Redgrave's Offices and shops : together with agricultural, railway and offshore installation safety ... / by Ian Fife and E. Anthony Machin.

Contributors

Great Britain.
Redgrave, Alexander, 1818-1894.
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Publication/Creation

London : Butterworth : Shaw and Sons, 1973.

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REDGRAVE'S OFFICES AND SHOPS

SECOND EDITION

JUDGE FIFE

E. ANTHONY MACHIN

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REDGRAVE'S OFFICES AND SHOPS

together with Agricultural, Railway and Offshore Installation Safety

SECOND EDITION

By

HIS HONOUR

JUDGE IAN FIFE

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and

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BUTTERWORTH & CO. (PUBLISHERS) LTD.

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1973

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First Edition . . June 1965
Second Edition . . September 1973

ISBN: 0 406 35322 0

Made and printed in Great Britain by
William Clowes and Sons, Limited, London, Beccles and Colchester

PREFACE

The extension of safety, health and welfare legislation into wide fields of non-industrial employment, as recommended in 1949 by the Gowers Committee (Cmd. 7664), made necessary either a very considerable increase in the size and scope of *Redgrave's Factories Acts* or the publication of a separate book. This book was the result of a decision to follow the latter course and in this, the second edition, we have included all the current statutes and regulations governing working conditions in employment outside factories, mines and quarries. We have, in general, adhered to the plan of *Redgrave's Factories Acts*, and the title of the present work acknowledges our debt to Alexander Redgrave, C.B., and the distinguished editors of the first nineteen editions of that work.

Since the appearance of the last edition the Robens Committee has reported (1972) and its recommendations foreshadow fundamental changes in the structure of safety legislation for the protection of workpeople, though these are unlikely to affect the material contained in this work for some time.

The principal Acts are the Offices, Shops and Railway Premises Act 1963, the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and the Shops Acts 1950 to 1965, but also included are the Agriculture (Poisonous Substances) Act 1952, the veteran Railway Employment (Prevention of Accidents) Act 1900, and a new section dealing with the Mineral Workings (Offshore Installations) Act 1971.

In a general introduction to the book the doctrines applicable to actions for breach of statutory duty and other matters of common interest are discussed and the annotated text of each Act, or group of Acts, and its related subordinate legislation is preceded by a short introduction. Defined words in subordinate legislation are printed in italics.

The law, as we believe it to be, is stated as at 1st July 1973.

In the preparation of this edition we have received the welcome help of Mr. Frank Kirk, who collaborated with us in the

preparation of the 22nd edition of *Redgrave's Factories Acts*, and who has brought to bear upon the present work an equal wealth of practical experience.

Mr. G. W. Cheyne, of Gray's Inn and the Western Circuit, Barrister, has again been largely responsible for editing that part of the book which deals with the Shops Acts 1950 to 1965 and the regulations thereunder; we are most grateful to him for so lightening our task and to the publishers' staff for so much valuable assistance.

IAN FIFE
ANTHONY MACHIN

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July, 1973

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GENERAL INTRODUCTION

This General Introduction deals with some of the general principles common to the interpretation and application of the safety, health and welfare legislation expounded in this volume. These general principles have been evolved, for the most part, in the context of the factory legislation, which is fully considered in Redgrave's Factories Acts. It is therefore logical to consider first the extent to which the factory legislation is authoritative in the interpretation of the safety legislation dealt with here.

Statutes in Pari Materia.—When there are different statutes *in pari materia*, though made at different times, or even expired and not referring to each other, they are to be taken and construed together as one system and as explanatory of each other (*R.* v. *Loxdale* (1758), 1 Burr. 445; *Goldsmiths' Company* v. *Wyatt*, [1907] 1 K. B. 95, C. A.). It is submitted that the Agriculture (Poisonous Substances) Act 1952, the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and the Offices, Shops and Railway Premises Act 1963 are *in pari materia* with the Factories Act 1961 and its predecessors, since the desire to protect employed persons against the risks inherent in their work is the mainspring of each. In these circumstances, unless the context requires the contrary, expressions in the Agriculture and Offices Acts which are clearly modelled upon corresponding expressions in the Factories Acts, and which have there received an authoritative judicial interpretation, ought, it is submitted, to be construed in the same way as in the factory legislation (*Webb* v. *Outrim*, [1907] A. C. 81, 89, P. C.; *Barras* v. *Aberdeen Steam Trawling and Fishing Co., Ltd.*, [1933] A. C. 402). For example, the provisions of the Offices, Shops and Railway Premises Act 1963 relating to the fencing of dangerous machinery (*ibid.*, s. 17) are plainly framed by reference to the cognate provisions of ss. 14 to 16 of the Factories Act 1961. Many of the expressions to be found in ss. 14 to 16 of that Act have been the subject of authoritative interpretation, and Parliament must be assumed to have enacted the Offices Act with that interpretation in

