

*These notes refer to the Health and Safety (Offences) Bill
as brought from the House of Commons on 16th June 2008 [HL Bill 66]*

HEALTH AND SAFETY (OFFENCES) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Health and Safety (Offences) Bill, as brought from the House of Commons on 16th June 2008. They are provided by the Department for Work and Pensions, with the consent of Lord Grocott, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The purpose of the Bill is to raise the maximum penalties available to the courts in respect of certain health and safety offences by altering the penalty framework set out in section 33 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”). The Bill also makes similar changes to the Health and Safety at Work (Northern Ireland) Order 1978 (“the 1978 Order”). In what follows, references to provisions of the 1974 Act should (where necessary) be read as including references to the corresponding provisions of the 1978 Order.

4. The changes made by the Bill were first proposed following a joint review of the current maximum penalties for health and safety offences, which was carried out between February and September 1999 by the Home Office, the then Department of the Environment, Transport and the Regions, and the Health and Safety Executive.

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5. The objective behind the changes is that sentences for health and safety offences be sufficient to deter those tempted to break the law, and sufficient to deal appropriately with those who do commit offences, in accordance with the Hampton¹ and Macrory² Reports.

6. The effect of the Bill is to:

(a) raise the maximum fine which may be imposed in the lower courts to £20,000 for most health and safety offences;

(b) make imprisonment an option for more health and safety offences in both the lower and higher courts;

(c) make certain offences, which are currently triable only in the lower courts, triable in either the lower or higher courts.

7. The power to impose a fine of up to £20,000 is already available in respect of some offences under the 1974 Act, such as breaches of the general duties arising under sections 2 to 6. The Bill extends this power to other offences that are considered to be comparable (for example, a breach of regulations made under the 1974 Act).

8. At present, imprisonment is an option only in certain cases. The Bill will make imprisonment available for most health and safety offences.

9. Under the 1974 Act, it is an offence under section 33(1)(e) to contravene any requirement imposed by an inspector under section 20 (for example, a requirement to give information relevant to an investigation or to leave premises undisturbed after an incident). It is also an offence to prevent another person from appearing before an inspector or from answering an inspector's questions (section 33(1)(f)). Both offences are currently triable only in the lower courts. The Bill makes them triable in the lower or higher courts.

10. For further details, see the Annexes to these notes.

COMMENTARY ON CLAUSES

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

¹ *Reducing administrative burdens: effective inspection and enforcement* by Philip Hampton. HM Treasury, March 2005. ISBN 1 84532 088 3

² *Regulating Justice: Making Sanctions Effective*, Final Report by Prof Richard B Macrory. November 2006.

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11. This clause replaces the penalty provisions of section 33(1A) to (4) of the 1974 Act by inserting a new Schedule 3A to the 1974 Act. This Schedule sets out the mode of trial and maximum penalties for the health and safety offences set out in section 33(1)(a) to (o) and for offences under the “existing statutory provisions” where no other penalty is specified. (The meaning of the term “existing statutory provisions” is given in section 53(1) of the 1974 Act: essentially the term refers to certain health and safety related statutory provisions pre-dating the 1974 Act.) Annex 1 to these notes gives brief details of each offence listed in the new Schedule 3A, stating the current penalty and mode of trial applicable to it, and setting out the penalty and mode of trial provided for in the new Schedule 3A. Annex 2 gives the equivalent details as regards the corresponding changes made to the 1978 Order.

Clause 2: Consequential amendments and repeals

12. *Subsection (1)* introduces Schedules 2 (consequential amendments) and 3 (repeals) to the Bill. *Subsections (2) and (4)* confers power on the Secretary of State, or the appropriate Department in Northern Ireland, to make consequential amendments to existing regulations. This power reflects the fact that existing regulations made under section 15 of the 1974 Act and/or under section 2(2) of the European Communities Act 1972, apply section 33 of the 1974 Act with modifications. These modifications will need to be revised to reflect the amendments made by the Bill to the 1974 Act. The purpose of including the power at subsections (2) and (4) is to enable the necessary changes to existing regulations to be made by statutory instrument subject to the negative resolution procedure.

EXTENT

13. The Bill extends to the whole of the United Kingdom. So far as the Scottish Parliament is concerned, it is considered that the Bill is essentially about health and safety, which is not a matter within the legislative competence of that Parliament. As regards the Northern Ireland Assembly, the subject matter of the Bill is considered to be criminal penalties and prosecutions, a matter that is within the legislative competence of that Assembly. But it is a reserved matter (as opposed to an excepted or transferred one). This means that any legislation in the Assembly on the subject would require the consent of the Secretary of State. It also means that a legislative consent motion would not be appropriate since those deal only with transferred matters. Neither health and safety nor criminal penalties and prosecutions are areas where the National Assembly for Wales has legislative competence or the Welsh Ministers have functions.

