 above applies;
  - (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 substance are provided with adequate information about any risks to health or safety to which the inherent properties of the substance may give rise, about the results of any relevant tests which have been carried out on or in connection with the substance and about any conditions necessary to ensure that the substance will be safe and without risks to health at all such times as are mentioned in paragraph (a) above and when the substance is being disposed of; 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.
- (5) It shall be the duty of any person who undertakes the manufacture of any substance 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 any risks to health or safety to which the substance may give rise at all such times as are mentioned in paragraph (a) of subsection (4) above.
- (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 for him 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.

- (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 on the basis of a written undertaking by that other 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 such times as are mentioned in paragraph (a) of subsection (1) or, as the case may be, in paragraph (a) of subsection (1) or (1A) above, the undertaking shall have the effect of relieving the first-mentioned person from the duty imposed by virtue of that paragraph to such extent as is reasonable having regard to the terms of the undertaking.
- (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~~ **Island**, 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~~ **Island**, 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 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 others by 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 in so far as the case in or in relation to which it would arise is shown to be one the occurrence of which could not reasonably be foreseen; and in determining whether any duty imposed by virtue of

paragraph (a) of subsection (1), (1A) or (4) above has been performed regard shall be had to any relevant information or advice which has been provided to any person by the person by whom the article has been designed, manufactured, imported or supplied or, as the case may be, by the person by whom the substance has been manufactured, imported or supplied.

## **7 General duties of employees at work**

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.

## **8 Duty not to interfere with or misuse things provided pursuant to certain provisions**

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.

## **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.

~~*The Health and Safety Commission and the Health and Safety Executive*~~ *The Health and Safety Tribunal*

## **10 ~~Establishment of the Executive~~ Health and Safety Tribunal**

- ~~(1) There shall be a body corporate to be known as the Health and Safety Executive (in this Act referred to as “the Executive”).~~
- ~~(2) The provisions of Schedule 2 shall have effect with respect to the Executive.~~
- ~~(3) The functions of the Executive and of its officers and servants shall be performed on behalf of the Crown.~~
- ~~(4) For the purpose of any civil proceedings arising out of those functions —~~

- ~~(a) in England and Wales and Northern Ireland, the Crown Proceedings Act 1947 shall apply to the Executive as if it were a government department within the meaning of that Act, and~~
- ~~(b) in Scotland, the Crown Suits (Scotland) Act 1857 shall apply to the Executive as if it were a public department within the meaning of that Act.~~

- (1) A Health and Safety Tribunal (in this Act referred to as “the Tribunal”) must be constituted for the purposes of this Act.**
- (2) Subject to subsection (5)(g), the Tribunal must be appointed in accordance with the Tribunals Act 2006 (an Act of Tynwald) and consist of –**
  - (a) a chairperson;**
  - (b) 2 other members appointed by the Appointments Commission, one from each of the following panels of the Employment and Equality Tribunal –**
    - (i) the employer panel; and**
    - (ii) the employee panel.**
- (3) An appeal may be made to the High Court in accordance with rules of court on a question of law from any decision of the Tribunal.**
- (4) The Department may make rules as to the institution and conduct of proceedings before the Tribunal.**
- (5) Rules under subsection (4) may (without prejudice to the generality of that subsection) include provision –**
  - (a) for prescribing the procedure to be followed on any appeal, application, reference or complaint or other proceedings before the Tribunal, including provisions as to the persons entitled to appear and to be heard on behalf of parties thereto;**
  - (b) for treating the Department (either generally or in such circumstances as may be specified in the rules) as a party to any proceedings before the Tribunal where it would not otherwise be a party, and entitling it to appear and be heard accordingly;**
  - (c) for requiring persons to attend to give evidence and produce relevant documents, and for authorising oaths to be administered to witnesses;**
  - (d) for enabling a party to proceedings before the Tribunal to obtain an order for discovery and inspection of relevant documents, or for further and better particulars, as might be granted by the High Court;**
  - (e) for making a person who without reasonable excuse fails to comply with any requirement imposed under paragraph (c), or any requirement as to discovery and inspection of documents**

imposed under paragraph (d), guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale;

- (f) for enabling the Tribunal to review its decisions and to revoke or vary its orders and awards in such circumstances as may be determined in accordance with the rules;
  - (g) for the appointment of one or more assessors as additional members of the Tribunal for the purposes of any proceedings before it, where the proceedings are under a statutory provision enabling one or more assessors to be appointed;
  - (h) for the award of fees, costs and expenses (other than allowances payable to members of the Tribunal), and for taxing or otherwise settling any such fees, costs or expenses (and in particular for enabling such costs to be taxed in the High Court);
  - (i) for the registration and proof of decisions, orders and awards of the Tribunal.
- (6) Rules under subsection (4) may enable the Tribunal to sit in private for the purpose of hearing evidence which in its opinion relates to matters of such a nature that it would be against the interests of national security to allow the evidence to be given in public, or hearing evidence from any person (“P”) which in its opinion is likely to consist of —
- (a) information which P could not disclose without contravening a prohibition imposed by or under a statutory provision; or
  - (b) information which has been communicated to P in confidence, or which P has otherwise obtained in consequence of the confidence reposed in P by another person; or
  - (c) information the disclosure of which would cause substantial injury to any undertaking of P’s or in which P works.
- (7) In subsection (2) “Employment and Equality Tribunal” means the tribunal constituted under section 103 of the Equality Act 2017 (an Act of Tynwald) and “the employer panel” and “the employee panel” have the meanings given in Schedule 17 to that Act.

*Powers of the Department*

**11 — Functions of the Executive**

**11A — Powers of the Executive: buildings in England**

**12 — Control of the Executive by the Secretary of State**

**13 Powers of the Executive Department**

- (1) Subject to subsection (2), the **Executive Department** shall have power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions, ~~including a function conferred on it under this subsection~~ **under this Act or any relevant statutory provisions.**
- (2) The power in subsection (1) shall not include the power to borrow money.
- (3) The **Executive Department** may make agreements with a government department or other person for that department or person to perform any of its functions, with or without payment.
- ~~(4) Subject to subsections (5) and (6), the Executive may make agreements with a Minister of the Crown, with a government department or with a public authority to perform functions exercisable by that Minister, department or authority, with or without payment.~~
- ~~(5) The functions referred to in subsection (4) —
  - (a) in the case of a Minister of the Crown, include functions not conferred by an enactment;
  - (b) shall be functions which the Secretary of State considers can be appropriately performed by the Executive; and
  - (c) do not include any power to make regulations or other instruments of a legislative character.~~
- ~~(6) The Executive may provide services or facilities, with or without payment, otherwise than for the general purposes of this Part, to a government department or public authority in connection with the exercise of that department's or authority's functions.~~
- ~~(6A) The reference in subsection (6) to the general purposes of this Part does not include a reference to any of the following —
  - (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the radioactive material transport purposes.~~

- (7) The **Executive Department** may appoint persons or committees of persons to provide it with advice in connection with any of its functions and, without prejudice to subsection (8), it may remunerate these persons.
- (8) The **Executive Department** may, in connection with the performance of its functions, pay to any person —
  - (a) travelling and subsistence allowances, and
  - (b) compensation for loss of remunerative time.
- (9) Any amounts paid under subsections (7) and (8) shall be such as may be determined by the **Secretary of State-Department**, with the approval of the **Minister for the Civil Service-Treasury**.
- (10) The **Executive Department** may —
  - (a) carry out, arrange for, or make payments for the carrying out of, research into any matter connected with its functions, and
  - (b) disseminate or arrange for or make payments for the dissemination of information derived from this research.
- ~~(11) The Executive may include, in any arrangements made for the provision of services or facilities under subsection (6), provision for the making of payments to the Executive, or any person acting on its behalf, by other parties to the arrangements and by persons using those services or facilities.~~

#### 14 **Power of the ~~Commission~~ Department to direct investigations and inquiries**

- (1) This section applies to the following matters, that is to say any accident, occurrence, situation or other matter whatsoever which the **Executive Department** thinks it necessary or expedient to investigate for any of the general purposes of this Part or with a view to the making of regulations for those purposes; and for the purposes of this subsection —
  - ~~(a) those general purposes shall be treated as not including the railway safety purposes or the ONR's purposes; but~~
  - (b) it is otherwise immaterial whether the **Executive Department** is or is not responsible for securing the enforcement of such (if any) of the relevant statutory provisions as relate to the matter in question.
- (2) The **Executive Department** may at any time —
  - (a) investigate and make a special report on any matter to which this section applies; or
  - (b) authorise another person **who in the opinion of the Department is suitably qualified** to investigate and make a special report into any such matter.

