

Status: Law In Force

Health and Safety at Work etc. Act 1974 c. 37

Part I Health, Safety and Welfare in connection with Work, and Control of Dangerous Substances and Certain Emissions into the Atmosphere

General duties

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(version 1 of 1)

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, 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 may provide for the appointment in prescribed cases by recognised trade unions (within the meaning of the regulations) 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.

[...] ¹

(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)] ² above, to establish, in accordance with regulations made by the Secretary of State, 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.

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Notes

1. Repealed by Employment Protection Act 1975 (c. 71), Sch. 18
2. Words substituted by Employment Protection Act 1975 (c. 71), Sch. 15 para. 2
3. Act applied by S.I. 1990/13, reg. 11(5), S.I. 1988/778, reg. 11(1)
4. Pt. I extended by S.I. 1978/752, reg. 3, S.I. 1981/1011, reg. 9, 1983/1919, reg. 3, Gas Act 1986 (c.44), ss. 18, 48(3)(4), S.I. 1989/1671, reg. 4, applied by Gas Act 1986 (c.44), s. 67(3), Sch. 8 para. 6(2), Consumer Protection Act 1987 (c.43), s. 36, S.I. 1988/1222, regs. 3, 4, S.I. 1989/1810, reg. 3, S.I. 1990/1380, reg. 3
5. S. 2 applied by S.I. 1989/840, arts. 2–10
6. S. 2(4) modified by S.I. 1977/500, reg. 8(1)

Modifications

Pt I	Modified in relation to the meaning of "work" by Control of Substances Hazardous to Health Regulations 1994/3246, reg. 19
	Modified in relation to the meaning of "work" by Control of Substances Hazardous to Health Regulations 1999/437, reg. 19
	Modified in relation to the meaning of "work" by Control of Substances Hazardous to Health Regulations 2002/2677, reg. 19
	Modified in consequence of the provisions of 1995 c.45 by Gas Act 1995 c. 45, Sch. 4 para. 10(1)
	Modified in relation to the meaning of "work" by Genetically Modified Organisms (Contained Use) Regulations 1992/3217, Pt I reg. 4
	Modified in relation to the meaning of "work" for the protection for and duties of employees under the relevant statutory provisions as defined in 1974 c.37 to those who are provided with "relevant training" by Health and Safety (Training for Employment) Regulations 1990/1380, reg. 3(a)
	Modified in relation to meaning of "work" and "at work" for offshore installations and pipeline works within the scope of SI 1989/840 and to premises and activities connected with those installations or works by Offshore Installations and Pipeline Works (First-Aid) Regulations 1989/1671, reg. 4(a)

Pt I s. 2	Modified in relation to contained use by Genetically Modified Organisms (Contained Use) Regulations 2014/1663, Pt 1 reg. 4(2)
Pt I s. 2(1)	Modified in relation to an activity involving genetic modification by Genetically Modified Organisms (Contained Use) Regulations 2000/2831, Pt I reg. 5(1)
Pt I s. 2(2)	Modified in relation to an activity involving genetic modification by Genetically Modified Organisms (Contained Use) Regulations 2000/2831, Pt I reg. 5(1)
Pt I s. 2(3)	Modified in relation to an activity involving genetic modification by Genetically Modified Organisms (Contained Use) Regulations 2000/2831, Pt I reg. 5(1)
	Modified in relation to every employer of persons at work at the mine (other than the owner) by Management and Administration of Safety and Health at Mines Regulations 1993/1897, Pt I reg. 4(4)

Subject: Health and safety at work

Keywords: Employees; Employers; Employers' powers and duties; Health and safety at work

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Annotation

Section 2

Introduction

This section contains the fundamental duty of employers to ensure employees' health and safety.

Quasi-Legislation Note:

See the [Sentencing Guidelines Council's Guidance](#).

Case Note:

For an unsuccessful attempt to rely on this section as a reason for refusal by a charity to promote an employee on grounds that the ethnicity of the employee would compromise the charity's impartiality and endanger the employee, see [Ahmed v Amnesty International \[2009\] I.C.R. 1450](#).