mind. However, when the earlier Act has been the subject of conflicting judicial decision, or of decision which is in fact shown to be erroneous, there is no rule of law to prevent a different construction being placed upon the later Act (*Royal Crown Derby Porcelain Co., Ltd.* v. *Russell*, [1949] 2 K. B. 417, C. A.).

Interpretation.—The Railway Employment (Prevention of Accidents) Act 1900, the Agriculture (Poisonous Substances) Act 1952, the Agriculture (Safety, Health and Welfare Provisions) Act 1956, the Offices, Shops and Railway Premises Act 1963 and the Mineral Workings (Offshore Installations) Act 1971, and subordinate legislation, impose penalties for infringement of their provisions, and must, therefore, be strictly construed (*Franklin* v. *Gramophone Co., Ltd.*, [1948] 1 K. B. 542, C. A., *per* SOMERVELL, L.J., at p. 557, a case under the Factories Act 1937; see, also, *London and North Eastern Rail. Co.* v. *Berriman*, [1946] A. C. 278, H. L., a case under the Prevention of Accidents Rules 1902). Since, however, such legislation is also a remedial measure passed for the protection of workmen, it must be read so as to effect its object so far as the wording fairly and reasonably permits (*Harrison* v. *National Coal Board*, [1951] 1 All E. R. 1102, H. L., *per* LORD PORTER, at p. 1107). (See, further, *Thurogood* v. *Van Den Berghs and Jurgens, Ltd.*, [1951] 2 K. B. 537, at p. 548; *McCarthy* v. *Coldair*, [1951] 2 T. L. R. 1226, and *Norris* v. *Syndic Manufacturing Co.*, [1952] 2 Q. B. 135, at p. 142.)

Many of the regulations made under the statutes considered in this volume include a regulation which specifically defines terms used therein. Where, however, the regulations themselves do not so define a term, and that term is one which appears in a like context in the enabling Act itself, it should receive the same meaning in the regulations as it bears in the Act (*Potts* (*or Riddell*) v. *Reid*, [1943] A. C. 1; [1942] 2 All E. R. 161, H. L., and *Blashill* v. *Chambers* (1884), 14 Q. B. 479, *per* GROVE, J., at p. 485).

Civil liability for breach of statutory duty.—It is well settled that in certain circumstances a breach of statutory duty which results in injury to a person of a class which the statute was designed to protect gives rise to a cause of action on the part of that injured person. The requirements which have to be satisfied before such a cause of action arises are,

first, that the statute, properly construed, was intended to grant a right of action to a class of persons of whom the plaintiff was one; secondly, that the statute has been broken; thirdly, that the plaintiff has suffered damage of a kind against which the statute was designed to give protection and, lastly, that the damage was caused by the breach. The general principles relating to this type of liability are discussed in 36 Halsbury's Laws (3rd Edn.) pp. 449 *et seq.*, and an illuminating discussion of the decided cases is to be found in the judgments delivered in *Solomons* v. *R. Gertzenstein, Ltd.*, [1954] 2 Q. B. 243; [1954] 2 All E. R. 625, C. A. The purpose of the present section of this Introduction is not to set out such general principles as may be said to exist in this branch of the law, but to discuss the narrower question, how far the legislation dealt with in this volume may be said to give rise to a cause of action in a person injured by a breach of its provisions.

In the case of the general safety provisions of that legislation, and cognate provisions of subordinate legislation, it is beyond doubt that a civil right of action is provided (see, for example, *Groves* v. *Lord Wimborne*, [1898] 2 Q. B. 402), and the courts clearly lean in favour of conferring on workmen a right to claim damages for breaches of statutory duty imposed on their employers or on the occupiers of premises in which they work (*per* SOMERVELL, L.J., in *Solomons* v. *R. Gertzenstein, Ltd.*, *supra*, at p. 631). It is not so clear, however, to what extent provisions of that legislation other than safety provisions, such as "health" and "welfare" provisions, fall to be similarly interpreted.