- (2A) The **Executive Department** may at any time, ~~with the consent of the Secretary of State,~~ direct an inquiry to be held into any matter to which this section applies.
- (3) Any inquiry held by virtue of subsection (2A) above shall be held in accordance with regulations made for the purposes of this subsection by the ~~Secretary of State~~ **Department**, and shall be held in public except where or to the extent that the regulations provide otherwise.
- (4) Regulations made for the purposes of subsection (3) above may in particular include provision —
- (a) conferring on the person holding any such inquiry, and any person assisting him in the inquiry, powers of entry and inspection;
  - (b) conferring on any such person powers of summoning witnesses to give evidence or produce documents and power to take evidence on oath and administer oaths or require the making of declarations;
  - (c) requiring any such inquiry to be held otherwise than in public where or to the extent that a ~~Minister of the Crown~~ **the Department** so directs.
- ~~(4A) Provision that may be made by virtue of subsection (4)(a) includes, in particular, provision conferring functions on the Office for Nuclear Regulation in relation to powers of entry and inspection in relation to any premises for which it is an enforcing authority.~~
- (5) In the case of a special report made by virtue of subsection (2), or a report made by the person holding an inquiry by virtue of subsection (2A), the **Executive Department** may cause the report, or so much of it as the **Executive Department** thinks fit, to be made public at such time and in such manner as it thinks fit.
- (6) The **Executive Department** —
- (a) in the case of an investigation and special report made by virtue of subsection (2) above (otherwise than by an officer or servant of the **Executive Department**), may pay to the person making it such remuneration and expenses as the ~~Secretary of State~~ **Department** may, with the approval of the ~~Minister for the Civil Service~~ **Treasury**, determine;
  - (b) in the case of an inquiry held by virtue of subsection (2A) above, may pay to the person holding it and to any assessor appointed to assist him such remuneration and expenses, and to persons attending the inquiry as witnesses such expenses, as the ~~Secretary of State~~ **Department** may, with the like approval, determine; and
  - (c) may, to such extent as the ~~Secretary of State~~ **Department** may determine, defray the other costs, if any, of any such investigation and special report or inquiry.

## 15 Health and safety regulations

- (1) Subject to the provisions of section ~~50-82(3) to (5)~~, the ~~Secretary of State~~ **Department** 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”).
- ~~(1A) In subsection (1), the reference to the general purposes of this Part does not include a reference to any of the following —~~
- ~~(a) — the nuclear safety purposes;~~
  - ~~(b) — the nuclear security purposes;~~
  - ~~(c) — the nuclear safeguards purposes;~~
  - ~~(d) — the radioactive material transport purposes.~~
- ~~(1B) Subsection (1A) does not preclude health and safety regulations from including provision merely because the provision could be made for any of the purposes mentioned in paragraphs (a) to (d) of that subsection.~~
- (2) Without prejudice to the generality of subsection (1), 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, ~~subject to subsection (3A),~~ make a specified authority or class of authorities responsible, to such extent as maybe specified, for the enforcement of any of the relevant statutory provisions.
- ~~(3A) Nothing in this section is to be taken to permit health and safety regulations to make provision about responsibility for the enforcement of any of the relevant statutory provisions as they apply in relation to any GB nuclear site.~~
- ~~(3B) Subsection (3A) does not prevent health and safety regulations providing for the Office of Rail and Road to be responsible for the enforcement, in relation to GB nuclear sites, of any of the relevant statutory provisions that are made for the railway safety purposes.~~
- ~~(3C) In subsections (3A) and (3B), “GB nuclear site” has the same meaning as in section 68 of the Energy Act 2013 (nuclear safety purposes).~~
- (4) Health and safety regulations —
- (a) may impose requirements by reference to the approval of the **Executive Department** or any other specified body or person;



- (b) may provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (5) Health and safety regulations –
  - (a) may provide (either unconditionally or subject to conditions, and with or without limit of time) for exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions;
  - (b) may enable exemptions from any requirement or prohibition imposed by or under any of the relevant statutory provisions to be granted (either unconditionally or subject to conditions, and with or without limit of time) by any specified person or by any person authorised in that behalf by a specified authority.
- (6) Health and safety regulations –
  - (a) may specify the persons or classes of persons who, in the event of a contravention of a requirement or prohibition imposed by or under the regulations, are to be guilty of an offence, whether in addition to or to the exclusion of other persons or classes of persons;
  - (b) may provide for any specified defence to be available in proceedings for any offence under the relevant statutory provisions either generally or in specified circumstances;
  - (c) may exclude proceedings on indictment in relation to offences consisting of a contravention of a requirement or prohibition imposed by or under any of the existing statutory provisions, sections 2 to 9 or health and safety regulations;
  - (d) may restrict the punishments (other than the maximum fine on conviction on indictment) which can be imposed in respect of any such offence as is mentioned in paragraph (c) above.
- (7) Without prejudice to section 35, health and safety regulations may make provision for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of bringing any such offence within the field of responsibility of any enforcing authority or conferring jurisdiction on any court to entertain proceedings for any such offence.
- (8) Health and safety regulations may take the form of regulations applying to particular circumstances only or to a particular case only (for example, regulations applying to particular premises only).
- ~~(9) If an Order in Council is made under section 84(3) providing that this section shall apply to or in relation to persons, premises or work outside Great Britain then, notwithstanding the Order, health and safety regulations shall not apply to or in relation to aircraft in flight, vessels, hovercraft or offshore installations outside Great Britain or persons at~~

~~work outside Great Britain in connection with submarine cables or submarine pipelines except in so far as the regulations expressly so provide.~~

- (10) In this section “specified” means specified in health and safety regulations.

## 16 Approval of codes of practice by the Executive Department

- (1) For the purpose of providing practical guidance with respect to the requirements of any provision of any of the enactments or instruments mentioned in subsection (1A) below, the **Executive Department** may, subject to the following subsection —

- (a) approve and issue such codes of practice (whether prepared by it or not) as in its opinion are suitable for that purpose;
- (b) approve such codes of practice issued or proposed to be issued otherwise than by the **Executive Department** as in its opinion are suitable for that purpose.

- (1A) Those enactments and instruments are —

- (a) sections 2 to 7 above;
- (b) health and safety regulations, ~~except so far as they make provision exclusively in relation to transport systems falling within paragraph 1(3) of Schedule 3 to the Railways Act 2005; and~~
- (c) the existing statutory provisions ~~that are not such provisions by virtue of section 117(4) of the Railways Act 1993; and~~
- (d) **regulations applied to the Island under section 1(1)(b) of the Health and Safety at Work, Etc., Act 1977 (an Act of Tynwald).**

- ~~(2) The Executive shall not approve a code of practice under subsection (1) above without the consent of the Secretary of State, and shall, before seeking his consent, consult —~~

- ~~(a) any government department or other body that appears to the Executive to be appropriate; and~~
- ~~(b) such government departments and other bodies, if any, as in relation to any matter dealt with in the code, the Executive is required to consult under this section by virtue of directions given to it by the Secretary of State.~~

- (2) The Department shall not approve a code of practice under this section unless it has had consultations with such organisations as it considers represent interests which will be affected by the code.**

- (3) Where a code of practice is approved by the **Executive Department** under subsection (1) above, the **Executive Department** shall issue a notice in writing —

- (a) identifying the code in question and stating the date on which its approval by the **Executive Department** is to take effect; and

- (b) specifying for which of the provisions mentioned in subsection (1) above the code is approved.
- (4) The **Executive Department** may —
  - (a) from time to time revise the whole or any part of any code of practice prepared by it in pursuance of this section;
  - (b) approve any revision or proposed revision of the whole or any part of any code of practice for the time being approved under this section;

and the provisions of subsections (2) and (3) above shall, with the necessary modifications, apply in relation to the approval of any revision under this subsection as they apply in relation to the approval of a code of practice under subsection (1) above.

- (5) The **Executive Department** may at any time ~~with the consent of the Secretary of State~~ withdraw its approval from any code of practice approved under this section, but before ~~seeking his consent shall consult the same government departments and other bodies~~ **doing so shall consult such organisations** as it would be required to consult under subsection (2) above if it were proposing to approve the code.
- (6) Where under the preceding subsection the **Executive Department** withdraws its approval from a code of practice approved under this section, the **Executive Department** shall issue a notice in writing identifying the code in question and stating the date on which its approval of it is to cease to have effect.
- (7) References in this Part to an approved code of practice are references to that code as it has effect for the time being by virtue of any revision of the whole or any part of it approved under this section.
- (8) The power of the **Executive Department** under subsection (1)(b) above to approve a code of practice issued or proposed to be issued otherwise than by the **Executive Department** shall include power to approve a part of such a code of practice; and accordingly in this Part “code of practice” may be read as including a part of such a code of practice.

## 17 Use of approved codes of practice in criminal proceedings

- (1) A failure on the part of any person to observe any provision of an approved code of practice shall not of itself render him liable to any civil or criminal proceedings; but where in any criminal proceedings a party is alleged to have committed an offence by reason of a contravention of any requirement or prohibition imposed by or under any such provision as is mentioned in section 16(1) being a provision for which there was an approved code of practice at the time of the alleged contravention, the following subsection shall have effect with respect to that code in relation to those proceedings.

- (2) Any provision of the code of practice which appears to the court to be relevant to the requirement or prohibition alleged to have been contravened shall be admissible in evidence in the proceedings; and if it is proved that there was at any material time a failure to observe any provision of the code which appears to the court to be relevant to any matter which it is necessary for the prosecution to prove in order to establish a contravention of that requirement or prohibition, that matter shall be taken as proved unless the court is satisfied that the requirement or prohibition was in respect of that matter complied with otherwise than by way of observance of that provision of the code.
- (3) In any criminal proceedings —
  - (a) a document purporting to be a notice issued by the ~~Executive Department~~ under section 16 shall be taken to be such a notice unless the contrary is proved; and
  - (b) a code of practice which appears to the court to be the subject of such a notice shall be taken to be the subject of that notice unless the contrary is proved.

