



# Factories Act 1961

1961 CHAPTER 34 9 and 10 Eliz 2

## PART XII **E+W+S**

### OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

#### 155 **Offences.** **E+W+S**

- (1) In the event of any contravention in or in connection with or in relation to a factory of the provisions of this Act, or of any regulation or order made thereunder, the occupier, or (if the contravention is one in respect of which the owner is by or under this Act made responsible) the owner, of the factory shall, subject to the following provisions of this Part of this Act, be guilty of an offence.
- (2) In the event . . . <sup>F1</sup> of a contravention by any person of any regulation or order made under this Act which expressly imposes any duty upon him, that person shall be guilty of an offence and the occupier or owner, as the case may be, shall not be guilty of an offence, by reason only of . . . <sup>F1</sup> the contravention of the provision imposing the said duty, as the case may be, unless it is proved that he failed to take all reasonable steps to prevent the contravention; but this subsection shall not be taken as affecting any liability of the occupier or owner in respect of the same matters by virtue of some provision other than the provisions or provision aforesaid.
- (3) If the occupier of a factory avails himself of any exception allowed by or under this Act and fails to comply with any of the conditions attached to the exception, he shall be deemed to have contravened the provisions of this Act.
- (4) If any persons are employed in a factory otherwise than in accordance with the provisions of this Act or of any regulation or order made thereunder, there shall be deemed to be a separate contravention in respect of each person so employed.
- [<sup>F2</sup>(5) Where an offence under this Act committed by a company is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of the company, he, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.]

*Status: Point in time view as at 31/01/1997.*

*Changes to legislation: There are currently no known outstanding effects for the Factories Act 1961, Part XII. (See end of Document for details)*

#### Textual Amendments

- F1** Words repealed by S.I. 1975/1012, **Sch.**  
**F2** S. 155(5) repealed by S.I. 1974/1941, reg. 7, **Sch. 1** except in relation to offences under s. 135

### [<sup>F3</sup>156 Fines for offences for which no express penalty provided. **E+W+S**

- (1) Subject to the following provisions of this Part of this Act, any person guilty of an offence under this Act for which no express penalty is provided by this Act shall be liable—
- (a) if he is an employed person, to a fine not exceeding [<sup>F4</sup>level 1 on the standard scale];
  - (b) in any other case, to a fine not exceeding [<sup>F4</sup>level 3 on the standard scale];
- and if the contravention in respect of which he was convicted is continued after the conviction he shall (subject to the provisions of section one hundred and fifty-seven of this Act) be guilty of a further offence and liable in respect thereof to a fine not exceeding fifteen pounds for each day on which the contravention is so continued.
- (2) In relation to a contravention which was likely to cause the death of, or bodily injury to, any person, subsection (1) of this section shall have effect as if for the references in paragraphs (a) and (b) to fifteen pounds and sixty pounds there were respectively substituted references to [<sup>F4</sup>level 3 on the standard scale] and [<sup>F4</sup>level 4 on the standard scale].]

#### Textual Amendments

- F3** S. 156 repealed by S.I. 1976/2004, **Sch.** except in relation to offences committed before 1.1.1977 and offences under s. 135  
**F4** Words substituted by virtue of (E.W.) **Criminal Justice Act 1982 (c. 48, SIF 39:1)**, **ss. 38, 46** and (S.) **Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1)**, **ss. 289F, 289G**

### [<sup>F5</sup>157 Power of court to order cause of contravention to be remedied. **E+W+S**

Where the occupier or owner of a factory is convicted of an offence under this Act, the court may, in addition to or instead of inflicting a fine, order him, within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time so specified, and where such an order is made, the occupier or owner shall not be liable under this Act in respect of the continuation of the contravention during the time allowed by the court, but if, after the expiration of that time as originally specified or enlarged by subsequent order, the order is not complied with, the occupier or owner, as the case may be, shall be liable to a fine not exceeding ten pounds for each day on which the non-compliance continues.]

#### Textual Amendments

- F5** S. 157 repealed by S.I. 1974/1941, reg. 7, **Sch. 1** except in relation to offences under s. 135.

*Status:* Point in time view as at 31/01/1997.