Case Note:

"Obviously an alleged breach of duty to take reasonable care must be specified and proved and in this context it is understandable that a Brown direction is required. Whilst [section 7](#) concerns employees, however, sections 2 and 3 deal with employers and, not unnaturally, a firmer stance is adopted towards them (although not so firm a stance as the European Commission were contending — in Case C-127/05, referred to by Lord Hope at para 31 of his opinion — unsuccessfully in the event, was required by Council Directive 89/391/EEC to be taken). Sections 2 and 3, in contrast to [section 7](#), do not impose a duty merely to take reasonable care; rather they impose a duty on employers to ensure health and safety — in the case of [section 3](#), to conduct their undertaking so as to ensure that people are not thereby exposed to risks to their health and safety — leaving it to the employers (see [section 40](#) of the Act) to establish if they can, on the balance of probabilities, that it was not reasonably practicable for them to do more than they did do to achieve the required objectives of health and safety. By the same token that no Brown direction is required in prosecutions under these sections, so too is it unnecessary for the prosecutor to identify, allege and prove specific failures on the employer's part, for all the world as if these were necessary ingredients of the offence charged." ([R. v Chargot Ltd \(t/a Contract Services\) \[2008\] UKHL 73](#) per Lord Brown of Eaton-Under-Heywood.)

Case Note:

(EU law): For the compatibility of s.2 with EU law see [Commission of the European Communities v United Kingdom \(C-127/05\) \[2007\] 3 C.M.L.R. 20](#) ECJ.

Case Note:

"The Act of 1974 introduced a totally new approach to the task of legislating for what may broadly be called safety at work for those employed as well as those who may be put at risk in consequence of the employer being engaged in work. The Act itself set out target duties and made provision for regulations to be made implementing those target duties for different industrial and other like undertakings. ...

"One of the novel aspects of the Act of 1974 was the formation of the Health and Safety Commission which has overall responsibility for implementing the statutory objectives laid down by the Act. One of the powers of the Commission was to provide practical guidance to employers to assist them in complying with the requirements imposed on them by sections 2 to 7 of the Act. ...

"In my judgment, it is impossible to conceive in these circumstances that either the Directive or the Act of 1974 can have intended to outlaw certain activities merely on the basis that

they were dangerous. The Act was thought to be compliant with the obligations of the United Kingdom under the Directive, so it is proper that it should be construed in such a manner that it conforms to the principles ascertainable from the Directive: see Review of the Implementation and Enforcement of E.C. Law in the U.K., Annex B1, pp. 105–110. ...

“The proper interpretation of [Part 1](#) of the Act of 1974 has to be that it is concerned with the requirements an employer must take to see that his employees are safe in the work (see [sections 1](#) and 2) which it is the employer’s business to carry out. I am quite unable to accept the primary submission advanced on behalf of the council which was to the effect that the Act was concerned with the measures which an employer was required to take ‘for the purposes of conducting his business.’ Hence the importance of the word ‘work’ where it appears in both [sections 1](#) and 2. The Act is not seeking to legislate as to what work could or could not be performed, but is properly concerned with the manner of its doing.” ([Canterbury City Council v Howletts & Port Lympe Estates Ltd \[1997\] I.C.R. 925 QBD.](#))

Case Note:

“In my opinion, the duty within section 2 is not confined to employees who are engaged in a specific process. The duty applies to ‘all employees’ of an employer. ...

“With respect to the duty arising under section 2(2), it seems to me that the subsection creates a duty to provide plant which is safe, subject to the question of reasonable practicability. ‘To provide,’ in the relevant code of legislation including the [Factories Act 1961](#) means ‘to supply or to make available.’ ...

“The question for decision is whether there is anything in the language of section 2(2)(a) of the Act of 1974 which leads to a different result? ... in my view the use of the words ‘at work’ cannot on any common sense basis mean that the duty to provide safe plant arises only when the men are actually at work. ...

