



RESEARCH PAPER 08/50  
28 MAY 2008

# ***Health and Safety (Offences) Bill:*** **Committee Stage Report**

This is a report on the Committee Stage of the *Health and Safety (Offences) Bill, 2007-08*. The report has been produced in response to a recommendation of the Modernisation Committee in its report on The Legislative Process (HC 1097, 2005-6).

The Bill is sponsored by Keith Hill, who drew ninth place in the 2007/8 ballot for Private Members' Bills. It was presented on 5 December 2007.

The Bill would increase sentences for various offences under the *Health and Safety at Work etc. Act 1974*. It has Government and cross-party support. It received its Second Reading on 1 February 2008 and had its Committee Stage on 26 March 2008, where it was not amended. It is due for Report Stage on 13 June 2008.

Christopher Barclay

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## Summary of main points

The *Health and Safety (Offences) Bill* was introduced as a Private Member's Bill by Keith Hill (Lab, Streatham).<sup>1</sup> This Bill would amend Section 33 of the *Health and Safety at Work etc. Act 1974*, to raise the maximum penalties available to the courts in respect of certain health and safety offences. The Bill would:

- raise the maximum fine which may be imposed by the lower courts to £20,000 for most offences;
- make a prison sentence an option for most health and safety offences in lower and higher courts;
- make certain offences that can currently only go to trial in lower courts, triable in either the lower or higher courts.

The Bill had its Second Reading on 1 February 2008. It had its Committee Stage on 26 March 2008, where it was not amended.

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<sup>1</sup> Link to [Health and Safety \(Offences\) Bill](#)



## CONTENTS

<b>I</b>	<b>Provisions of the Bill</b>	<b>7</b>
<b>II</b>	<b>Second Reading Debate, 1 February 2008</b>	<b>7</b>
<b>III</b>	<b>Committee Stage Debate, 26 March 2008</b>	<b>10</b>
	<b>A. Offences and penalties</b>	<b>10</b>
	<b>B. Commencement</b>	<b>13</b>
	<b>C. Membership of the Committee</b>	<b>13</b>
	<b>Appendix - Explanatory Notes</b>	<b>15</b>



## I Provisions of the Bill

The *Health and Safety (Offences) Bill*, 2007-08 is a Private Member's Bill introduced by Keith Hill with Government support.<sup>2</sup> The Bill has been introduced several times before. Most recently it was introduced by Wayne David, and had a Second Reading on 27 April 2007.<sup>3</sup> On that occasion, 20 MPs voted in favour and three against. However, since there were less than 40 Members present, the Question was not decided.

This Bill would amend section 33 of the *Health and Safety at Work etc. Act 1974*, to raise the maximum penalties available to the courts in respect of certain health and safety offences. The Bill would:

- raise the maximum fine which may be imposed by the lower courts to £20,000 for most offences;
- make a prison sentence an option for most health and safety offences in lower and higher courts;
- make certain offences that can currently only go to trial in lower courts, triable in either the lower or higher courts.

The Bill had its Second Reading on 1 February 2008. It had its Committee Stage on 26 March 2008, where it was not amended.

The appendix to this paper copies the Explanatory Notes prepared by the Department for Work and Pensions with the consent of Keith Hill MP. The annex to the Explanatory Notes contains a useful table showing the current penalties for various offences and then the penalties that the Bill would introduce. That probably gives a clearer idea of the importance of the changes than the schedule to the Bill, which just gives the new penalties.

## II Second Reading Debate, 1 February 2008

**Keith Hill** introduced the Bill, noting that its purpose was set out in its long title: "To revise the mode of trial and maximum penalties applicable to certain offences relating to health and safety." He noted that following the *Offshore Safety Act 1992*, the lower courts were able to fine up to a maximum of £20,000 for breaches of general duties to safeguard people's health and safety under sections 2 to 6 of the Act. However, the current maximum penalty for specific breaches of health and safety regulations was a £5,000 fine, but such breaches may be just as serious as breaches of general duties.