The cases in which these matters have fallen for decision are principally cases upon the provisions of the Factories Act 1937; but they are valid for the provisions of the Factories Act 1961, a consolidating statute, which replace them. The remainder of this section of the General Introduction is devoted to an examination of the factory legislation which, in accordance with the principles discussed under the heading "Statutes in Pari Materia", *supra*, may be a guide to the construction of the cognate provisions of the statutes dealt with in this volume.

With regard to the health provisions of the Factories Acts, in *Ebbs* v. *James Whitson & Co., Ltd.*, [1952] 2 Q. B. 877; [1952] 2 All E. R. 192, C. A., the plaintiff claimed under s. 4 (1) of the 1937 Act (now s. 4 (1) of the 1961 Act), which

deals with the provision of ventilation (compare s. 7 of the Offices, Shops and Railway Premises Act 1963). DENNING, L.J. (at pp. 885; 195) expressly reserved the question whether the provisions of s. 4 and of the other sections of Part I of the Act gave rise to a civil action, and he pointed out that the enforcement of Part I was expressly provided for in ss. 8 and 9. It is, however, to be noted that *McCarthy* v. *Daily Mirror Newspapers, Ltd.*, [1949] 1 All E. R. 801, in which the Court of Appeal accepted without discussion that an action lay for breach of s. 43 (1) of the 1937 Act (now s. 59 (1) of the 1961 Act), a welfare provision, was not cited to the Court in *Ebbs* v. *James Whitson & Co., Ltd., supra.* Despite the reservation of DENNING, L.J., in this case there have since been several decisions in favour of granting a right of action for breach of a health provision, although in one case alone (*Carroll* v. *North British Locomotive Co., Ltd.*, 1957 S. L. T. (Sh. Ct.) 2) was the question expressly discussed. Thus, in *Nicholson* v. *Atlas Steel Foundry and Engineering Co., Ltd.*, [1957] 1 All E. R. 776, H. L., an action was brought for, *inter alia*, breach of s. 4 (1) of the 1937 Act (now s. 4 (1) of the 1961 Act). The House of Lords held that the respondents were liable to the appellant for breach of this section, although no mention of the problem appears in the argument or the speeches. Nor, it appears, was the question raised in the courts below (see the judgment of the Lord Ordinary at 1957 S. C. (H. L.) 45 and of the First Division of the Court of Session at 1957 S. C. (H. L.) 59). Section 4 (1) was also the subject of *Clarkson* v. *Modern Foundries, Ltd.*, [1958] 1 All E. R. 33, in which DONOVAN, J., appears to have awarded damages for a breach of the section. It seems from the report at [1957] 1 W. L. R. 1210, 1212 that *Nicholson* v. *Atlas Steel Foundry and Engineering Co.* was cited to the court; but this is the only indication that the point under discussion was made patent. In *Murray* v. *Walnut Cabinet Works, Ltd.* (1954), *Times*, October 19th, CASSELS, J., found for the plaintiff on the ground both, it seems, of breach of common law duty and of breach of s. 3 of the 1937 Act (now s. 3 of the 1961 Act), which deals with the securing of a reasonable temperature, but on appeal (105 L. J. 41) the Court of Appeal expressed no view on the point under discussion. In the case of s. 5 (1) it must now be regarded as authoritatively decided that a right of civil action is conferred (*Lane* v. *Gloucester Engineering Co., Ltd.*, [1967] 2 All E. R. 293; [1967]

1 W. L. R. 767, C. A.; *Thornton* v. *Fisher and Ludlow, Ltd.*, [1968] 2 All E. R. 241; [1968] 1 W. L. R. 655, C. A.). Finally, in *Carroll* v. *North British Locomotive Co., Ltd., supra*, an action for breach (*inter alia*) of s. 1 (b) of the 1937 Act (now s. 1 (2) (b) of the 1961 Act) Sheriff-Substitute WALKER, after full consideration, doubted the correctness of the reservation of DENNING, L.J., in *Ebbs* v. *James Whitson & Co., Ltd., supra*, and held, on a preliminary plea-in-law, that s. 1 (b) (which deals with the cleanliness of floors) gave rise to a claim in damages. The preponderance of authority is thus now strongly in favour of allowing a civil right of action for breach of a health provision of the Factories Acts.