#### *Enforcement*

### 18 **Authorities responsible for enforcement of the relevant statutory provisions**

- (1) It shall be the duty of the ~~Executive Department~~ to make adequate arrangements for the enforcement of the relevant statutory provisions except to the extent that some other authority or class of authorities is by any of those provisions ~~or by regulations under subsection (2) below~~ made responsible for their enforcement.
  - ~~(1A) The Office for Nuclear Regulation is responsible for the enforcement of the relevant statutory provisions as they apply in relation to GB nuclear sites (within the meaning given in section 68 of the Energy Act 2013 (nuclear safety purposes)).~~
  - ~~(1B) Subsection (1A) is subject to any provision of health and safety regulations making the Office of Rail and Road responsible for the enforcement of any of the relevant statutory provisions to any extent in relation to such sites.~~
- ~~(2) The Secretary of State may by regulations —~~
  - ~~(za) make the Office for Nuclear Regulation responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed (and may in particular provide for any site or matter in relation to which the Office for Nuclear Regulation is made so responsible to be determined by the Secretary of State or the Office for Nuclear Regulation under the regulations);~~
  - ~~(a) make local authorities responsible for the enforcement of the relevant statutory provisions to such extent as may be prescribed;~~

~~(b) — make provision for enabling responsibility for enforcing any of the relevant statutory provisions to be, to such extent as may be determined under the regulations —~~

~~(zi) — transferred from the Executive or local authorities to the Office for Nuclear Regulation, or from the Office for Nuclear Regulation to the Executive or local authorities;~~

~~(i) — transferred from the Executive to local authorities or from local authorities to the Executive; or~~

~~(ii) — assigned to the Executive, to the Office for Nuclear Regulation or to local authorities for the purpose of removing any uncertainty as to what are by virtue of subsection (1A) or this subsection their respective responsibilities for the enforcement of those provisions;~~

~~(iii) — assigned to the Office of Rail and Road or the Office for Nuclear Regulation for the purpose of removing any uncertainty as to what are by virtue of any of the relevant statutory provisions their respective responsibilities for the enforcement of any of those provisions;~~

~~and any regulations made in pursuance of paragraph (b) above shall include provision for securing that any transfer or assignment effected under the regulations is brought to the notice of persons affected by it.~~

~~(3) — Any provision made by regulations under the preceding subsection shall have effect subject to any provision made by health and safety regulations in pursuance of section 15(3)(c).~~

~~(3A) — Regulations under subsection (2)(a) may not make local authorities enforcing authorities in relation to any site in relation to which the Office for Nuclear Regulation is an enforcing authority.~~

~~(3B) — Where the Office for Nuclear Regulation is, by or under subsection (1A) or (2), made responsible for the enforcement of any of the relevant statutory provisions to any extent, it must make adequate arrangements for the enforcement of those provisions to that extent.~~

~~(4) — It shall be the duty of every local authority —~~

~~(a) — to make adequate arrangements for the enforcement within their area of the relevant statutory provisions to the extent that they are by any of those provisions or by regulations under subsection (2) above made responsible for their enforcement; and~~

~~(b) — to perform the duty imposed on them by the preceding paragraph and any other functions conferred on them by any of the relevant statutory provisions in accordance with such guidance as the Executive may give them.~~

~~(4A) — Before the Executive gives guidance under subsection (4)(b) it shall consult the local authorities.~~

- ~~(4B) It shall be the duty of the Executive and the local authorities —~~
- ~~(a) to work together to establish best practice and consistency in the enforcement of the relevant statutory provisions;~~
  - ~~(b) to enter into arrangements with each other for securing cooperation and the exchange of information in connection with the carrying out of their functions with regard to the relevant statutory provisions; and~~
  - ~~(c) from time to time to review those arrangements and to revise them when they consider it appropriate to do so.~~
- (5) Where any authority other than, the ~~Executive, the Office for Nuclear Regulation or a local authority~~ **Department** is by any of the relevant statutory provisions made responsible for the enforcement of any of those provisions to any extent, it shall be the duty of that authority —
- (a) to make adequate arrangements for the enforcement of those provisions to that extent; and
  - (b) ~~except where that authority is the Office of Rail and Road, to~~ perform the duty imposed on the authority by the preceding paragraph and any other functions conferred on the authority by any of the relevant statutory provisions in accordance with such guidance as the ~~Executive~~ **Department** may give to the authority.
- ~~(6) Nothing in the provisions of this Act or of any regulations made thereunder charging any person in Scotland with the enforcement of any of the relevant statutory provisions shall be construed as authorising that person to institute proceedings for any offence.~~
- (7) In this Part —
- (a) “enforcing authority” means the ~~Executive or the Office for Nuclear Regulation~~ **Department** or any other authority which is by any of the relevant statutory provisions ~~or by regulations under subsection (2) above~~ made responsible for the enforcement of any of those provisions to any extent; and
  - (b) any reference to an enforcing authority’s field of responsibility is a reference to the field over which that authority’s responsibility for the enforcement of those provisions extends for the time being;

but where by virtue of subsection (3) of section 13 of this Act ~~or section 95 of the Energy Act 2013 (power for Office for Nuclear Regulation to arrange for exercise of functions by others)~~ the performance of any function of the ~~Executive or the Office for Nuclear Regulation (as the case may be)~~ **Department** is delegated to a government department or person, references to the ~~Executive~~ **Department** (or to an enforcing authority where that authority is the ~~Executive or the Office for Nuclear Regulation~~ **Department**) in any provision of this Part which relates to that function shall, so far as may be necessary to give effect to any agreement or arrangements under the provision in question, be construed as references

to that department or person; and accordingly any reference to the field of responsibility of an enforcing authority shall be construed as a reference to the field over which that department or person for the time being performs such a function.

## **19 Appointment of inspectors**

- ~~(1) Every enforcing authority may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this section.~~
- ~~(2) Every appointment of a person as an inspector under this section shall be made by an instrument in writing specifying which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this section —~~
- ~~(a) be entitled to exercise only such of those powers as are so specified; and~~
- ~~(b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.~~
- (1) There shall be appointed as inspectors (under whatever title the Department may from time to time determine) —**
- (a) by the Public Services Commission in accordance with section 5 of the Public Services Commission Act 2015 (an Act of Tynwald); or**
- (b) by the Department, on such terms and conditions as the Department thinks fit,**
- persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility.**
- (1A) Every other enforcing authority may appoint inspectors (under whatever title it may from time to time determine) persons having suitable qualifications for carrying into effect the relevant statutory provisions within its field of responsibility, and may terminate any appointment made under this subsection.**
- (2) An enforcing authority shall by an instrument in writing specify, in relation to each of its inspectors, which of the powers conferred on inspectors by the relevant statutory provisions are to be exercisable by that inspector; and an inspector shall be entitled to exercise only such of those powers as are so specified, and only within the field of responsibility of the authority concerned.**
- (2A) An instrument made under subsection (2) shall not be valid unless it carries the photograph and signature of the inspector, and is signed by**

**a person authorised to do so by the enforcing authority; and an instrument purporting to be so made in relation to any person and complying with this subsection shall be evidence that he has been duly appointed an inspector by that authority and is entitled to exercise the powers specified therein within the authority's field of responsibility.**

- (3) So much of an inspector's instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcing authority which appointed him.
- (4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by any of the relevant statutory provisions, produce his instrument of appointment or a duly authenticated copy thereof.

## **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 detain 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 matters 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~~ **which appears to the enforcing authority on a report of the inspector to be** necessary for the purpose mentioned in subsection (1) above,

**but before exercising any powers by virtue of paragraph (j) above an inspector shall inform the person concerned of the requirements of that paragraph; and an inspector may not exercise any powers by virtue of paragraph (k) above in respect of any books referred to in paragraph (k)(ii) above which relate to the trading or profit and loss accounts of any undertaking unless he is authorised for the purpose by an order of the High Court.**

- (2A) **Where it is shown to the satisfaction of a justice of the peace, on sworn information in writing, that admission to premises specified in the information is reasonably required by an inspector for any purpose specified in subsection (1) above, the justice may by warrant under his hand authorise the inspector to enter the premises, by force if need be.**
- (2B) **A warrant under subsection (2A) above —**
- (a) **may not be granted unless the justice is satisfied that the inspector has reasonable cause to apprehend a serious obstruction in the execution of his duty; and**
  - (b) **shall continue in force until the purpose for which the entry is required has been satisfied.**
- (2C) **A person who in the exercise of a right of entry conferred by this section enters any premises from which the occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.**
- (2D) **A person who in the exercise of a right conferred by this section causes damage while effecting entry to any premises or any part thereof shall make good that damage without charge to the owner or occupier of the premises.**
- (3) ~~The Secretary of State~~ **Department** 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 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, on an order for the production of documents in an action in the Court of Session.
- (8A) An inspector shall inform any person who on reasonable grounds requests him to do so of his powers under this section.**
- (9) Nothing in this section is to be read as enabling an inspector to secure the disclosure by a ~~telecommunications operator~~ **communications provider** or postal operator of communications data without the consent of the operator.
- (10) ~~In subsection (9) “communications data”, “postal operator” and “telecommunications operator” have the same meanings as in the Investigatory Powers Act 2016 (see sections 261 and 262 of that Act).~~