TERRITORIAL APPLICATION: WALES

14. This Bill does not have any special effect on Wales and does not affect the National Assembly for Wales.

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FINANCIAL EFFECTS OF THE BILL

15. There are no significant public expenditure implications. Making imprisonment available for more health and safety offences is expected to lead to a minimal increase in the prison population. Making two offences which are triable only in the lower courts into “either way” offences (triable in the lower or the higher courts) might lead to a few additional cases being heard in the higher courts. Any additional costs to the Health and Safety Executives or the criminal justice system should be insignificant.

EFFECTS OF THE BILL ON PUBLIC SERVICE MANPOWER

16. The Bill will have no significant manpower implications for the Health and Safety Executives or the criminal justice system.

SUMMARY OF IMPACT ASSESSMENT

17. An Impact Assessment has been prepared and concludes that no new obligations in respect of which compliance costs arise are imposed by this Bill except to the extent that employers and others are not already complying with the law. Nor are there any additional resource costs to society, as fines are transfer payments. Copies of the Impact Assessment are available from the Vote Office.

EUROPEAN CONVENTION ON HUMAN RIGHTS

18. Article 6 of the ECHR (which enshrines the presumption of innocence) is engaged by the combination of:

(a) clause 1 of the Bill, which adds the new Schedule 3A to the 1974 Act, which in turn introduces imprisonment as a penalty for certain health and safety offences; and

(b) section 40 of the 1974 Act, which imposes a reverse burden of proof on a defendant where the duty giving rise to the offence with which he has been charged is subject to the statutory qualification “so far as is reasonably practicable”, often referred to as “SFAIRP”.

19. SFAIRP is a feature of most of the duties set out in sections 2 to 6 of the 1974 Act and is also found in certain provisions of regulations made under the 1974 Act and of the “existing statutory provisions”. Broadly speaking, the other duties and prohibitions which are penalised under the 1974 Act are not subject to SFAIRP.

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20. Any provision that imposes a reverse burden of proof is an inroad into the presumption of innocence enshrined in Article 6.2. Despite this, if the reverse burden is necessary, justified and proportionate then it will not be incompatible with that presumption of innocence. The courts have already held that the burden imposed by section 40 of the 1974 Act is compatible with the ECHR. The question that arises in the context of this Bill is whether the addition of imprisonment, as a possible penalty when a person is convicted of an offence to which the reverse burden applies, means that this is no longer the case.

21. The Department for Work and Pensions is of the opinion that, in making imprisonment available as a potential penalty for an offence to which the reverse burden applies, the Bill is compatible with Article 6 of the ECHR, in that it strikes a fair balance between the fundamental right of the individual and the general interests of the community. In particular, case law in this area has established the significance of the fact that, before any question of the reverse burden of proof applies, the defendant must be proved to have owed a duty, and of the fact that the matters that need to be proved, in order to establish a defence, are matters within the defendant's personal knowledge. The Department has also taken into account the fact that the maximum term of imprisonment that may be imposed on conviction of an offence to which the reverse burden applies is two years.

COMMENCEMENT

22. The Bill will have effect in relation to offences committed after the end of the period of three months beginning with the day on which the Bill receives Royal Assent.

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ANNEX 1

**PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES FOR OFFENCES
UNDER SECTION 33(1) OF THE 1974 ACT AND THE “EXISTING STATUTORY
PROVISIONS”, AND PROPOSED NEW PENALTIES AND MODE OF TRIAL AS
SET OUT IN NEW SCHEDULE 3A TO THE 1974 ACT**

OFFENCES	PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES	PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES
<p>An offence under s. 33(1)(a) Failure to discharge a duty imposed (on employers and others) by virtue of section 2, 3, 4 or 6.</p>	<p>Summary - a fine not exceeding £20,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment - 2 years imprisonment, or an unlimited fine, or both.</p>
<p>An offence under s.33(1)(a) Failure to discharge a duty imposed (on employees) by section 7.</p>	<p>Summary - a fine not exceeding £5,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 12 months* imprisonment, or a fine not exceeding the statutory maximum, or both</p> <p>Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(b) Failure to discharge the duty not to interfere with or misuse things provided for</p>	<p>Summary - a fine not exceeding £5,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment - 2 years imprisonment,</p>