In considering the welfare provisions of the Acts it is not safe to assume that all the sections which fall under the rubric "Welfare (General Provisions)" (ss. 57 to 62 of the 1961 Act) should receive a similar interpretation so far as civil rights of action are concerned. Thus, in *Reid* v. *Westfield Paper Co., Ltd.*, 1957 S. C. 218, the First Division of the Court of Session considered the effect of s. 42 (1) of the 1937 Act (now s. 58 (1) of the 1961 Act) and Lord President CLYDE said (p. 225):

> "Some of the welfare provisions, such as s. 44, which deals with facilities for sitting, seem to have a purely welfare outlook; others, such as s. 45, which deals with first aid, seem to impinge substantially on matters of health or safety. In the present case I find it unnecessary to decide whether a purely welfare provision could, if breached, involve a claim for damages by a person injured by its breach. In my opinion, s. 42 (1), although primarily directed to protecting welfare, does also involve considerations of health and safety, which this Act is mainly devoted to protecting. If so, its breach could involve civil liability. . . ."

Lord SORN, at p. 228, referring to ss. 41 and 45 (now ss. 57 and 61 of the 1961 Act), said that they seemed to demonstrate that the heading "Welfare" was not used in an exclusive and restricted sense, and that it was capable of covering provisions in which the element of protection of health was present, whilst s. 42 disclosed a purpose beyond that of promoting welfare in the narrow sense. Accordingly, the court held that s. 42 (1) (now s. 58 (1) of the 1961 Act) gave a civil right of action. It is therefore incorrect to generalise upon the welfare provisions. The only other decisions upon them are *McCarthy*

v. *Daily Mirror Newspapers, Ltd.*, *supra*, in which the Court of Appeal accepted without discussion that an action lay for breach of s. 43 (1) of the 1937 Act (now s. 59 (1) of the 1961 Act) and *Barr* v. *Cruickshank & Co., Ltd.* 1958, 74 Sh. Ct. Rep. 218, in which Sheriff-Substitute MURRAY held expressly that a breach of s. 43 (1) of the 1937 Act gave rise to a cause of action. It is thus possible to say that of the welfare sections of the 1961 Act, which are for this purpose ss. 57 to 61 (s. 62 provides for the making of regulations), ss. 58 (1) and 59 (1) give rise to civil liability, whilst the interpretation of the remaining provisions is uncertain. When subordinate legislation contains like provisions these must in this respect, it is submitted, be interpreted in the same sense as those of the Act itself.

With regard to the protective legislation dealt with in this volume, it is submitted that the Agriculture (Poisonous Substances) Act 1952, and subordinate legislation, is wholly "safety" legislation, since its expressed purpose is to protect employees against risks of poisoning. The principle of *Groves* v. *Lord Wimborne*, *supra*, therefore applies. The Agriculture (Safety, Health and Welfare Provisions) Act 1956, and the Offices, Shops and Railway Premises Act 1963, and subordinate legislation, contain provisions, some of which are directed to considerations of safety, some to those of health, and some to those of welfare. In the case of these two statutes the character of each provision is not (as in the case of the Factories Act 1961) indicated by the division of the Act into parts headed "health", "safety" and "welfare", but a comparison with the cognate provisions of the Factories Act 1961 will assist in the formation of a judgment upon the character of any particular provision. The Mineral Workings (Offshore Installations) Act 1971 enables regulations to be made in each of these three spheres. The Railway Employment (Prevention of Accidents) Act 1900 and the Rules made thereunder are, it is submitted, "safety" legislation.