**In subsection (9) —**

**“communications data”, in relation to a communications provider, electronic communications network or a electronic communication service, means entity data or events data —**

- (a) **which is (or is to be or is capable of being) held or obtained by, or on behalf of, a communications provider and —**
- (i) **is about an entity to which a electronic communications service is provided and relates to the provision of the service,**

- (ii) is comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a electronic communications network by means of which the communication is being or may be transmitted, or
  - (iii) does not fall within sub-paragraph (i) or (ii) but does relate to the use of a electronic communications service or a electronic communication network,
- (b) which is available directly from a electronic communication network and falls within sub-paragraph (ii) of paragraph (a), or
- (c) which –
- (i) is (or is to be or is capable of being) held or obtained by, or on behalf of, a communications operator,
  - (ii) is about the architecture of a electronic communication network, and
  - (iii) is not about a specific person,

but does not include any content of a communication;

“postal operator” means a person providing a postal service to persons in the Island;

“postal service” means a service that –

- (a) consists in the following, or in any one or more of them, namely, the collection, sorting, conveyance, distribution and delivery (whether in the Island or elsewhere) of postal items, and
- (b) has as its main purpose, or one of its main purposes, to make available, or to facilitate, a means of transmission from place to place of postal items containing communications; and

“communications provider” has the same meaning given to in the Communication Act 2021.

## 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.

## 22 Prohibition notices

- (1) This section applies to any activities which are being or are likely 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 are 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~~ **immediately, where an inspector is of the opinion, and states it, that the risk of serious personal injury is or, as the case may be, will be imminent.**

## 23 Provisions supplementary to ss. 21 and 22

- (1) In this section “a notice” means an improvement notice or a prohibition notice.
- (2) A 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 applies 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 that building, and, in the case of a matter connected with a 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~~ **Department of Home Affairs**.

~~In this subsection “fire and rescue authority”, in relation to premises, means —~~

- ~~(a) where the Regulatory Reform (Fire Safety) Order 2005 applies to the premises, 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 an 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 period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

- ~~(6) In the application of this section to Scotland —~~

~~(a) — in subsection (3) for the words from “with the requirements” to “aforesaid” there shall be substituted the words —~~

~~“(a) to any provisions of the building standards regulations to which that building or matter would be required to conform if the relevant building were being newly erected; or~~

~~(b) — where the sheriff, on an appeal to him under section 16 of the Building (Scotland) Act 1959 —~~

~~(i) — against an order under section 10 of that Act requiring the execution of operations necessary to make the building or matter conform to the building standards regulations, or~~

~~(ii) — against an order under section 11 of that Act requiring the building or matter to conform to a provision of such regulations,~~

~~has varied the order, to any provisions of the building standards regulations referred to in paragraph (a) above as affected by the order as so varied, unless the relevant statutory provision imposes specific requirements more onerous than the requirements of any provisions of building standards regulations as aforesaid or, as the case may be, than the requirements of the order as varied by the sheriff. ~~”~~;~~

~~(b) — after subsection (5) there shall be inserted the following subsection —~~

~~“(5A) In subsection (3) above “building standards regulations” has the same meaning as in section 3 of the Building (Scotland) Act 1959. ~~”~~.~~

## 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~~ **the Tribunal**; and on such an appeal ~~the tribunal~~ **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~~ **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~~ **the Tribunal** so directs (and then only from the giving of the direction).

- (4) One or more **suitably qualified** assessors may be appointed for the purposes of any proceedings brought before ~~an employment tribunal~~ **the Tribunal** under this 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.

## **~~25A Power of customs officer to detain articles and substances~~**

## **26 Power of enforcing authorities to indemnify their inspectors**

Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of any of the relevant statutory provisions and the circumstances are such that he is not legally entitled to require the enforcing authority which appointed him to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred,



if the authority is satisfied that he honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

*Obtaining and disclosure of information*

**27 Obtaining of information by ~~the Commission,~~ the Executive Department, enforcing authorities etc.**

- (1) For the purpose of obtaining —
- (a) any information which the ~~Executive~~ **Department** needs for the discharge of its functions; or
  - (b) any information which an enforcing authority ~~other than the Office for Nuclear Regulation~~ needs for the discharge of the authority's functions,

the ~~Executive~~ **Department** may, ~~with the consent of the Secretary of State,~~ serve on any person a notice requiring that person to furnish to the ~~Executive~~ **Department** or, as the case may be, to the enforcing authority in question such information about such matters as may be specified in the notice, and to do so in such form and manner and within such time as may be so specified.

In this subsection “consent” includes a general consent extending to cases of any stated description “functions” means functions under this Act.

- ~~(2) Nothing in section 9 of the Statistics of Trade Act 1947 (which restricts the disclosure of information obtained under that Act) shall prevent or penalise —~~

- ~~(a) the disclosure by a Minister of the Crown to the Executive of information obtained under that Act about any undertaking within the meaning of that Act, being information consisting of the names and address of the persons carrying on the undertaking, the nature of the undertaking's activities, the numbers of persons of different descriptions who work in the undertaking, the addresses or places where activities of the undertaking are or were carried on, the nature of the activities carried on there, or the numbers of persons of different descriptions who work or worked in the undertaking there.~~

- ~~(3) In the preceding subsection, any reference to a Minister of the Crown or the Executive includes respectively a reference to an officer of that person or of that body and also, in the case of a reference to the Executive, 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 under section 13(7).~~
- (4) ~~A person to whom information is disclosed in pursuance of subsection (2) above shall not use the information for a purpose other than a purpose of the Executive.~~

## ~~27A Information communicated by Commissioners for Revenue and Customs~~

### 28 Restrictions on 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, ~~other than the Office for Nuclear Regulation (or an inspector appointed by it), 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 Department, the Office for Nuclear Regulation, the Environment Agency, the Scottish Environment Protection Agency, the Natural Resources Body for Wales, a government~~ **any other** 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 authority to receive it, **or**
- (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,~~
- (iv) a constable authorised by ~~a chief officer of police~~ **the Chief Constable** 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~~2015~~ (**an Act of Tynwald**), 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 Department, the Office for Nuclear Regulation, the Environment Agency, the Natural Resources Body for Wales, the Scottish Environment Protection Agency, a government~~ **any other** 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 also, in the case of a reference to the Executive Department or the Office for Nuclear Regulation, includes a reference to —~~
- ~~(a) a person performing any functions of the Executive or Office for Nuclear Regulation on its behalf by virtue of section 13(3) of this Act or, as the case may be, section 95 of the Energy Act 2013;~~
  - ~~(b) an officer of a body which is so performing any such functions; and~~
  - ~~(c) an adviser appointed under section 13(7) or, in the case of the Office for Nuclear Regulation, a person providing advice to that body.~~
- (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, of the Office for Nuclear Regulation or of the Environment Agency or of the Natural Resources Body for Wales or of the Scottish Environment Protection Agency or of the government department~~ **Department or of the other 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, a fire and rescue authority created by an order under section 4A of the Fire and Rescue Services Act 2004 and the London Fire Commissioner.~~

(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 (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); 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 purpose 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~~2015~~ **(an Act of Tynwald)**, and
  - (b) the information is not held by the authority on behalf of another person.
- ~~(9B) Nothing in subsection (7) or (9) applies to a person appointed as an inspector by the Office for Nuclear Regulation in relation to functions which the person has by virtue of that appointment.~~
- ~~(10) The Broads Authority and every National Park authority shall be deemed to be local authorities for the purposes of this section.~~

*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 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 ~~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);
  - (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 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) 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).

### **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) of that section; or
  - (b) a report is made by the person holding an inquiry into any such matter by virtue of subsection (2A) of that section; or

(c) ~~an investigation under Part 1 of the Coroners and Justice Act 2009 is conducted into~~ **an inquest under the Coroners of Inquests Act 1987 (an Act of Tynwald) 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) ~~an inquiry into any death that may have been so caused is held under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016,~~

~~and it appears from the report or investigation or, in a case falling within paragraph (d) above that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject matter of the report, investigation or inquiry or inquest, 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 investigation or inquiry.~~ **and it appears from the report or, in a case falling within paragraph (c) above, from the proceedings at the inquest, that any of the relevant statutory provisions was contravened at a time which is material in relation to the subject-matter of the report or inquest, 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) above, within three months of the conclusion of the inquest.**

(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 <sup>43</sup>and (c) section 331(3) of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) shall have effect as it has effect for the purposes of that section. <sup>42</sup>.~~

~~(6) — In the application of subsection (4) above to Scotland, after the words ‘applies to’ there shall be inserted the words <sup>44</sup>any offence under section 33(1)(c) above where the health and safety regulations concerned were made for the general purpose mentioned in section 18(1) of the Gas Act 1986 and <sup>45</sup>.~~

## 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.

### **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, ~~the Environment Agency or the Natural Resources Body for Wales~~ or by or with the consent of the ~~Director of Public Prosecutions~~ **Attorney General**.

