



Health and Safety at Work etc. Act 1974

1974 CHAPTER 37

PART I

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

Provisions as to offences

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.

Modifications etc. (not altering text)

- C1** S. 40 applied by [S.I. 1989/840, arts. 2-10](#)
S. 40 excluded (with saving) (E.W.S.) (1.12.1997) by [S.I. 1997/1840, regs. 7, 9](#)
S. 40: power to apply conferred (E.W.S.) (28.8.1995) by [1995 c. 15, ss. 2\(4\)\(j\), 5](#) (with s. 3(5))
S. 40 applied (with modifications) (E.W.S.) (16.4.1996) by [S.I. 1996/772, reg. 17](#)
S. 40 applied (15.11.2000) by [S.I. 2000/2831, reg. 26\(1\)\(a\)](#)
- C2** Ss. 33-42 applied (with modifications) (1.4.1999) by [S.I. 1999/743, reg. 20\(1\), \(2\)\(3\)](#)
- C3** Ss. 33-42 applied (with modifications) (19.11.1999) by [S.I. 1999/2892, reg. 16\(1\)](#)
Ss. 33-42 applied (20.9.2001) by [S.I. 2001/2975, reg. 19\(d\)](#)
- C4** Ss. 1-59, 80-82 applied (11.7.2001) by [S.I. 2001/2127, arts. 4\(1\), 5\(1\)\(2\), 6\(1\), 7\(1\), 8\(1\), 10](#) (with art. 11) (as amended by [S.I. 2009/1750, art. 2\(2\)\(4\)](#))
Ss. 33-42 applied (E.W.S.) (24.7.2002) by [S.I. 2002/1689, reg. 14\(1\)\(b\)](#)
Ss. 33-42 applied (16.5.2002) by [S.I. 2002/1166, reg. 31](#) (with art. 37)

Status: Point in time view as at 16/01/2012. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the *Health and Safety at Work etc. Act 1974, Section 40.* (See end of Document for details)

- C5** S. 40 applied (with modifications) (E.W.S.) (3.5.2004) by [S.I. 2004/129](#), **reg. 23(3)(e)**; s. 40 applied (with modifications) (E.W.S.) (9.6.2004) by [S.I. 2004/1309](#), **reg. 17**; s. 40 applied (E.W.S.) (22.4.2005) by [S.I. 2005/928](#), **reg. 4(2)(3)(5)(6)**; s. 40 applied (E.W.S.) (2.4.2006) by [S.I. 2006/397](#), **reg. 34(3)(c)**
- C6** Ss. 37-41 applied (with modifications) (E.W.S.) (the amendment coming into force in accordance with art. 1(1) of the amending S.I.) by [The Channel Tunnel \(Safety\) Order 2007 \(S.I. 2007/3531\)](#), **art. 4(2)(3)(h)** (subject to (4)-(6)) (with art. 7)
- C7** Ss. 1-59, 80-82 applied (temp.) (5.8.2009) by [The Health and Safety at Work etc. Act 1974 \(Application outside Great Britain\) Order 2001 \(S.I. 2001/2127\)](#), arts. 8A, 8B (as inserted by [S.I. 2009/1750](#), **art. 2(3)**)
- C8** Ss. 33-42 applied (with modifications) (E.W.) (12.8.2009 with application in accordance with reg. 3 of the amending S.I.) by [The Major Accident Off-Site Emergency Plan \(Management of Waste from Extractive Industries\)\(England and Wales\) Regulations 2009 \(S.I. 2009/1927\)](#), {reg. 9(1)}
- C9** Ss. 37-41 applied (with modifications) (E.W.S.) (6.4.2010) by [The Rail Vehicle Accessibility \(Non-Interoperable Rail System\) Regulations 2010 \(S.I. 2010/432\)](#), **reg. 6(2)(3)(g)**
- C10** Ss. 37-41 applied (with modifications) (E.W.S.) (6.4.2010) by [The Train Driving Licences and Certificates Regulations 2010 \(S.I. 2010/724\)](#), regs. 1(2), **38(2)(3)(g)**
- C11** Ss. 1-59 applied by [S.I. 2001/2127](#) art. 8A 8B (as inserted (E.W.S.) (6.4.2011) by [The Health and Safety at Work etc. Act 1974 \(Application outside Great Britain\) \(Variation\) Order 2011 \(S.I. 2011/745\)](#), arts. 1(1), **3(2)**)
- C12** Ss. 37-41 applied (with modifications) (16.1.2012) by [The Railways \(Interoperability\) Regulations 2011 \(S.I. 2011/3066\)](#), regs. 1(2), **39(2)(3)(g)** (with reg. 3)

Status:

Point in time view as at 16/01/2012. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the Health and Safety at Work etc. Act 1974, Section 40.