It is for that reason that the Bill would extend the £20,000 lower court maximum to offences that, typically, have created risk directly or indirectly, or actual injury, damage to health or death. It is also why the £20,000 maximum is extended to offences that undermine the ability of enforcers to regulate health and safety, to prevent harm or to investigate what may be serious health and safety offences.

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<sup>2</sup> Link to [Health and Safety \(Offences\) Bill](#)

<sup>3</sup> HC Deb 27 April 2007 cc1175-96

He stressed the importance of proportionality in the approach to the new penalties in the Bill.

The second change to present arrangements set out in schedule 1 would be to make imprisonment an option for most health and safety offences in both the lower and the higher courts. At present, imprisonment is an option only in certain cases. In the lower courts, it is an option only for failure to comply with an improvement or prohibition notice, or with a court remedy order, and for offshore offences. In the higher courts, it is an option only for failure to comply with licensing requirements or explosives provisions, or disclosures in breach of the Act. Those are all serious offences. However, the Bill will extend the option of a custodial sentence to a greater range of offences and that responds in part to the fact that judges have remarked in several cases over the years on the lack of imprisonment as an option and that they would have jailed the offender had they been able to do so. It is my expectation that imprisonment will continue to occur only in the most serious of cases and that there will be only a minimal increase in the number of offenders going to prison under this new legislation.

The third change to present arrangements to be introduced by schedule 1 would make two offences, currently triable only in the lower courts, either-way offences, like most health and safety offences, so that they would be triable in either the lower or higher courts. Those offences under section 33(1) of the Act are first, contravening any requirement imposed by an inspector under section 20 of the Act and secondly, preventing another person from appearing before an inspector or from answering his or her questions. Under the Bill, those offences could in future attract the tougher penalties available in the higher courts.

**Keith Hill** explained the reasoning for the changes.

Why do we need the increased penalties set out in the Bill? There are three main reasons: tougher, more commensurate punishment, more effective deterrence and greater efficiency in the dispensation of justice. On tougher punishment, there is a well-established view that the fines under health and safety legislation are too low. That is certainly the view of the HSE and the Government. (...)

On the option of imprisonment, there is a history going back to the mid-1990s of judges expressing discontent at being unable to impose jail sentences for health and safety offences. (...)

The second reason for higher penalties is more effective deterrence; but to deter irresponsible behaviour and encourage compliance with the law penalties need to be high enough to eliminate the gain from breaking the law. (...)

The third reason for the higher penalties in the Bill is the need for greater efficiency in the court system. (...) By extending the £20,000 maximum fine to the lower courts and making imprisonment an option, the effect of the Bill will be that more cases will be resolved in the lower courts. Justice will be faster, less costly and more efficient.

He argued that the Bill would not increase the likelihood of a successful challenge under the European Convention on Human Rights. He praised the *Health & Safety at Work etc. Act 1974*:



The 1974 Act's record speaks for itself. Between 1974 and 2007, the number of fatal injuries to employees fell by 73 per cent. The number of reported non-fatal injuries fell by 70 per cent. If we look behind changing employment patterns during that period, we see the same picture. Between 1974 and 2007, the rate of fatal injuries per 100,000 employees fell by a huge 76 per cent. Britain had the lowest rate of fatal injuries in the European Union in 2003, the most recent year for which figures are available. The EU average was 2.5 fatalities per 100,000 workers; the figure in the UK was 1.1.