Causation.—It has already been said that in an action for breach of statutory duty the plaintiff must prove that the damage of which he complains was caused by the breach. This general proposition must yield to the words of the statutory provision if that provision in terms places the onus of disproving the causal connection upon the person on whom the

duty lies. Apart, however, from cases where the onus is expressly so placed, the plaintiff must prove his case by the ordinary standard of proof in civil actions: he must make it appear at least that on a balance of probabilities the breach of duty caused or materially contributed to his injury (*Bonnington Castings, Ltd.* v. *Wardlaw*, [1956] A. C. 613; [1956] 1 All E. R. 615, H. L.). The application of this principle has given rise to difficulty in cases where the plaintiff's claim is based upon a failure to provide a protective device. In *Cummings* (*or McWilliams*) v. *Sir William Arrol & Co., Ltd.*, [1962] 1 All E. R. 623, H. L., the widow of a steel erector who had been killed by a fall at a shipbuilding yard sued, *inter alia*, the occupiers of the yard alleging a breach of s. 26 (2) of the Factories Act 1937, in that the occupiers had failed to provide the deceased with a safety belt. The occupiers admitted that no belt had been provided, but alleged that had a belt been provided the deceased would not have worn it, and, therefore, that the failure to provide the belt did not cause the death. This contention was upheld by the House of Lords. The Lord Chancellor, Lord KILMUIR, stated (at p. 627) that there were four steps of causation: (1) a duty to supply a safety belt; (2) a breach; (3) that if there had been a safety belt the deceased would have used it and (4) that if there had been a safety belt the deceased would not have been killed. If the irresistible inference was that the deceased would not have worn a safety belt had it been available, the first two steps in the chain of causation ceased to operate. This case was followed in *Wigley* v. *British Vinegars, Ltd.*, [1962] 3 All E. R. 161, H. L., but was distinguished in *Ross* v. *Associated Portland Cement Manufacturers, Ltd.*, [1964] 2 All E. R. 452; [1964] 1 W. L. R. 768, H. L., where the evidence led to no such inference. In *Corn* v. *Weir's Glass* (*Hanley*), *Ltd.*, [1960] 2 All E. R. 300, the Court of Appeal held that a plaintiff who, in suing for breach of reg. 27 (1) of the Building (Safety, Health and Welfare) Regulations 1948, alleged a failure to provide a hand-rail on a flight of stairs, failed if he could not prove that the presence of a hand-rail would in fact have protected him from injury. In this case DEVLIN, L.J. (at p. 306), considered the position which arose when there were two or more ways in which the occupier might comply with his statutory duty, one of which would, and the others of which would not, have protected the plaintiff. In those

circumstances, he said, the occupier could not rely upon a method which he was unlikely to have used simply because it was within the letter of the regulation. On the other hand, if it could not be said that any one way was more likely to have been chosen than the others, then the plaintiff as a matter of probability failed.

The question of causation is not to be decided by any logical or scientific theory, but by applying common sense to the facts of the particular case (*Stapley* v. *Gypsum Mines, Ltd.*, [1953] A. C. 663, H. L., *per* Lord REID, at p. 681), and the onus resting upon the plaintiff to prove the necessary causal connection is not discharged merely because there was a breach of duty and it is shown to be possible that his injury may have been caused by it (*Bonnington Castings* v. *Wardlaw, supra, per* Lord REID at p. 618). When, however, a breach of duty is proved, that may be said to constitute some *prima facie* evidence of causal connection between the breach and the subsequent damage (*Cummings (or McWilliams)* v. *Sir William Arrol & Co., Ltd., supra, per* Viscount SIMONDS at p. 628).

Breach of Statutory Duty and Negligence.—Many of the statutory provisions with which this volume is concerned are absolute in character; that is to say, negligence is not a necessary ingredient of liability. In such circumstances a consideration is invited of the relationship between liability under such a provision and liability for negligence at common law. Thus, the imposition of a statutory duty does not of itself relieve an employer of his ordinary duty of care in relation to the same subject-matter (*Franklin* v. *Gramophone Co., Ltd.*, [1948] 1 K. B. 542, C. A.); although, in very many cases, it would be difficult, if not impossible, to maintain that an employer who had complied with regulations had been negligent at common law (*ibid., per* SOMERVELL, L.J., at p. 360). On the other hand, in some cases the very existence of the statutory provision may be relied on by the plaintiff as showing that a reasonable man would have foreseen a particular risk, which the statutory provision is designed to eliminate, and may, therefore, be relied on to help establish a duty of care on the part of the employer (*Franklin* v. *Gramophone Co., Ltd., supra, per* SOMERVELL, L.J., at p. 360; *National Coal Board* v. *England*, [1954] A. C. 403; [1954] 1 All E. R. 546, H. L.). However, where the circumstances of the case, although they

nearly approach those to which the statutory provision applies, are in fact outside them, the question of common law negligence must be considered without regard to the statutory provision (*Chipchase* v. *British Titan Products Co., Ltd.*, [1956] 1 Q. B. 545; [1956] 1 All E. R. 613, C. A.).