*Changes to legislation:* There are currently no known outstanding effects for the Factories Act 1961, Part XII. (See end of Document for details)

**158 Fine for offence by parent. E+W+S**

If a young person is employed in any factory in contravention of the provisions of this Act, the parent of the young person shall be guilty of an offence and liable [<sup>F6</sup>on summary conviction] to a fine not exceeding [<sup>F7</sup>level 1 on the standard scale], unless it appears to the court that the contravention occurred without the consent, connivance, or wilful default of the parent.

**Textual Amendments**

- F6** Words inserted by S.I. 1974/1941, Sch. 2 para. 4
- F7** Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), ss. 289F, 289G

**159 .....<sup>F8</sup> E+W+S**

**Textual Amendments**

- F8** Ss. 1(5), 2(4), 3(3), 4(2), 5(2), 7(2), 9, 10, 14(3)(4)(6), 17(3)–(5), 18(5)(6), 25(4), 53–55, 58(2)–(4), 59(2)(3), 62, 66, 70, 71, 72(2), 73(2), 76, 81, 83, 121(7), 122(6), 124(2)(3), 129(1), 134, 137(5), 142, 145, 149, 150, 153(3), 159, 164(3), 174(2), 177, 179, 180(5)(7)(8)(10), 181(2), 182(5)(6), Schs. 3, 4 repealed by S.I. 1974/1941, reg. 7, Sch. 1

**[<sup>F9</sup>160 Penalty on person actually committing an offence for which other person is primarily liable. E+W+S**

- (1) Where an act or default for which any person is liable under this Act is in fact the act or default of some other person, that other person shall be guilty of an offence and liable, subject to subsection (2) of this section, to the like fine as if he were the first-mentioned person.
- (2) The fine that may be imposed under subsection (1) of this section on an employed person where the offence is one for which no express penalty is provided by this Act shall be that specified in section one hundred and fifty-six of this Act in relation to employed persons, notwithstanding that the person primarily liable is not an employed person.]

**Textual Amendments**

- F9** S. 160 repealed by S.I. 1976/2004, Sch. except in relation to offences committed before 1.1.1977 and offences under s. 135.

**[<sup>F10</sup>161 Power of person primarily liable to exempt himself from liability. E+W+S**

- (1) In England and Wales, a person charged with an offence under this Act shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three day's notice in writing of his intention, to have any other person whom he charges as the actual offender brought before the court at the time appointed for the

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hearing of the charge; and if, after the commission of the offence has been proved, the first-mentioned person proves to the satisfaction of the court—

- (a) that he has used all due diligence to enforce the execution of this Act and of any relevant order or regulation made thereunder; and
- (b) that the said other person had committed the offence in question without his consent, connivance, or wilful default;

that other person shall be summarily convicted of the offence, and the first-mentioned person shall not be guilty of the offence, and the person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

- (2) The prosecution shall have the right in any such case to cross-examine the first-mentioned person if he gives evidence and any witnesses called by him in support of his charge, and to call rebutting evidence.
- (3) In Scotland, a person charged with an offence under this Act who proves to the satisfaction of the court that he has used all due diligence to enforce the execution of this Act and of any relevant order or regulation made thereunder and that the offence was due to the act or default of some other person who committed it without his consent, connivance or wilful default, shall be acquitted of the offence.
- (4) When it is made to appear to the satisfaction of an inspector at the time of discovering an offence—
  - (a) that the person who would be proceeded against apart from this subsection has used all due diligence to enforce the execution of this Act; and
  - (b) by what person the offence has been committed; and
  - (c) that it has been committed without the consent, connivance or wilful default of the first-mentioned person and in contravention of his orders,
 the inspector shall proceed against the person whom he believes to be the actual offender without first proceeding against the first-mentioned person.]

#### Textual Amendments

**F10** S. 161 repealed by S.I. 1976/2004, Sch. except in relation to offences committed before 1.1.1977 and offences under s. 135

#### 162 Proceedings against persons not primarily liable. **E+W+S**

Where, under this Act, any person is substituted for another with respect to any provisions of this Act, any order, summons, notice or proceeding which for the purpose of any of those provisions is by or under this Act required or authorised to be served on or taken in relation to that other person, is hereby required or authorised (as the case may be) to be served on or taken in relation to the first-mentioned person.