“In my opinion, section 2 of the Act of 1974 creates a duty to ensure that there is safety when the employees come to work ...” ([Bolton MBC v Malrod Insulations \[1993\] I.C.R. 358 QBD.](#))

Note:

For Crown application see [s.48](#); for application to police, see [s.51A](#); for exclusion of domestic employment see [s.51](#).

Note:

For the offence of breach of the duty under this section see [s.33](#).

Subsection (1)

So far as is reasonably practicable — see annotation to [s.4](#).

At work — see [s.52](#).

Employee — see [s.53](#).

Subsection (2)

Plant — see [s.53](#).

Substance — see [s.53](#).

See Key Legal Concept: [Necessary](#).

See Key Legal Concept: [Have Regard To](#).

Subsection (3)

Prescribed — by regulations made by the Secretary of State — see [s.53\(1\)](#); for ancillary powers and procedure see [s.82](#).

See Key Legal Concept: [Written](#).

Subsection (4)

See Key Legal Concept: [Secretary of State](#).

See Key Legal Concept: [Consultation](#).

Regulations — for ancillary powers and procedure see [s.82](#).

Status: Law In Force

Health and Safety at Work etc. Act 1974 c. 37

Part I Health, Safety and Welfare in connection with Work, and Control of Dangerous Substances and Certain Emissions into the Atmosphere

General duties

This version in force from: **March 26, 2015 to present**

(version 2 of 2)

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]¹ to conduct [the undertaking]² 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

(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.

Notes

¹. Words inserted by Deregulation Act 2015 c. 20 [s.1\(2\)\(a\)](#) (March 26, 2015 so far as is necessary for enabling the exercise on or after that day of any power to make provision by an order or regulations made by statutory instrument; October 1, 2015 otherwise)

². Words substituted by Deregulation Act 2015 c. 20 [s.1\(2\)\(b\)](#) (March 26, 2015 so far as is necessary for enabling the exercise on or after that day of any power to make provision by an order or regulations made by statutory instrument; October 1, 2015 otherwise)

³. Added by Deregulation Act 2015 c. 20 [s.1\(3\)](#) (March 26, 2015 so far as is necessary for enabling the exercise on or after that day of any

power to make provision by an order or regulations made by statutory instrument; October 1, 2015 otherwise)

Modifications

Pt I	Modified in relation to the meaning of "work" by Control of Substances Hazardous to Health Regulations 1994/3246, reg. 19
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	Modified in relation to the meaning of "work" by Control of Substances Hazardous to Health Regulations 2002/2677, reg. 19
	Modified in consequence of the provisions of 1995 c.45 by Gas Act 1995 c. 45, Sch. 4 para. 10(1)
	Modified in relation to the meaning of "work" by Genetically Modified Organisms (Contained Use) Regulations 1992/3217, Pt I reg. 4
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	Modified in relation to meaning of "work" and "at work" for offshore installations and pipeline works within the scope of SI 1989/840 and to premises and activities connected with those installations or works by Offshore Installations and Pipeline Works (First-Aid) Regulations 1989/1671, reg. 4(a)
Pt I s. 3(2)	Modified in relation to an activity involving the consignment, storage or use of any of the biological agents referred to in SI 1994/3246 reg.19 by Control of Substances Hazardous to Health Regulations 1994/3246, reg. 20
	Modified in relation to an activity involving the consignment, storage or use of any of the biological agents referred to in SI 1999/437 reg.19 by Control of Substances Hazardous to Health Regulations 1999/437, reg. 20
	Modified in relation to an activity involving the consignment, storage or use of any of the biological agents referred to in SI 2002/2677 reg.19 by Control of Substances Hazardous to Health Regulations 2002/2677, reg. 20
	Modified in relation to an activity involving genetic modification by Genetically Modified Organisms (Contained Use) Regulations 1992/3217, Pt I reg. 5
	Modified in relation to an activity involving genetic modification by Genetically Modified Organisms (Contained Use) Regulations 2000/2831, Pt I reg. 5(2)
	Modified in relation to contained use by Genetically Modified Organisms (Contained Use) Regulations 2014/1663, Pt 1 reg. 4(3)

Subject: Health and safety at work

Keywords: Employers; Employers' powers and duties; Health and safety at work; Powers rights and duties; Self-employed workers

Annotation

Section 3

Introduction

This section contains the fundamental duty of employers and the self-employed to non-employees.

