

HEALTH AND SAFETY (OFFENCES) ACT 2008

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Health and Safety (Offences) Act 2008 which received Royal Assent on 16 October 2008. They have been prepared by the Department for Work and Pensions, with the consent of the Rt. Hon Keith Hill MP and the Rt Hon Lord Bruce Grocott, in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The purpose of the Act 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 Act 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 Act 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.
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 Act 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

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.

sections 2 to 6. The Act 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 Act 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 Act makes them triable in the lower or higher courts.
10. For further details, see the Annexes to these notes.

COMMENTARY ON SECTIONS

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

11. This section 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. The section also makes corresponding changes to the 1978 Order, details of which are given in Annex 2 to these notes.

Section 2: Consequential amendments and repeals

12. *Subsection (1)* introduces Schedules 2 (consequential amendments) and 3 (repeals) to the Act. *Subsections (2) and (4)* confer 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 Act 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 Act extends to the whole of the United Kingdom. So far as the Scottish Parliament is concerned, it is considered that the Act 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 Act 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.

*These notes refer to the Health and Safety (Offences) Act 2008
(c.20) which received Royal Assent on 16 October 2008*

TERRITORIAL APPLICATION: WALES

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

COMMENCEMENT

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

HANSARD REFERENCES

16. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard Reference</i>
House of Commons		
Introduction	5 December 2007	Vol.468 Col. 854
Second Reading	1 February 2008	Vol. 471 Cols. 613-626
Committee	26 March 2008	Hansard Public Bill Committee
Report	13 June 2008	Vol. 477 Cols 576 -595
Third Reading	13 June 2008	Vol. 477 Cosl. 595 - 629
House of Lords		
Introduction	16 June 2008	Vol 702. Col. 802
Second Reading	4 July 2008	Vol. 703 Cols. 473 - 489
Committee (order of commitment discharged)	18 July 2008	Vol. 703 Col. 1449
Third Reading	10 October 2008	Vol. 704 Cols. 411- 414
Royal Assent - 16 October 2008 House of Lords Hansard Vol. 704 Col. 934		

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

<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
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.	Summary — a fine not exceeding £20,000 Indictment — an unlimited fine	Summary — 12 months ¹ 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)(a) Failure to discharge a duty imposed (on employees) by section 7.	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — 12 months ¹ imprisonment, or a fine not exceeding the statutory maximum, or both Indictment — 2 years imprisonment, or an unlimited fine, or both
An offence under s.33(1)(b) Failure to discharge the duty not to interfere with or misuse things provided	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — 12 months ¹ imprisonment, or a fine not exceeding £20,000, or both Indictment
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. The position as regards Scotland is as shown in the table. The position as regards Northern Ireland is dealt with in Annex 2.		

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<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
for health and safety, imposed by section 8.		— 2 years imprisonment, 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 ¹ 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	Summary only
An offence under s.33(1)(e)	Summary — a fine not exceeding £5,000	Summary
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. The position as regards Scotland is as shown in the table. The position as regards Northern Ireland is dealt with in Annex 2.		

<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
Contravening any requirement imposed by an inspector under section 20 (eg. to give information relevant to an investigation, or to leave premises undisturbed after an incident) or under section 25.	Indictment (section 25 breaches only) — an unlimited fine	— 12 months ¹ imprisonment, or a fine not exceeding £20,000, or both Indictment (sections 20 and 25) — 2 years imprisonment, or an unlimited fine, or both
An offence under s.33(1) (f) Preventing another person from appearing before an inspector, or from answering an inspector's question.	Summary only	Summary — 12 months ¹ 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) (g) Contravening an improvement or prohibition notice.	Summary — 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment or an unlimited fine or both	Summary — 12 months ¹ 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) (h)	Summary only	Summary only
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. The position as regards Scotland is as shown in the table. The position as regards Northern Ireland is dealt with in Annex 2.		