### ~~39 Prosecutions by inspectors~~

### **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.
- (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.
- (4) Subject to ~~the following subsection~~ **subsection (5)**, the court by or before which the person is convicted of the offence 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.
- (4A) Subject to subsection (5), the court by or before which a person is convicted of an offence under any of the relevant statutory provisions in respect of any radioactive substance or any machine or apparatus intended to produce ionising radiations may order that the substance, machine or apparatus be forfeited.
- (5) The court shall not order anything to be forfeited under ~~the preceding subsection~~ **subsection (4) or (4A)** 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.

*Financial provisions.*

~~43 — Financial provisions.~~

~~43A — Railway safety levy~~

*Miscellaneous and supplementary*

**44 Appeals in connection with licensing provisions in the relevant statutory provisions**

- (1) Any person who is aggrieved by a decision of an authority having power to issue licences under any of the relevant statutory provisions —
- (a) refusing to issue him a licence, to renew a licence held by him, or to transfer to him a licence held by another;
  - (b) issuing him a licence on or subject to any term, condition or restriction whereby he is aggrieved;
  - (c) varying or refusing to vary any term, condition or restriction on or subject to which a licence is held by him; or
  - (d) revoking a licence held by him,
- may appeal to the ~~Secretary of State~~ **Tribunal**.
- ~~(2) — The Secretary of State may, in such cases as he considers it appropriate to do so, having regard to the nature of the questions which appear to him to arise, direct that an appeal under this section shall be determined on his behalf by a person appointed by him for that purpose.~~
- ~~(3) — Before the determination of an appeal the Secretary of State shall ask the appellant and the authority against whose decision the appeal is brought whether they wish to appear and be heard on the appeal and —~~
- ~~(a) — the appeal may be determined without a hearing of the parties if both of them express a wish not to appear and be heard as aforesaid;~~
  - ~~(b) — the Secretary of State shall, if either of the parties expresses a wish to appear and be heard, afford to both of them an opportunity of so doing.~~
- ~~(4) — The Tribunals and Inquiries Act 1992 shall apply to a hearing held by a person appointed in pursuance of subsection (2) above to determine an appeal as it applies to a statutory inquiry held by the Secretary of State, but as if in section 10(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State included a reference to a decision taken on his behalf by that person.~~
- ~~(5) — A person who determines an appeal under this section on behalf of the Secretary of State and the Secretary of State, if he determines such an~~

appeal, may give such directions as he considers appropriate to give effect to his determination.

- (6) ~~The Secretary of State may pay to any person appointed to hear or determine an appeal under this section on his behalf such remuneration and allowances as the Secretary of State may with the approval of the Minister for the Civil Service determine.~~
- (7) In this section —
- (a) “licence” means a licence under any of the relevant statutory provisions.
- (7A) On the application of a party to the proceedings, one or more suitably qualified assessors shall be appointed for the purposes of any proceedings before the Tribunal under this section.**

#### 45 Default powers

- (1) Where, in the case of a ~~local authority~~ **an authority other than the Department** who are an enforcing authority, the ~~Executive Department~~ is of the opinion that an investigation should be made as to whether ~~that local authority~~ **that authority** have failed to perform any of their enforcement functions the ~~Executive Department~~ may ~~make a report to the Secretary of State~~ **cause an inquiry to be held; and the provisions of sections 2 and 5 of the Inquiries (Evidence) Act 2003 apply.**
- (2) ~~The Secretary of State may, after considering a report submitted to him under the preceding subsection, cause a local inquiry to be held; and the provisions of subsections (2) to (5) of section 250 of the Local Government Act 1972 as to local inquiries shall, without prejudice to the generality of subsection (1) of that section, apply to a local inquiry so held as they apply to a local inquiry held in pursuance of that section.~~
- (3) If the ~~Secretary of State~~ **Department** is satisfied, after having caused a ~~local inquiry~~ **an inquiry** to be held into the matter, that a ~~local authority~~ **an authority** have failed to perform any of their enforcement functions, ~~he~~ **the Department** may make an order declaring the authority to be in default.
- (4) An order made by virtue of the preceding subsection which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (hereafter in this section referred to as “the defaulting authority”) to perform such of their enforcement functions as are specified in the order in such manner as may be so specified and may specify the time or times within which those functions are to be performed by the authority.
- (5) If the defaulting authority fail to comply with any direction contained in such an order the ~~Secretary of State~~ **Department** may, instead of enforcing the order ~~by mandamus~~, make an order transferring to the ~~Executive~~

**Department** such of the enforcement functions of the defaulting authority as ~~he~~ **it** thinks fit.

- (6) Where any enforcement functions of the defaulting authority are transferred in pursuance of the preceding subsection, the amount of any expenses which the ~~Executive~~ **Department** certifies were incurred by it in performing those functions shall on demand be paid to it by the defaulting authority.
- (7) Any expenses which in pursuance of the preceding subsection are required to be paid by the defaulting authority in respect of any enforcement functions transferred in pursuance of this section shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the enforcement functions had not been transferred and the expenses had been incurred by the authority in performing them.
- (8) Where the defaulting authority are required to defray any such expenses the authority shall have the like powers for the purpose of raising the money for defraying those expenses as they would have had for the purpose of raising money required for defraying expenses incurred for the purpose of the enforcement functions in question.
- (9) An order transferring any enforcement functions of the defaulting authority in pursuance of subsection (5) above may provide for the transfer to the ~~Executive~~ **Department** of such of the rights, liabilities and obligations of the authority as the ~~Secretary of State~~ **Department** considers appropriate; and where such an order is revoked the ~~Secretary of State~~ **Department** may, by the revoking order or a subsequent order, make such provision as ~~he~~ **it** considers appropriate with respect to any rights, liabilities and obligations held by the ~~Executive~~ **Department** for the purposes of the transferred enforcement functions.
- (10) The ~~Secretary of State~~ **Department** may by order vary or revoke any order previously made by ~~him~~ **it** in pursuance of this section.
- (11) In this section “enforcement functions”, in relation to ~~a local authority~~ **an authority**, means the functions of the authority as an enforcing authority.
- ~~(12) In the application of this section to Scotland—~~
  - ~~(a) in subsection (2) for the words “subsections (2) to (5) of section 250 of the Local Government Act 1972” there shall be substituted the words “subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973”, except that before 16th May 1975 for the said words there shall be substituted the words “subsections (2) to (9) of section 355 of the Local Government (Scotland) Act 1947”;~~
  - ~~(b) in subsection (5) the words “instead of enforcing the order by mandamus” shall be omitted.~~

## 46 Service of notices

- (1) Any notice required or authorised by any of the relevant statutory provisions to be served on or given to an inspector may be served or given by delivering it to him or by leaving it at, or sending it by post to, his office.
- (2) Any such notice required or authorised to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- (3) Any such notice may —
  - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business ~~or, in Scotland, the firm.~~
- (4) For the purposes of this section ~~and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section,~~ the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that —
  - (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
  - (b) in the case of a partnership or a person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the ~~United Kingdom~~ **Isle of Man** or of a partnership carrying on business outside the ~~United Kingdom~~ **Isle of Man** shall be their principal office within the ~~United Kingdom~~ **Isle of Man**.
- (5) If the person to be served with or given any such notice has specified an address within the ~~United Kingdom~~ **Isle of Man** other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section ~~and section 7 of the Interpretation Act 1978~~ as his proper address.
- (6) Without prejudice to any other provision of this section, any such notice required or authorised to be served on or given to the owner or occupier of any premises (whether a body corporate or not) may be served or given by sending it by post to him at those premises, or by addressing it by name to the person on or to whom it is to be served or given and delivering it to some responsible person who is or appears to be resident or employed in the premises.
- (7) If the name or the address of any owner or occupier of premises on or to whom any such notice as aforesaid is to be served or given cannot after

reasonable inquiry be ascertained, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of “owner” or “occupier” of the premises (describing them) to which the notice relates, and by delivering it to some responsible person who is or appears to be resident or employed in the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

- (8) The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.

#### 47 Civil liability

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

#### 47A Avoidance of certain contract terms

A contract shall be void and of no effect in so far as it purports to preclude any person from doing such acts as may be necessary to comply with any requirement of the relevant statutory provisions or to render him liable to any penalty or forfeiture for so doing.

#### 48 Application to Crown

- (1) Subject to the provisions of this section, the provisions of this Part, except sections 21 to 25 and 33 to 42, and of regulations made under this Part shall bind the Crown.
- (2) Although they do not bind the Crown, sections 33 to 42 shall apply to persons in the public service of the Crown as they apply to other persons.
- (3) For the purposes of this Part and regulations made thereunder persons in the service of the Crown shall be treated as employees of the Crown whether or not they would be so treated apart from this subsection.
- (4) Without prejudice to section 15(5), the ~~Secretary of State~~ **Council of Ministers** may, to the extent that it appears to ~~him~~ it requisite or expedient to do so in the interests of the safety of the State or the safe custody of persons lawfully detained, by order exempt the Crown either generally or in particular respects from all or any of the provisions of this Part which would, by virtue of subsection (1) above, bind the Crown.
- ~~(5) The power to make orders under this section shall be exercisable by statutory instrument, and any such order may be varied or revoked by a subsequent order.~~
- ~~(6) Nothing in this section shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.~~

#### 49 Adaptation of enactments to metric units or appropriate metric units

- (1) Regulations made under this subsection may amend —
  - (a) any of the relevant statutory provisions; or
  - (b) any provision of an enactment which relates to any matter relevant to any of the general purposes of this Part but is not among the relevant statutory provisions; or
  - (c) any provision of an instrument made or having effect under any such enactment as is mentioned in the preceding paragraph,by substituting an amount or quantity expressed in metric units for an amount or quantity not so expressed or by substituting an amount or quantity expressed in metric units of a description specified in the



regulations for an amount or quantity expressed in metric units of a different description.