However, that still equates to about 250 workplace deaths a year and many more injuries. There can be no complacency; hence the need for the Bill. It will allow us to punish the criminally negligent who put life and limb in danger, deter those who attempt to cut costs by breaking health and safety law and render justice faster and more efficient, and it will do so without introducing any new regulatory requirements or new compliance costs in any sector. I commend the Bill to the House.<sup>4</sup>

**Annette Brooke**, for the Liberal Democrats, supported the Bill and raised the problem of accidents at work to children under 16. **Andrew Selous** for the Conservatives also supported the Bill. He noted that the public was concerned that health and safety fears were being used to prevent reasonable leisure activities. The reality of serious injuries and deaths in the workplace was very different:

The figure that especially shocked me from our debate in Westminster Hall on the construction industry was that in the six years to 31 March 2004 there were 504 deaths from construction accidents—only 18 fewer than the number of regular service personnel killed through accidental or violent causes. Who would have thought that being a builder is nearly as dangerous as being a soldier?

**The Parliamentary Under-Secretary of State for Work and Pensions (Mrs. Anne McGuire)** welcomed the Bill, noting that its proposals were consistent with the Government's health and safety strategy and the wider considerations of regulatory sanctions in the Hampton<sup>5</sup> and Macrory reports.<sup>6</sup> The Government had tried five times before to get the Bill through on Fridays.<sup>7</sup>

The Health and Safety Executive has always been clear about the need to improve the levels of fines. There is a disparity between fines imposed for other regulatory breaches and those imposed for health and safety offences. In 2007, British Airways was fined £121.5 million for illegally fixing fuel charges on passengers. The postal regulator fined Royal Mail nearly £12 million for service standard failures, and in 2005 the Financial Services Authority fined Shell £17 million for serious misconduct amounting to market abuse. The biggest ever United Kingdom fine for a health and safety offence was the £15 million that

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<sup>4</sup> HC Deb 1 February 2008 cc613-8

<sup>5</sup> Sir Philip Hampton for HM Treasury, [Best Practice on Better Regulation: Hampton Review](#), February 2005

<sup>6</sup> Richard B. Macrory, [Regulatory Justice: Making Sanctions Effective Final Report](#), November 2006

<sup>7</sup> HC Deb 1 February 2008 c624

Transco was fined following the Larkhall explosion which killed a family of four in 1999.<sup>8</sup>

**Keith Hill** noted that the Hampton thesis was that effective deterrence makes for lighter inspection and enforcement. Indeed, his report was entitled “Reducing administrative burdens.”

The Bill received a Second Reading.

### III Committee Stage Debate, 26 March 2008

#### A. Offences and penalties

Clause 1 - Health and safety offences: mode of trial and maximum penalty - was debated along with new clause 1, tabled by Andrew Selous, which would index-link the level of fines.

**Keith Hill** described the basic purpose of the Bill, but also noted some industry views:

I acknowledge that both the Engineering Employers Federation—the manufacturers’ organisation—and the CBI have reservations about the custodial aspects of the Bill, but I detect a fairly wide measure of support for its principles. In its note on the Bill, the EEF states that its members

“support the principle of serious penalties for serious offences”,

and the CBI note states that it

“supports the principle behind this Bill to bring penalties for breaches of specific duties to safeguard health and safety in line with general duties, and to bring the penalty framework for health and safety offences in line with other offences.”

I am grateful for that support. The CBI is right on both counts. One effect of the Bill will be to bring the maximum fines under the health and safety legislation into line with those already available under comparable regulatory legislation—for example, environmental and food safety legislation. A second effect will be to increase the maximum fine in the lower courts for specific breaches of regulations from £5,000 to £20,000, which is the level available for breaches of general duties under sections 2 to 6 of the Act and on the reasonable grounds that such breaches may be just as serious as breaches of general duties.