#### 163 Owner of machine liable in certain cases instead of occupier. **E+W+S**

Where in a factory the owner or hirer of a machine or implement moved by mechanical power is some person other than the occupier of the factory the owner or hirer shall, so far as respects any offence under this Act committed in relation to a person who is employed in or about or in connection with that machine or implement, and is in the employment or pay of the owner or hirer, be deemed to be the occupier of the factory.

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**164 Prosecution of offences and application of fines. E+W+S**

[<sup>F11</sup>(1) All offences under this Act shall be triable summarily.]

[<sup>F11</sup>(2) In any proceedings under this Act it shall be sufficient in the information or, in Scotland, complaint to allege that the factory is a factory within the meaning of this Act and to state the name of the ostensible occupier of the factory, or, where the occupier is a firm, the title of the firm.]

(3) ..... <sup>F12</sup>

(4) ..... <sup>F12</sup>

[<sup>F13</sup>(5) Where any offence is committed under this Act by reason of a failure to make an examination, enter a report, or do any other thing, at or within a time specified by this Act or any regulation or order made thereunder, the offence shall be deemed to continue until the examination is made, or the report entered, or the other thing done, as the case may be.]

(6) ..... <sup>F14</sup> all fines imposed in Scotland in respect of offences under this Act shall be paid into the Exchequer.

[<sup>F13</sup>(7) Where a proceeding is taken before a magistrates' court or other court of summary jurisdiction with respect to an offence under this Act alleged to be committed in or with reference to a factory, no person shall be qualified to act as a member of the court who is the occupier or owner of the factory, or the husband, wife, parent, son, daughter, brother, or sister of the occupier or owner of the factory, or a person engaged in, or an officer of any association of persons engaged in, the same trade or occupation as any person charged with the offence.]

**Textual Amendments**

**F11** S. 164(1)(2) repealed by S.I. 1976/2004, **Sch.** except in relation to offences committed before 1.1.1977 and offences under s. 135

**F12** Ss. 1(5), 2(4), 3(3), 4(2), 5(2), 7(2), 9, 10, 14(3)(4)(6), 17(3)–(5), 18(5)(6), 25(4), 53–55, 58(2)–(4), 59(2)(3), 62, 66, 70, 71, 72(2), 73(2), 76, 81, 83, 121(7), 122(6), 124(2)(3), 129(1), 134, 137(5), 142, 145, 149, 150, 153(3), 159, 164(3), 174(2), 177, 179, 180(5)(7)(8)(10), 181(2), 182(5)(6), Schs. 3, 4 repealed by S.I. 1974/1941, reg. 7, **Sch. 1**

**F13** S. 164(5)(7) repealed by S.I. 1974/1941, reg. 7, **Sch. 1** except in relation to offences under s. 135

**F14** Words repealed by Criminal Justice Act 1972 (c. 71), **Sch. 6 Pt. II**

**165 ..... <sup>F15</sup> E+W+S**

**Textual Amendments**

**F15** Ss. 40–52, 120, 140(2), 148, 165, repealed by S.I. 1976/2004, **Sch.**

**166 Special provisions as to evidence. E+W+S**

(1) If a person is found in a factory at any time at which work is going on or the machinery is in motion, except during the intervals for meals or rest, he shall, until the contrary is proved, be deemed for the purposes of this Act to have been then employed in the

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factory, unless the factory is one in which the only persons employed are members of the same family dwelling there.

- (2) Where in any proceedings under this Act with respect to a young person it appears to the court that that young person is apparently of or below the age alleged by the informant, or, in Scotland, by the prosecutor, it shall lie on the accused to prove that the young person is not of or below that age.
- [<sup>F16</sup>(3) Where any entry is required by this Act or by any order or regulations made thereunder to be made in the general register or in any other register or record, the entry made by the occupier of a factory or on his behalf shall, as against him, be admissible as evidence of the facts therein stated, and the fact that any entry so required with respect to the observance of any provision of this Act or of any order or regulation made thereunder has not been made, shall be admissible as evidence that that provision has not been observed.]