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health and safety, imposed by section 8.		or an unlimited fine, or both
An offence under s.33(1)(b) Failure to discharge the duty not to charge employees for things done to meet requirements of relevant statutory provisions, imposed by section 9.	Summary - a fine not exceeding £5,000 Indictment - an unlimited fine	Summary - a fine not exceeding £20,000 Indictment - an unlimited fine
An offence under s.33(1)(c) Contravening requirements of health and safety regulations, licences or authorisations.	Summary - a fine not exceeding £5,000 Indictment - an unlimited fine	Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both
An offence under s.33(1)(d) Contravening requirements imposed specifically in relation to public inquiries or special investigations.	Summary only - a fine not exceeding £5000	Summary only - a fine not exceeding level 5 on the Standard Scale (£5,000)
An offence under s.33(1)(e) Contravening any requirement imposed by an	Summary - a fine not exceeding £5,000	Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both

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<p>inspector under section 20 (eg. to give information relevant to an investigation, or to leave premises undisturbed after an incident) or under section 25.</p>	<p>Indictment (section 25 breaches only) - an unlimited fine</p>	<p>Indictment (sections 20 and 25) - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(f) Preventing another person from appearing before an inspector, or from answering an inspector's question.</p>	<p>Summary only - a fine not exceeding £5,000</p>	<p>Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(g) Contravening an improvement or prohibition notice.</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment or an unlimited fine or both</p>	<p>Summary - 12 months* imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(h) Obstructing an inspector.</p>	<p>Summary only - a fine not exceeding £5,000</p>	<p>Summary only Imprisonment for a term of 51 weeks** (in England and Wales) or 12 months* (in Scotland), or a fine not exceeding level 5 on the standard scale, or both.</p>
<p>An offence under s.33(1)(i)</p>	<p>Summary - a fine not</p>	<p>Summary - a fine not exceeding</p>

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<p>Contravening any notice issued under section 27(1) (general powers of HSC/E to obtain information).</p>	<p>exceeding £5,000</p> <p>Indictment</p> <p>- an unlimited fine</p>	<p>the statutory maximum</p> <p>Indictment</p> <p>- an unlimited fine</p>
<p>An offence under s.33(1)(j)</p> <p>Disclosing information in breach of HSWA section 27(4) or 28.</p>	<p>Summary</p> <p>- a fine not exceeding £5,000</p> <p>Indictment</p> <p>- 2 years imprisonment, an unlimited fine, or both</p>	<p>Summary</p> <p>- 12 months* imprisonment, or a fine not exceeding the statutory maximum, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(k), (l) or (m)</p> <p>Offences relating to deception.</p>	<p>Summary</p> <p>- a fine not exceeding £5,000</p> <p>Indictment</p> <p>- an unlimited fine</p>	<p>Summary</p> <p>- 12 months* imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under s.33(1)(n)</p> <p>Falsely to pretend to be an inspector.</p>	<p>Summary only</p> <p>- a fine not exceeding £5,000</p>	<p>Summary only</p> <p>- a fine not exceeding level 5 on the Standard Scale (£5,000)</p>
<p>An offence under s.33(1)(o)</p> <p>Failure to comply with a court remedy order (section 42).</p>	<p>Summary</p> <p>- 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment or an</p>	<p>Summary</p> <p>- 12 months* imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or</p>

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	unlimited fine, or both	both
An offence under the “existing statutory provisions” for which no other penalty is specified.	<p>Summary</p> <p>- a fine not exceeding £5,000</p> <p>Indictment</p> <p>- an unlimited fine</p>	<p>Summary</p> <p>- 12 months* imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>

Footnotes:

* Where the table refers to imprisonment for a term not exceeding 12 months, this is to be read as a reference to a term not exceeding 6 months until the coming into force of section 154(1) of the Criminal Justice Act 2003. This provision, which has not yet been brought into force, increases from 6 months to 12 months the maximum term of imprisonment that may be imposed, on summary conviction, for an offence triable either summarily or on indictment.

** Similarly, where the table refers to imprisonment for a term not exceeding 51 weeks, until section 281(5) of that Act is brought into force this should be read as a reference to a term not exceeding 6 months. This provision has the effect of increasing the maximum term of imprisonment that may be imposed on conviction of a summary-only offence from 6 months to 51 weeks.

These provisions of the Criminal Justice Act 2003 extend only to England and Wales.