He hoped that **Andrew Selous** would not press his amendment to a division. Although he sympathised with the proposal to index-link the level of fines, he was unable to agree to it because it required primary legislation:

If we were simply in the business of uprating fines under existing legislation through this Bill—there have been no changes in the level of fine or standard scale of charges since 1992, which is surprising—we would be considering a 30 per cent. increase in the fine to allow for inflation, which would take it to £6,500. We are in fact doing a good deal more than that. We are making a qualitative

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<sup>8</sup> HC Deb 1 February 2008 cc622-6

change, by making a large-scale increase in the level of fine, to reflect a change of consensus in our attitude towards health and safety offences. I hope that that satisfies the hon. Gentleman.<sup>9</sup>

**Andrew George** (LD): I assume that the right hon. Gentleman wishes his Bill to be inflation-proof, or would rather that in years to come, we do not have to revisit the merits of having this legislation in the first place. Surely, it would be advantageous if such an amendment could be introduced to make this legislation inflation-proof. Is the right hon. Gentleman telling the Committee that he is not able to accept the new clause for some procedural reason that the rest of us do not follow?<sup>10</sup>

**Andrew Selous** and **Jim Devine** (Lab) favoured index-linking the fine. However, **Anne McGuire**, Under Secretary at Department for Work and Pensions, said that it would be very unusual for an Act to index-link a fine. **John Heppell** (Lab) pointed to the administrative difficulty of indexation.

**Andrew Selous** hoped that the cost to the business of rectifying the deficiency that caused the health and safety breach would be taken into account in setting the level of a fine. He accepted that index-linking the fine would not be accepted and did not press the new clause to a vote. However:

I flag this as a general issue: what is the most efficient way to ensure that we are not all coming back to debate endless statutory instruments on simple annual upratings? We should ensure that, when Parliament sets a fine, it maintains its real value over time.<sup>11</sup>

He briefly mentioned new clause 2, which had not been selected for debate, but which would have brought in new section 33B(2) to the *Health and Safety at Work etc. Act 1974*:

Proposed new section 33B(2) raises a general issue that applies to clause 1: I should like to know why we are seeking to impose a penalty of imprisonment for nine offences for which it was not a penalty before. Eagle-eyed members of the Committee might spot that the reasons given in paragraphs (a) to (d) come directly from the regulatory impact assessment of the Bill. At paragraph 30 on page 5, the RIA states:

“Imprisonment is likely to continue to be confined to health and safety cases which would be likely to cause public outrage”. Then it lists four examples. It refers to cases involving recklessness about the possibility of serious harm; deception intended to undermine enforcement; deliberately creating serious risks with a view to profit; and serious neglect leading to major injury or death.

I do not think that any member of the Committee would quibble with any of those four reasons for allowing a prison sentence to be imposed, but the fact is that under the bald legislation—it will be the law if the Bill completes all its stages—it

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<sup>9</sup> PBC Deb 26 March 2008 cc3-7

<sup>10</sup> PBC Deb 26 March 2008 cc3-7

<sup>11</sup> PBC Deb 26 March 2008 c9

will also be possible to impose a prison sentence on summary conviction for much lesser offences. We are talking about a prison sentence being imposed by a magistrates court, without a jury. For example, it would be possible to send someone to prison for the failure to display a health and safety poster. I am not saying for a moment that the courts have gone down that route in the past.

(...)

A further issue has been raised with me by one of the outside interest groups that have commented on the Bill. (...) Clearly, if a body corporate is found guilty of a health and safety offence, we cannot send the company to prison; we have to send an individual. The question, particularly in respect of a large company, is whom we send and whether we are certain that we have the right person.

He stressed the importance of proportionality in sentencing.

The Engineering Employers Federation...has requested sentencing guidelines to be given to judges and magistrates to ensure that proportionality, which is crucial, is tied down, so that those who have genuine worries about the application of the Bill can be properly reassured.

He noted that some lawyers did consider that the European Convention on Human Rights might cause problems. Under the Bill, on an allegation of an offence, where a duty of care was owed and where the matters were within the personal control of the individual, there would be a reverse burden of proof.<sup>12</sup>

**Dr. Alasdair McDonnell** (SDLP) wanted the Bill extended to cover the safety of building workers and others in Northern Ireland. **Robert Syms** (Con), a director of a family building and property business, broadly welcomed the Bill and the £20,000 upper limit. He also wanted sentencing guidelines for the lower courts. **Anne McGuire** stressed that the Health and Safety Commission had a targeted and proportionate enforcement policy. She noted that Government legal advisers had carefully examined compatibility with human rights legislation, and were satisfied.