- (2) The amendments shall be such as to preserve the effect of the provisions mentioned except to such extent as in the opinion of the ~~authority making the regulations~~ **Department** is necessary to obtain amounts expressed in convenient and suitable terms.
- (3) Regulations made under this subsection may, in the case of a provision which falls within any of paragraphs (a) to (c) of subsection (1) above and contains words which refer to units other than metric units, repeal those words if the authority making the regulations is of the opinion that those words could be omitted without altering the effect of that provision.
- (4) The power to make regulations under this section shall be exercisable by the ~~Secretary of State~~ **Department**.

#### ~~50~~ — **Regulations under the relevant statutory provisions**

#### **51 Exclusion of application to domestic employment**

Nothing in this Part shall apply in relation to a person by reason only that he employs another, or is himself employed, as a domestic servant in a private household.

#### **51A Application of Part to police**

- (1) For the purposes of this Part, a person who, otherwise than under a contract of employment, holds the office of constable, **special constable** or an appointment as police cadet shall be treated as an employee of the ~~relevant officer~~ **Chief Constable**.
- ~~(2) In this section “the relevant officer” —~~
  - ~~(a) in relation to a member of a police force or a special constable or police cadet appointed for a police area, means —~~
    - ~~(i) the chief officer of police of that force, or~~
    - ~~(ii) in the case of a member of the force or a special constable who is, by virtue of a collaboration agreement under section 22A of the Police Act 1996, under the direction and control of a chief officer (within the meaning given by section 23I of that Act), that chief officer,~~
  - ~~(b) in relation to a member of a police force seconded to the National Crime Agency to serve as a National Crime Agency officer, means that Agency, and~~
  - ~~(c) in relation to any other person holding the office of constable or an appointment as police cadet, means —~~

- ~~(i) — the person who has the direction and control of the body of constables or cadets in question, or~~
  - ~~(ii) — in the case of a constable who is, by virtue of a collaboration agreement under section 22A of the Police Act 1996, under the direction and control of a chief officer (within the meaning given by section 23I of that Act), that chief officer.~~
- (2A) For the purposes of this Part the relevant officer, as defined by subsection (2)(a) or (c) above, **Chief Constable** shall, if not a corporation sole, be treated as a corporation sole.
- (2B) Where, in a case in which the relevant officer, as so defined, **the Chief Constable** is guilty of an offence by virtue of this section, it is proved —
  - (a) that the ~~office holder~~ **Chief Constable** personally consented to the commission of the offence,
  - (b) that he personally connived in its commission, or
  - (c) that the commission of the offence was attributable to personal neglect on his part,the ~~office holder~~ **Chief Constable** (as well as the corporation sole) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (2C) In subsection (2B) above “the ~~office holder~~ **Chief Constable**”, in relation to the relevant officer means an individual who, at the time of the consent, connivance or neglect —
  - (a) held the office or other position mentioned in subsection (2) above as the office or position of that officer of **Chief Constable**; or
  - (b) was for the time being responsible for exercising and performing the powers and duties of that office or position.
- (2D) The provisions mentioned in subsection (2E) below (which impose the same liability for unlawful conduct of constables on persons having their direction or control as would arise if the constables were employees of those persons) do not apply to any liability by virtue of this Part.
- (2E) Those provisions are section 14(1) of the Police Act 1993 (an Act of Tynwald).
  - ~~(a) — section 24 of the Police and Fire Reform (Scotland) Act 2012 (asp 8);~~
  - ~~(b) — section 88(1) of the Police Act 1996;~~
  - ~~(c) — paragraph 14(1) of Schedule 3 to the Criminal Justice and Police Act 2001;~~
  - ~~(d) — paragraph 2 of Schedule 4 to the Crime and Courts Act 2013;~~
  - ~~(e) — paragraph 20 of Schedule 1 to the Police and Justice Act 2006.~~
- ~~(2F) — In the application of this section to Scotland —~~

- (a) ~~subsection (2A) shall have effect as if for the words “corporation sole” there were substituted “distinct juristic person (that is to say, as a juristic person distinct from the individual who for the time being is the office holder)”;~~
  - (b) ~~subsection (2B) shall have effect as if for the words “corporation sole” there were substituted “juristic person”; and~~
  - (c) ~~subsection (2C) shall have effect as if for the words “subsection (2B)” there were substituted “subsections (2A) and (2B)”.~~
- (3) ~~For the purposes of regulations under section 2(4) above —~~
- (a) ~~the Police Federation for England and Wales shall be treated as a recognised trade union recognised by each chief officer of police in England and Wales,~~
  - (b) ~~the Police Federation for Scotland shall be treated as a recognised trade union recognised by the chief constable of the Police Service of Scotland, and~~
  - (c) ~~any body recognised by the Secretary of State for the purposes of section 64 of the Police Act 1996 shall be treated as a recognised trade union recognised by each chief officer of police in England, Wales and Scotland the Chief Constable.~~
- (4) ~~Regulations under section 2(4) above may provide, in relation to persons falling within subsection (2)(b) or (c) above, that a body specified in the regulations is to be treated as a recognised trade union recognised by such person as may be specified.~~

## 52 Meaning of work and at work

- (1) For the purposes of this Part —
- (a) “work” means work as an employee or as a self-employed person;
  - (b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise;
  - (bb) a person holding the office of constable **or special constable** is at work throughout the time when he is on duty, but not otherwise; and
  - (c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person;
- and, subject to the following subsection, the expressions “work” and “at work”, in whatever context, shall be construed accordingly.
- (2) Regulations made under this subsection may —
- (a) extend the meaning of “work” and “at work” for the purposes of this Part; and

- (b) in that connection provide for any of the relevant statutory provisions to have effect subject to such adaptations as may be specified in the regulations.
- (3) The power to make regulations under subsection (2) above shall be exercisable by the ~~Secretary of State~~ **Department**.

### 53 **General interpretation of Part I**

- (1) In this Part, unless the context otherwise requires —

**“article for use at work”** means —

- (a) any plant designed for use or operation (whether exclusively or not) by persons at work, and
- (b) any article designed for use as a component in any such plant;

**“article of fairground equipment”** means any fairground equipment or any article designed for use as a component in any such equipment;

**“code of practice”** (without prejudice to section 16(8)) includes a standard, a specification and any other documentary form of practical guidance;

**“conditional sale agreement”** means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled;

**“contract of employment”** means a contract of employment or apprenticeship (whether express or implied and, if express, whether oral or in writing);

**“credit-sale agreement”** means an agreement for the sale of goods, under which the purchase price or part of it is payable by instalments, but which is not a conditional sale agreement;

**“Customs and Excise”** means the Customs and Excise Division of the Treasury;

**“customs officer”** means an officer within the meaning of the Customs and Excise Management Act ~~1979~~ **1986 (an Act of Tynwald)**;

**“domestic premises”** means premises occupied as a private dwelling (including any garden, yard, garage, outhouse or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling), and “non-domestic premises” shall be construed accordingly;

**“employee”** means an individual who works under a contract of employment or is treated by section 51A as being an employee, and related expressions shall be construed accordingly;

**“enforcing authority”** has the meaning assigned by section 18(7);

~~“the Executive” has the meaning assigned by section 10(1);~~

**“the existing statutory provisions”** means the following provisions while and to the extent that they remain in force, namely ~~the provisions of the Acts mentioned in Schedule 1 which are specified in the third column of that Schedule and of~~ **the enactments specified in Schedule 1** and the regulations, orders or other instruments of a legislative character made or having effect under any provision so specified;

**“fairground equipment”** means any fairground ride, any similar plant which is designed to be in motion for entertainment purposes with members of the public on or inside it or any plant which is designed to be used by members of the public for entertainment purposes either as a slide or for bouncing upon, and in this definition the reference to plant which is designed to be in motion with members of the public on or inside it includes a reference to swings, dodgems and other plant which is designed to be in motion wholly or partly under the control of, or to be put in motion by, a member of the public;

**“the general purposes of this Part”** has the meaning assigned by section 1;

**“health and safety regulations”** has the meaning assigned by section 15(1);

**“hire-purchase agreement”** means an agreement other than a conditional sale agreement, under which —

- (a) goods are bailed ~~or (in Scotland) hired~~ in return for periodical payments by the person to whom they are bailed ~~or hired~~; and
- (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs:
  - (i) the exercise of an option to purchase by that person;
  - (ii) the doing of any other specified act by any party to the agreement;
  - (iii) the happening of any other event;

and “hire-purchase” shall be construed accordingly;

**“improvement notice”** means a notice under section 21;

**“inspector”** means an inspector appointed under section 19;

**“ionising radiation”** means **the transfer of energy in the form of particles or electromagnetic waves of a wavelength of 100 nanometres or less or a frequency of  $3 \times 10^{15}$  hertz or more capable of producing ions directly or indirectly;**