ANNEX 2

PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES FOR OFFENCES UNDER ARTICLE 31(1) OF THE 1978 ORDER AND THE “EXISTING STATUTORY PROVISIONS”, AND PROPOSED NEW PENALTIES AND MODE OF TRIAL AS SET OUT IN NEW SCHEDULE 3A TO THE 1978 ORDER

OFFENCES	PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES	PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES

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<p>An offence under Art. 31(1)(a) Failure to discharge a duty imposed (on employers and others) by virtue of Articles 4 to 7.</p>	<p>Summary - a fine not exceeding £20,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment - 2 years imprisonment, or an unlimited fine, or both.</p>
<p>An offence under Art. 31(1)(a) Failure to discharge a duty imposed (on employees) by Article 8.</p>	<p>Summary - a fine not exceeding £5,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding the statutory maximum, or both</p> <p>Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(b) Failure to discharge the duty not to interfere with or misuse things provided for health and safety, imposed by Article 9.</p>	<p>Summary - a fine not exceeding £5,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(b) Failure to discharge the duty not to charge employees for things done to</p>	<p>Summary - a fine not exceeding £5,000</p> <p>Indictment - an unlimited fine</p>	<p>Summary - a fine not exceeding £20,000</p> <p>Indictment - an unlimited fine</p>

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meet requirements of relevant statutory provisions, imposed by Article 10.		
An offence under Art. 31(1)(c) Contravening requirements of health and safety regulations, licences or authorisations.	Summary - a fine not exceeding £5,000 Indictment - an unlimited fine	Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both
An offence under Art. 31(1)(d) Contravening requirements imposed specifically in relation to public inquiries or special investigations.	Summary only - a fine not exceeding £5000	Summary only - a fine not exceeding level 5 on the Standard Scale (£5,000)
An offence under Art. 31(1)(e) Contravening any requirement imposed by an inspector under Article 22 (eg. to give information relevant to an investigation, or to leave premises undisturbed after an incident) or under Article 27.	Summary - a fine not exceeding £5,000 Indictment (Article 27 breaches only) - an unlimited fine	Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment (Articles 22 and 27) - 2 years imprisonment, or an unlimited fine, or both

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<p>An offence under Art. 31(1)(f) Preventing another person from appearing before an inspector, or from answering an inspector's question.</p>	<p>Summary only - a fine not exceeding £5,000</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(g) Contravening an improvement or prohibition notice.</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment or an unlimited fine or both</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment - 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(h) Obstructing an inspector.</p>	<p>Summary only - a fine not exceeding £5,000</p>	<p>Summary only - 6 months imprisonment, or a fine not exceeding level 5 on the standard scale, or both.</p>
<p>An offence under Art. 31(1)(i) Contravening any notice issued under Article 29 (general powers of Department or HSENI to obtain information).</p>	<p>Summary - a fine not exceeding £5,000 Indictment - an unlimited fine</p>	<p>Summary - a fine not exceeding the statutory maximum Indictment - an unlimited fine</p>
<p>An offence under Art. 31(1)(j) Disclosing information in</p>	<p>Summary - a fine not exceeding £5,000</p>	<p>Summary - 6 months imprisonment, or a fine not exceeding the</p>

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breach of Article 30.	<p>Indictment</p> <p>- 2 years imprisonment, an unlimited fine, or both</p>	<p>statutory maximum, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(k), (l) or (m)</p> <p>Offences relating to deception.</p>	<p>Summary</p> <p>- a fine not exceeding £5,000</p> <p>Indictment</p> <p>- an unlimited fine</p>	<p>Summary</p> <p>- 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under Art. 31(1)(n)</p> <p>Falsely to pretend to be an inspector.</p>	<p>Summary only</p> <p>- a fine not exceeding £5,000</p>	<p>Summary only</p> <p>- a fine not exceeding level 5 on the Standard Scale (£5,000)</p>
<p>An offence under Art. 31(1)(o)</p> <p>Failure to comply with a court remedy order (Article 39).</p>	<p>Summary</p> <p>- 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment or an unlimited fine, or both</p>	<p>Summary</p> <p>- 6 months imprisonment, or a fine not exceeding £20,000, or both</p> <p>Indictment</p> <p>- 2 years imprisonment, or an unlimited fine, or both</p>
<p>An offence under the “existing statutory provisions” for which no other</p>	<p>Summary</p> <p>- a fine not exceeding £5,000</p>	<p>Summary</p> <p>- 6 months imprisonment, or a fine not exceeding £20,000, or both</p>

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penalty is specified.	Indictment - an unlimited fine	Indictment - 2 years imprisonment, or an unlimited fine, or both
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