Quasi-Legislation Note:

See the [Sentencing Guidelines Council's Guidance](#).

Amendment Note:

This section is amended by the [Deregulation Act 2015 s.1](#); for information about the background to the amendments (including Explanatory Notes and Ministerial Statements) see the annotations to that section.

Case Note:

“Obviously an alleged breach of duty to take reasonable care must be specified and proved and in this context it is understandable that a Brown direction is required. Whilst [section 7](#) concerns employees, however, [sections 2](#) and 3 deal with employers and, not unnaturally, a firmer stance is adopted towards them (although not so firm a stance as the European Commission were contending — in Case C-127/05, referred to by Lord Hope at para 31 of his opinion — unsuccessfully in the event, was required by Council Directive 89/391EEC to be taken). [Sections 2](#) and 3, in contrast to [section 7](#), do not impose a duty merely to take reasonable care; rather they impose a duty on employers to ensure health and safety — in the case of section 3, to conduct their undertaking so as to ensure that people are not thereby exposed to risks to their health and safety — leaving it to the employers (see [section 40](#) of the Act) to establish if they can, on the balance of probabilities, that it was not reasonably practicable for them to do more than they did do to achieve the required objectives of health and safety. By the same token that no Brown direction is required in prosecutions under these sections, so too is it unnecessary for the prosecutor to identify, allege and prove specific failures on the employer's part, for all the world as if these were necessary ingredients of the offence charged.” ([R. v Chargot Ltd \(t/a Contract Services\) \[2008\] UKHL 73](#) per Lord Brown of Eaton-Under-Heywood.)

Case Note:

“The proposition that in general a penal statute should receive a strict or restrictive interpretation requires no authority. ... The [Health and Safety at Work Act 1974](#) is a penal Act to the extent that it creates criminal offences. But ... there are other principles of interpretation that also apply, including the principle that a statute should be given a purposive construction. Here, the purpose of the statute is (among other things) to secure and to protect the safety of employees and others. It is for that purpose that functions beyond the prosecution of offences created by the Act were conferred on the Health and Safety Commission and the HSE: see [sections 10 and 11](#). That purpose requires the court to avoid an over-restrictive interpretation if it would be inconsistent with that purpose. The requirement that section 3 should be interpreted in its context also points against an automatic narrow interpretation. ...

“It has always been a principle of the interpretation of statutes that the courts should seek to construe them so as to produce a just and fair law.” ([R. \(on the application of Hampstead Heath Winter Swimming Club\) v London Corp \[2005\] EWHC 713 \(Admin\)](#).)

Case Note:

“It seems to me wrong to try to find some formula such as that of Mr. Carlisle to take the place of the simple words of the statute. Whether the activity which has caused the risk amounts to part of the conduct by the employer of his undertaking must in each case be a question of fact. The place where the activity takes place will in the normal case be very important; possibly decisive. But one cannot lay down rigid rules.” (*R. v Associated Octel Co Ltd* [1996] 1 W.L.R. 1543 HL.)

Note:

For the offence of breach of the duty under this section see [s.33](#).

Note:

For Crown application see [s.48](#); for application to police, see [s.51A](#); for exclusion of domestic employment see [s.51](#).

Subsection (1)

See Key Legal Concept: [Person](#).

Undertaking — see *Osborne v Taylor of Huyton* [1982] I.C.R. 168 QBD.

So far as is reasonably practicable — see annotation to [s.4](#).

Subsection (2)

Self-employed person — see [s.53](#).

Employee — see [s.53](#).

Subsection (3)

Prescribed — by regulations made by the Secretary of State — see [s.53\(1\)](#); for ancillary powers and procedure see [s.82](#).