**Keith Hill** answered the point about taking into account compliance costs in deciding the level of a fine by referring to a Court of Appeal judgement stating that: "a fine should not, in general, be so large as to imperil the defendant's continued trading." There might be exceptional cases in which a defendant ought not to be in business.

On the prosecution of individuals, it was important to be sure that one had the right culprit. The enforcement guidelines stated that prosecutions should proceed when investigation revealed that the offence was committed with the consent or connivance of the individual, or as a result of neglect on their part. The enforcement statement said that, subject to those rigorous criteria for bringing a prosecution:

"enforcing authorities should identify and prosecute or recommend prosecution of individuals if they consider that a prosecution is warranted. In particular, they should consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or

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<sup>12</sup> PBC Deb 26 March 2008 cc8-12

connivance or to have been attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy.”

He continued later:

As will be well known, the Sentencing Advisory Panel has recently consulted on sentencing for the offence of corporate manslaughter and for health and safety offences involving death, with a view to advising the Sentencing Guidelines Council, and the resulting draft guidelines are due in the autumn. It would be extremely timely therefore if the attention of the council were to be drawn to the new provisions of the Bill and if the council were requested to issue guidelines on the Bill, assuming that it will be enacted and possibly incorporated in the work already going on. I give a commitment to approach both the council and the Secretary of State for his support in that matter, and I hope that I can rely upon the Minister for her sympathetic consideration of the proposal. I hope that I have answered all the questions asked by hon. Members in their interventions, and I commend clause 1 to the Committee.<sup>13</sup>

**Andrew Selous** did not press new clause 1 to a vote.  
*Clauses 1 and 2 were ordered to stand part of the Bill.*

## B. Commencement

**Andrew Selous** proposed that commencement day should be three months after the Bill was passed, so as to allow time for its provisions to be publicised for business. **Keith Hill** welcomed the proposal and agreed about the need for publicity.

*Clause 3 was ordered to stand part of the Bill.*  
*Schedules 1 to 3 agreed to.*

The Bill was reported to the House without amendment.

## C. Membership of the Committee

The Committee consisted of the following Members:

Chairman: Mr. Greg Pope  
 Bercow, John (Buckingham) (Con)  
 † Binley, Mr. Brian (Northampton, South) (Con)  
 † Clapham, Mr. Michael (Barnsley, West and Penistone) (Lab)  
 † Clark, Ms Katy (North Ayrshire and Arran) (Lab)  
 David, Mr. Wayne (Caerphilly) (Lab)  
 † Devine, Mr. Jim (Livingston) (Lab)  
 † George, Andrew (St. Ives) (LD)  
 † Grogan, Mr. John (Selby) (Lab)  
 † Heppell, Mr. John (Nottingham, East) (Lab)  
 † Hill, Keith (Streatham) (Lab)  
 † McDonnell, Dr. Alasdair (Belfast, South) (SDLP)

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<sup>13</sup> PBC Deb 26 March 2008 cc15-9

† McGuire, Mrs. Anne (Parliamentary Under-Secretary of State for Work and Pensions)

† Robertson, John (Glasgow, North-West) (Lab)

† Selous, Andrew (South-West Bedfordshire) (Con)

Spink, Bob (Castle Point) (Con) \*

† Syms, Mr. Robert (Poole) (Con)

† attended the Committee

\* now in UKIP

## Appendix - Explanatory Notes

Explanatory Notes on the Bill were provided by the Department for Work and Pensions, with the consent of Keith Hill MP, and are copied below:

### EXPLANATORY NOTES

#### INTRODUCTION

1. These explanatory notes relate to the Health and Safety (Offences) Bill, as introduced in the House of Commons on 5th December 2007. They are provided by the Department for Work and Pensions, with the consent of Keith Hill MP, 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").