#### Textual Amendments

**F16** S. 166(3) repealed by S.I. 1974/1941, reg. 7, Sch. 1 except for the purposes of s. 135

### 167 Proceedings for offences in respect of the employment of children. **E+W+S**

For the purposes of any proceedings under this Act in respect of the employment of children in contravention of . . . <sup>F17</sup>[<sup>F18</sup>section one hundred and thirty six of the <sup>M1</sup>Education (Scotland) Act 1962] or section one of the <sup>M2</sup>Employment of Women, Young Persons, and Children Act 1920 or any other enactment prohibiting the employment of children which is incorporated with this Act, references in this Part of this Act to young persons shall be construed as including references to children within the meaning of any such enactment.

#### Textual Amendments

**F17** Words repealed by Education Act 1973 (c. 16) Sch. 2 Pt. I

**F18** Words substituted by virtue of Interpretation Act 1978 (c. 30), s. 17(2)(a)

#### Marginal Citations

**M1** 1962 c. 47.

**M2** 1920 c. 65.

### [<sup>F19</sup>168 Service of documents, etc. **E+W+S**

- (1) Any document (including any summons or order) required or authorised to be served under this Act may be served—
- (a) on any person by delivering it to him, or by leaving it at, or sending it by post to, his residence;
  - (b) on any firm by delivering it to any partner of the firm, or by leaving it at, or sending it by post to, the office of the firm;
  - (c) on the owner or occupier of a factory (including any such owner or occupier being a company to which the <sup>M3</sup>Companies Act 1948 applies), in any such manner as aforesaid, or by delivering it, or a true copy thereof, to any person apparently not under the age of sixteen years at the factory.

*Status: Point in time view as at 31/01/1997.*

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- (2) Any such document may be addressed for the purpose of the service thereof on the occupier of a factory, to “the occupier” at the proper postal address of the factory, without further name or description.
- (3) The foregoing provisions of this section shall apply with the necessary modifications to documents required or authorised under this Act to be sent to any person, firm, owner or occupier, and to the sending, addressing, and delivery of such documents.]

#### Textual Amendments

**F19** S. 168 repealed by S.I. 1974/1941, reg. 7, Sch. 1 except for the purposes of s. 135

#### Marginal Citations

**M3** 1948 c. 38.

### **169 Power of county court or sheriff to modify agreements.** **E+W+S**

If by reason of an agreement between the owner and the occupier of premises the whole or any part of which has been let as a factory the owner or occupier is prevented from carrying out any structural or other alterations in the premises which are necessary to enable him to comply with the provisions of this Act or of any regulation or order made under this Act or in order to conform with any standard or requirement imposed by or under this Act, he may apply to the county court or, in Scotland, the sheriff, and the court or sheriff, after hearing the parties and any witnesses whom they desire to call, may make such an order setting aside or modifying the terms of the agreement as the court or sheriff considers just and equitable in the circumstances of the case.

### **170 Power of county court or sheriff to apportion expenses.** **E+W+S**

Where in any premises the whole or any part of which has been let as a factory any structural or other alterations are required in order to comply with the provisions of this Act or of any regulation or order made under this Act or in order to conform with any standard or requirement imposed by or under this Act and the owner or occupier as the case may be alleges that the whole or part of the expenses of the alterations ought to be borne by the occupier or owner, the owner or occupier may apply to the county court or, in Scotland, the sheriff, and the court or sheriff, after hearing the parties and any witnesses whom they may desire to call, may make such an order concerning the expenses or their apportionment as the court or sheriff considers just and equitable in the circumstances of the case, regard being had to the terms of any contract between the parties, or in the alternative the court or sheriff may at the request of the owner or occupier determine the lease.

### **[<sup>F20</sup>171 Application of the Arbitration Act 1996.** **E+W+S**

Part I of the Arbitration Act 1996 does not apply to proceedings under this Act except in so far as it may be applied by regulations made under this Act.]

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*Status: Point in time view as at 31/01/1997.*

**Changes to legislation:** *There are currently no known outstanding effects for the Factories Act 1961, Part XII. (See end of Document for details)*

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#### **Textual Amendments**

**F20** S. 171 substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3 para. 14** (with s. 81(2)); S.I. 1996/3146, **art. 3**



**Status:**

Point in time view as at 31/01/1997.

**Changes to legislation:**

There are currently no known outstanding effects for the Factories Act 1961, Part XII.