~~“local authority” means —~~

- ~~(a) in relation to England, a county council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple,~~
- ~~(aa) in relation to Wales, a county council or a county borough council,~~

~~(b) — in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;~~

**“micro-organism”** includes any microscopic biological entity which is capable of replication;

~~“nuclear safeguards purposes” has the same meaning as in Part 3 of the Energy Act 2013 (nuclear regulation etc.) (see section 72 of that Act);~~

~~“nuclear safety purposes” has the same meaning as in that Part of that Act (see section 68 of that Act);~~

~~“nuclear security purposes” has the same meaning as in that Part of that Act (see section 70 of that Act);~~

**“offshore installation”** means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

~~“the ONR’s purposes” has the same meaning as in Part 3 of the Energy Act 2013 (see section 67 of that Act);~~

**“personal injury”** includes any disease and any impairment of a person's physical or mental condition;

**“plant”** includes any machinery, equipment or appliance;

**“premises”** includes any place and, in particular, includes —

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof), and
- (c) any tent or movable structure;

~~“prescribed” means prescribed by regulations made by the Secretary of State Department;~~

**“prohibition notice”** means a notice under section 22;

~~“the radioactive material transport purposes” means the transport purposes within the meaning of Part 3 of the Energy Act 2013 (see section 73 of that Act);~~

**“radioactive substance”** means any substance which contains one or more radionuclides whose activity cannot be disregarded for the purposes of radiation protection;

~~“railway safety purposes” has the same meaning as in Schedule 3 to the Railways Act 2005;~~

**“the relevant statutory provisions”** means —

- (a) the provisions of this Part and of any health and safety regulations; and
- (b) the existing statutory provisions;

“**self-employed person**” means an individual who works for gain or reward otherwise than under a contract of employment, whether or not he himself employs others;

“**substance**” means any natural or artificial substance (including micro-organisms), whether in solid or liquid form or in the form of a gas or vapour;

“**supply**”, where the reference is to supplying articles or substances, means supplying them by way of sale, lease, hire or hire-purchase, whether as principal or agent for another;

“**the Tribunal**” means the Health and Safety Tribunal constituted by section 10.

(1A) In this Part and Schedule 3A, “**advocate**”, “**Attorney General**”, “**constable**”, “**Chief Constable**”, “**the High Court**”, “**local authority**” and “**summary conviction**” have the meanings given by the Interpretation Act 2015 (an Act of Tynwald).

(1B) In this Part, “**special constable**” has the meaning given by the Police Act 1993 (an Act of Tynwald).

#### 54 — Application of Part I to Isles of Scilly

### PART IV — MISCELLANEOUS AND GENERAL

#### 80 General power to repeal or modify Acts and instruments

- (1) Regulations made **by the Department** under this subsection may repeal or modify any provision to which this subsection applies if it appears to the ~~authority making the regulations~~ **Department** that the repeal or, as the case may be, the modification of that provision is expedient in consequence of or in connection with any provision made by or under Part I.
- (2) Subsection (1) above applies to any provision, not being among the relevant statutory provisions, which —
  - (a) is contained in ~~this Act or in any other Act passed before or in the same Session as this Act~~ **any Act of Tynwald passed before the 31st July 1980**; or
  - (b) is contained in any regulations, order or other instrument of a legislative character which was made under an Act **of Tynwald before** ~~before the passing of this Act~~ **31st July 1980**; or

- (c) applies, excludes or for any other purpose refers to any of the relevant statutory provisions and is contained in any Act of Tynwald not falling within paragraph (a) above or in any regulations, order or other instrument of a legislative character which is made under an Act of Tynwald but does not fall within paragraph (b) above.
- ~~(2A) Subsection (1) above shall apply to provisions in the Employment Rights Act 1996 or the Trade Union and Labour Relations (Consolidation) Act 1992 which derive from provisions of the Employment Protection (Consolidation) Act 1978 which re-enacted provisions previously contained in the Redundancy Payments Act 1965, the Contracts of Employment Act 1972 or the Trade Union and Labour Relations Act 1974 as it applies to provisions contained in Acts passed before or in the same Session as this Act.~~
- (3) Without prejudice to the generality of subsection (1) above, the modifications which may be made by regulations thereunder include modifications relating to the enforcement of provisions to which this section applies (including the appointment of persons for the purpose of such enforcement, and the powers of persons so appointed).
- ~~(4) The power to make regulations under subsection (1) above shall be exercisable by the Secretary of State; but the authority who is to exercise the power shall, before exercising it, consult such bodies as appear to him to be appropriate.~~
- (5) In this section “the relevant statutory provisions” has the same meaning as in Part I.

## ~~81 Expenses and receipts~~

## 82 General provisions as to interpretation and regulations

- (1) In this Act —
- (a) **“Department” means the Department of Environment, Food and Agriculture;**
  - (b) “contravention” includes failure to comply, and “contravene” has a corresponding meaning;
  - (c) “modifications” includes additions, omissions and amendments, and related expressions shall be construed accordingly;
  - (ca) **“statutory provision” has the meaning given by the Interpretation Act 2015 (an Act of Tynwald);**
  - (d) any reference to a Part, section or Schedule not otherwise identified is a reference to that Part or section of, or Schedule to, this Act.



- (2) Except in so far as the context otherwise requires, any reference in this Act to an enactment is a reference to it as amended, and includes a reference to it as applied, by or under any other enactment, including this Act.
- (3) Any power conferred by Part I ~~or II~~ or this Part to make regulations —
- (a) includes power to make different provision by the regulations for different circumstances or cases and to include in the regulations such incidental, supplemental and transitional provisions as the authority making the regulations considers appropriate in connection with the regulations; and
- (b) ~~shall be exercisable by statutory instrument, which (unless subsection (3A), (3B) or (4) applies) shall be subject to annulment in pursuance of a resolution of either House of Parliament.~~
- ~~(3A) In the case of a statutory instrument which also contains regulations under section 74 of the Energy Act 2013 (nuclear regulations), subsection (3) is subject to section 113 of that Act (subordinate legislation).~~
- ~~(3B) Regulations under section 3(2) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.~~
- ~~(4) The first regulations under section 43A(1) shall not be made unless a draft has been laid before and approved by resolution of each House of Parliament.~~
- (4) **Before the Department makes any order, rules or regulations under this Act it shall consult such organisations as it considers represent interests affected by the order, rules or regulations.**
- (5) **An order, rules or regulations under this Act shall not have effect unless approved by Tynwald.**

~~84~~ **Extent, and application of Act**

85 **Short title and commencement**

- (1) This Act may be cited as the Health and Safety at Work etc. Act 1974.
- ~~(2) This Act shall come into operation on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be appointed under this subsection for different purposes.~~
- ~~(3) An order under this section may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the provisions thereby brought into force, including such adaptations of those provisions or any provision of this Act then in force as appear to him to be necessary or expedient in consequence of the partial operation of this Act (whether before or after the day appointed by the order).~~



## SCHEDULE 1

[Sections 1 and 53]

## Existing Enactments which are Relevant Statutory Provisions

Chapter	Short title	Provisions which are relevant statutory provisions
1875 c. 17.	The Explosives Act 1875	The whole Act except sections 30 to 32, 80 and 116 to 121.
1882 c. 22.	The Boiler Explosions Act 1882	The whole Act.
1890 c. 35.	The Boiler Explosions Act 1890	The whole Act.
1906 c. 14.	The Alkali, &c. Works Regulation Act 1906	The whole Act.
1909 c. 43.	The Revenue 1909.	Section 11.
1920 c. 65.	The Employment of Women, Young Persons and Children Act 1920.	The whole Act.
1922 c. 35.	The Celluloid and Cinematograph Film Act 1922.	The whole Act.
1926 c. 43.	The Public Health (Smoke Abatement) Act 1926.	The whole Act.
1928 c. 32.	The Petroleum (Consolidation) Act 1928.	The whole Act.
1936 c. 22.	The Hours of Employment (Conventions) Act 1936.	The whole Act except section 5.
1936 c. 27.	The Petroleum (Transfer of Licences) Act 1936.	The whole Act.
1937 c. 45.	The Hydrogen Cyanide (Fumigation) Act 1937.	The whole Act.
1945 c. 19.	The Ministry of Fuel and Power Act 1945.	Section 1(1) so far as it relates to maintaining and improving the safety, health and welfare of persons employed in or about mines and quarries in Great Britain.
1946 c. 59.	The Coal Industry Nationalisation Act 1946.	Section 42(1) and (2).
1948 c. 37.	The Radioactive Substances Act 1948.	Section 5(1)(a).
1951 c. 21.	The Alkali, &c. Works Regulation (Scotland) Act 1951.	The whole Act.
1952 c. 60.	The Agriculture (Poisonous Substances) Act 1952.	The whole Act.
1954 c. 70.	The Mines and Quarries Act 1954.	The whole Act except section 151.
1956 c. 49.	The Agriculture (Safety, Health and Welfare Provisions) Act 1956.	The whole Act.
1961 c. 34.	The Factories Act 1961.	The whole Act except section 135.
1961 c. 64.	The Public Health Act 1961.	Section 73.
1962 c. 58.	The Pipe lines Act 1962.	Sections 20 to 26, 33, 34 and 42, Schedule 5.
1963 c. 41.	The Offices, Shops and Railway	The whole Act.