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<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
Obstructing an inspector.		Imprisonment for a term of 51 weeks ¹ (in England and Wales) or 12 months ¹ (in Scotland), or a fine not exceeding level 5 on the standard scale, or both.
An offence under s.33(1) (i) Contravening any notice issued under section 27(1) (general powers of HSC/E to obtain information).	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — a fine not exceeding the statutory maximum Indictment — an unlimited fine
An offence under s.33(1) (j) Disclosing information in breach of HSWA section 27(4) or 28.	Summary — a fine not exceeding £5,000 Indictment — 2 years imprisonment, an unlimited fine, or both	Summary — 12 months ¹ imprisonment, or a fine not exceeding the statutory maximum, or both Indictment — 2 years imprisonment, or an unlimited fine, or both
An offence under s.33(1) (k), (l) or (m) Offences relating to deception.	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — 12 months ¹ imprisonment, or a fine not exceeding £20,000, or both Indictment
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. The position as regards Scotland is as shown in the table. The position as regards Northern Ireland is dealt with in Annex 2.		

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<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
		— 2 years imprisonment, or an unlimited fine, or both
An offence under s.33(1)(n) Falsely to pretend to be an inspector.	Summary only	Summary only
An offence under s.33(1)(o) Failure to comply with a court remedy order (section 42).	Summary — 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment or an unlimited fine, or both	Summary — 12 months ¹ imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment, or an unlimited fine, or both
An offence under the “existing statutory provisions” for which no other penalty is specified.	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine (2 year’s imprisonment also available in certain cases)	Summary — 12 months ¹ imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment, or an unlimited fine, or both

Footnotes:

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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.

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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. The position as regards Scotland is as shown in the table. The position as regards Northern Ireland is dealt with in Annex 2.

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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

<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
An offence under Art. 31(1)(a) Failure to discharge a duty imposed (on employers and others) by virtue of Articles 4 to 7.	Summary — a fine not exceeding £20,000 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)(a) Failure to discharge a duty imposed (on employees) by Article 8.	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — 6 months imprisonment, or a fine not exceeding the statutory maximum, or both Indictment — 2 years imprisonment, or an unlimited fine, or both
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.	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)(b) Failure to discharge the duty not to charge employees for things done to meet requirements of relevant statutory provisions, imposed by Article 10.	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 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	Summary only — a fine not exceeding £5000	Summary only — a fine not exceeding level 5 on the Standard Scale (£5,000)

<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
specifically in relation to public inquiries or special investigations.		
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
An offence under Art. 31(1)(f) Preventing another person from appearing before an inspector, or from answering an inspector's question.	Summary only — a fine not exceeding £5,000	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)(g) Contravening an improvement or prohibition notice.	Summary — 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment or an unlimited fine or both	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)(h) Obstructing an inspector.	Summary only — a fine not exceeding £5,000	Summary only — 6 months imprisonment, or a fine not exceeding level 5 on the standard scale, or both.
An offence under Art. 31(1)(i) Contravening any notice issued under Article 29 (general powers of Department or HSENI to obtain information).	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine	Summary — a fine not exceeding the statutory maximum Indictment — an unlimited fine
An offence under Art. 31(1)(j) Disclosing information in breach of Article 30.	Summary — a fine not exceeding £5,000 Indictment — 2 years imprisonment, an	Summary — 6 months imprisonment, or a fine not exceeding the statutory maximum, or both Indictment

<i>OFFENCES</i>	<i>PRESENT MODE OF TRIAL AND MAXIMUM PENALTIES</i>	<i>PROPOSED NEW MODE OF TRIAL AND MAXIMUM PENALTIES</i>
	unlimited fine, or both	— 2 years imprisonment, or an unlimited fine, or both
An offence under Art. 31(1)(k), (l) or (m) Offences relating to deception.	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)(n) Falsely to pretend to be an inspector.	Summary only — a fine not exceeding £5,000	Summary only — a fine not exceeding level 5 on the Standard Scale (£5,000)
An offence under Art. 31(1)(o) Failure to comply with a court remedy order (Article 39).	Summary — 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment or an unlimited fine, or both	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 the “existing statutory provisions” for which no other penalty is specified.	Summary — a fine not exceeding £5,000 Indictment — an unlimited fine (2 year’s imprisonment also available in certain cases)	Summary — 6 months imprisonment, or a fine not exceeding £20,000, or both Indictment — 2 years imprisonment, or an unlimited fine, or both