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.

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 Hampton<sup>14</sup> and Macrory<sup>15</sup> 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.

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<sup>14</sup> Philip Hampton for HM Treasury, *Reducing administrative burdens: effective inspection and enforcement*, March 2005

<sup>15</sup> Prof Richard B Macrory, *Regulating Justice: Making Sanctions Effective, Final Report*, November 2006.

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 Annex to these notes.

#### COMMENTARY ON CLAUSES

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

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.) The Annex 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.

Clause 2: Consequential amendments and repeals

12. Subsection (1) introduces Schedules 2 (consequential amendments) and 3 (repeals) to the Bill. Subsection (2) confers power on the Secretary of State 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 subsection (2) 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 England and Wales and Scotland. Health and safety is outside the legislative competence of the devolved administrations.

#### TERRITORIAL APPLICATION: WALES

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



#### 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 Executive 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 Executive 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.

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.

#### ANNEX

#### 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
<b>An offence under s. 33(1)(a)</b> Failure to discharge a duty imposed (on employers and others) by virtue of section 2, 3, 4 or 6.	<b>Summary</b> - a fine not exceeding £20,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both.
<b>An offence under s.33(1)(a)</b> Failure to discharge a duty imposed (on employees) by section 7.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding the statutory maximum, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(b)</b> Failure to discharge the duty not to interfere with or misuse things provided for health and safety, imposed by section 8.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(b)</b> Failure to discharge the duty not to charge employees for things done to meet requirements of relevant statutory provisions, imposed by section 9.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - a fine not exceeding £20,000 <b>Indictment</b> - an unlimited fine
<b>An offence under s.33(1)(c)</b> Contravening requirements of health and safety regulations, licences or	<b>Summary</b> - a fine not exceeding £5,000	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or

authorisations.	<b>Indictment</b> - an unlimited fine	both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(d)</b> Contravening requirements imposed specifically in relation to public inquiries or special investigations.	<b>Summary only</b> - a fine not exceeding £5000	<b>Summary only</b> - a fine not exceeding level 5 on the Standard Scale (£5,000)
<b>An offence under s.33(1)(e)</b> 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.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment (section 25 breaches only)</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment (section 20 and 25)</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(f)</b> Preventing another person from appearing before an inspector, or from answering an inspector's question.	<b>Summary only</b> - a fine not exceeding £5,000	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(g)</b> Contravening an improvement or prohibition notice.	<b>Summary</b> - 6 months imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment or an unlimited fine or both	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(h)</b> Obstructing an inspector.	<b>Summary only</b> - a fine not exceeding £5,000	<b>Summary only</b> 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.
<b>An offence under s.33(1)(i)</b> Contravening any notice issued under section 27(1) (general powers of HSC/E to obtain information).	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - a fine not exceeding the statutory maximum <b>Indictment</b> - an unlimited fine
<b>An offence under s.33(1)(j)</b> Disclosing information in breach of HSWA section 27(4) or 28.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - 2 years imprisonment, an unlimited fine, or both	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding the statutory maximum, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both

<b>An offence under s.33(1)(k)(l) and (m)</b> Offences relating to deception.	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
<b>An offence under s.33(1)(n)</b> Falsely to pretend to be an inspector.	<b>Summary only</b> - a fine not exceeding £5,000	<b>Summary only</b> - a fine not exceeding level 5 on the Standard Scale (£5,000)
<b>An offence under s.33(1)(o)</b> Failure to comply with a court remedy order (section 42).	<b>Summary</b> - 6 months imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment or an unlimited fine, or both	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both
An offence under the "existing statutory provisions" for which no other penalty is specified	<b>Summary</b> - a fine not exceeding £5,000 <b>Indictment</b> - an unlimited fine	<b>Summary</b> - 12 months* imprisonment, or a fine not exceeding £20,000, or both <b>Indictment</b> - 2 years imprisonment, or an unlimited fine, or both

## 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.