	<del>Premises Act 1963.</del>	
<del>1971 c. 20.</del>	<del>The Mines Management Act 1971.</del>	<del>The whole Act.</del>
<del>1972 c. 28.</del>	<del>The Employment Medical Advisory Service Act 1972.</del>	<del>The whole Act except sections 1 and 6 and Schedule 1.</del>

AT number	Short title
1 of 1909	The Factories and Workshops Act 1909
4 of 1909	The White Phosphorus Matches Prohibition Act 1909
3 of 1923	The Mechanical Contrivances Regulation Act 1923
2 of 1928	The Dangerous Goods Act 1928
2 of 1930	The Employment of Women, Young Persons and Children Act 1930
3 of 1931	The Factories and Workshops (Amendment) Act 1931
2 of 1934	The Boiler Act 1934
3 of 1936	The Factories and Workshops Amendment Act 1936
3 of 1939	The Factories and Workshops Amendment Act 1939
10 of 1950	The Mines and Quarries Regulation Act 1950
4 of 1954	The Dangerous Goods Act 1954
1 of 1961	The Agriculture (Poisonous Substances) Act 1961
29 of 1974	The Agriculture (Safety, Health and Welfare Provisions) Act 1974
3 of 1982	Schedules 6 (Inspection of Railways, etc.) and 7 (Accidents on Railways) to the Isle of Man Passenger Transport Act 1982
11 of 2013	The Sunbeds Act 2013

## SCHEDULE 3

[Section 15]

## Subject-Matter of Health and Safety Regulations

1

- (1) Regulating or prohibiting —
  - (a) the manufacture, supply or use of any plant;
  - (b) the manufacture, supply, keeping or use of any substance;
  - (c) the carrying on of any process or the carrying out of any operation.
- (2) Imposing requirements with respect to the design, construction, guarding, siting, installation, commissioning, examination, repair, maintenance, alteration, adjustment, dismantling, testing or inspection of any plant.
- (3) Imposing requirements with respect to the marking of any plant or of any articles used or designed for use as components in any plant, and in that connection regulating or restricting the use of specified markings.
- (4) Imposing requirements with respect to the testing, labelling or examination of any substance.
- (5) Imposing requirements with respect to the carrying out of research in connection with any activity mentioned in subparagraphs (1) to (4) above.

2

- (1) Prohibiting the importation into the ~~United Kingdom~~ **Island** or the landing or unloading there of articles or substances of any specified description, whether absolutely or unless conditions imposed by or under the regulations are complied with.
- (2) Specifying, in a case where an act or omission in relation to such an importation, landing or unloading as is mentioned in the preceding subparagraph constitutes an offence under a provision of this Act and of the ~~Customs and Excise Acts 1979~~ **Customs and Excise Acts 1986 (within the meaning of the Customs and Excise Management Act 1986 (an Act of Tynwald))**, the Act under which the offence is to be punished.

3

- (1) Prohibiting or regulating the transport of articles or substances of any specified description.
- (2) Imposing requirements with respect to the manner and means of transporting articles or substances of any specified description, including requirements with respect to the construction, testing and marking of

containers and means of transport and the packaging and labelling of articles or substances in connection with their transport.

4

- (1) Prohibiting the carrying on of any specified activity or the doing of any specified thing except under the authority and in accordance with the terms and conditions of a licence, or except with the consent or approval of a specified authority.
- (2) Providing for the grant, renewal, variation, transfer and revocation of licences (including the variation and revocation of conditions attached to licences).

5

Requiring any person, premises or thing to be registered in any specified circumstances or as a condition of the carrying on of any specified activity or the doing of any specified thing.

6

- (1) Requiring, in specified circumstances, the appointment (whether in a specified capacity or not) of persons (or persons with specified qualifications or experience, or both) to perform specified functions, and imposing duties or conferring powers on persons appointed (whether in pursuance of the regulations or not) to perform specified functions.
- (2) Restricting the performance of specified functions to persons possessing specified qualifications or experience.

7

Regulating or prohibiting the employment in specified circumstances of all persons or any class of persons.

8

- (1) Requiring the making of arrangements for securing the health of persons at work or other persons, including arrangements for medical examinations and health surveys.
- (2) Requiring the making of arrangements for monitoring the atmospheric or other conditions in which persons work.

9

Imposing requirements with respect to any matter affecting the conditions in which persons work, including in particular such matters as the structural condition and stability of premises, the means of access to and egress from

premises, cleanliness, temperature, lighting, ventilation, overcrowding, noise, vibrations, ionising and other radiations, dust and fumes.

**10**

Securing the provision of specified welfare facilities for persons at work, including in particular such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshment facilities.

**11**

Imposing requirements with respect to the provision and use in specified circumstances of protective clothing or equipment, including clothing affording protection against the weather.

**12**

Requiring in specified circumstances the taking of specified precautions in connection with the risk of fire.

**13**

- (1) Prohibiting or imposing requirements in connection with the emission into the atmosphere of any specified gas, smoke or dust or any other specified substance whatsoever.
- (2) Prohibiting or imposing requirements in connection with the emission of noise, vibrations or any ionising or other radiations.
- (3) Imposing requirements with respect to the monitoring of any such emission as is mentioned in the preceding sub-paragraphs.

**14**

Imposing requirements with respect to the instruction, training and supervision of persons at work.

**15**

- (1) Requiring in specified circumstances, specified matters to be notified in a specified manner to specified persons.
- (2) Empowering inspectors in specified circumstances to require persons to submit written particulars of measures proposed to be taken to achieve compliance with any of the relevant statutory provisions.

**16**

Imposing requirements with respect to the keeping and preservation of records and other documents, including plans and maps.

**17**

Imposing requirements with respect to the management of animals.

**18**

The following purposes as regards premises of any specified description where persons work, namely —

- (a) requiring precautions to be taken against dangers to which the premises or persons therein are or may be exposed by reason of conditions (including natural conditions) existing in the vicinity;
- (b) securing that persons in the premises leave them in specified circumstances.

**19**

Conferring, in specified circumstances involving a risk of fire or explosion, power to search a person or any article which a person has with him for the purpose of ascertaining whether he has in his possession any article of a specified kind likely in those circumstances to cause a fire or explosion, and power to seize and dispose of any article of that kind found on such a search.

**20**

Restricting, prohibiting or requiring the doing of any specified thing where any accident or other occurrence of a specified kind has occurred.

**21**

As regards cases of any specified class, being a class such that the variety in the circumstances of particular cases within it calls for the making of special provision for particular cases, any of the following purposes, namely —

- (a) conferring on employers or other persons power to make rules or give directions with respect to matters affecting health or safety;
- (b) requiring employers or other persons to make rules with respect to any such matters;
- (c) empowering specified persons to require employers or other persons either to make rules with respect to any such matters or to modify any such rules previously made by virtue of this paragraph; and



- (d) making admissible in evidence without further proof, in such circumstances and subject to such conditions as may be specified, documents which purport to be copies of rules or rules of any specified class made under this paragraph.

**22**

Conferring on any local or public authority power to make byelaws with respect to any specified matter, specifying the authority or person by whom any byelaws made in the exercise of that power need to be confirmed, and generally providing for the procedure to be followed in connection with the making of any such byelaws.

**INTERPRETATION****23**

- (1) In this Schedule “specified” means specified in health and safety regulations.
- (2) It is hereby declared that the mention in this Schedule of a purpose that falls within any more general purpose mentioned therein is without prejudice to the generality of the more general purpose.



## 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.

<b>Offence</b>	<b>Mode of trial</b>	<b>Penalty on summary conviction</b>	<b>Penalty on conviction on indictment</b>
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, 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, 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, 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.	A fine.
An offence under section 33(1)(c).	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine, 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.	
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, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under	Summarily only.	Imprisonment for a	

section 33(1)(h)-		term not exceeding 51 weeks (in England and Wales) or 12 months (in Scotland), or a fine, or both.	
An offence under section 33(1)(i)-	Summarily or on indictment.	A fine.	A fine.
An offence under section 33(1)(j)-	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine, 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, 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.	
An offence under section 33(1)(o)-	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a fine, 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, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

Offence	Mode of trial	Penalty on summary conviction	Penalty on conviction on information
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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	A fine not exceeding 4 times level 5 on the standard scale.	A fine.
An offence under section 33(1)(c).	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(h).	Summarily only.	A fine not exceeding level 5 on the standard scale.	
An offence under section 33(1)(i).	Summarily or on information.	A fine not exceeding 4 times level 5 on the standard scale.	A fine.
An offence under section 33(1)(j).	Summarily or on information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.
An offence under section 33(1)(k), (l)	Summarily or on information.	Imprisonment for a term not	Imprisonment for a term not

or (m).		exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, 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 information.	Imprisonment for a term not exceeding 6 months, or a fine not exceeding 4 times level 5 on the standard scale, or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

2

- (3) — ~~This paragraph makes transitional modifications of the table as it applies to England and Wales.~~
- (4) — ~~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.~~
- (5) — ~~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.~~