Persons protected by Safety Legislation.—Subject to the construction of any particular section, the general provisions of the Factories Acts apply to protect all persons working in the factory, whether employed by the occupier or not (*Summers (John) & Sons, Ltd.* v. *Frost*, [1955] A. C. 740; [1955] 1 All E. R. 870, H. L.; *Wigley* v. *British Vinegars, Ltd.*, [1964] A. C. 307; [1962] 3 All E. R. 161, H. L.), but in many instances special regulations under those Acts, either expressly or by implication, apply to protect only a more restricted class of persons. As a general rule, however, where special regulations are expressed to be for the safety of "persons employed" they apply to protect any person employed in the factory, whether employed by the occupier or not (*Massey-Harris-Ferguson (Manufacturing) Ltd.* v. *Piper*, [1956] 2 All E. R. 722); but a fireman called in to deal with a fire at the factory is not a "person employed" (*Hartley* v. *Mayoh & Co.*, [1954] 1 Q. B. 383; [1954] 1 All E. R. 375, C. A.). In the case of the protective legislation dealt with in this volume, the persons protected are in many cases expressly specified. For example, the provisions of the Offices, Shops and Railway Premises Act 1963, which relate to the fencing of exposed parts of machinery, safeguard "every person working in those premises" (*ibid.*, s. 17 (1)). Independent contractors and their servants thus fall within the protection of this section. Where, however, the persons protected are designated with less certainty (as, for example, by the phrase, "persons employed") decisions upon the Factories Acts will, it is submitted, afford guidance in construing the provision in question, in accordance with the principles discussed earlier, in the section, "Statutes in Pari Materia".

A person who is protected by the Act does not lose this protection by being in a part of the premises to which he is not permitted to go (*Westwood* v. *Post Office*, (1973), *Times*, August 1), or by being engaged upon a concern of his own (*Westwood* v. *Post Office, supra; Uddin* v. *Associated Portland Cement Manufacturers, Ltd.*, [1965] 2 Q. B. 582; [1965] 2 All

E. R. 213; C. A.; *Allen* v. *Aeroplane and Motor Aluminium Castings, Ltd.*, [1965] 3 All E. R. 377; [1965] 1 W. L. R. 1244, C. A.).

The provisions of the Offices, Shops and Railway Premises Act 1963 do not, however, so extend as to protect persons (such as customers) who are not employed in connection with the premises; thus, in *Reid* v. *Galbraith's Stores*, 1970 S. L. T. (Notes) 83, a customer who slipped on a leek in a shop was held not entitled to found upon the Act.

Delegation of Statutory Duty.—Where an employer delegates the performance of a duty laid upon him by protective legislation he remains civilly liable to a person injured by breach of that duty (*Lochgelly Iron and Coal Co., Ltd.* v. *M'Mullan*, [1934] A. C. 1), but where the person injured is himself the person to whom the duty was delegated he may, where there has been a definite delegation, be disentitled to recover (*Smith* v. *A. Baveystock & Co. Ltd.*, [1945] 1 All E. R. 531; *Vyner* v. *Waldenberg Brothers Ltd.*, [1946] K. B. 50; [1945] 2 All E. R. 547, C. A.). However, whether the breach by the injured person is of a duty delegated to him by his employer or of a duty imposed upon him by the Act or regulations "the important and fundamental question . . . is not whether there was a delegation, but simply the usual question: Whose fault was it? . . . One has to inquire whether the fault of the employer under the statutory regulations consists of, and is co-extensive with, the wrongful act of the employee. If there is some fault on the part of the employer which goes beyond or is independent of the wrongful act of the employee, and was a cause of the accident, the employer has some liability" (*per* PEARSON, J., in *Ginty* v. *Belmont Building Supplies, Ltd.*, [1959] 1 All E. R. 414). This statement of the law was approved and applied by the Court of Appeal in *McMath* v. *Rimmer Brothers* (*Liverpool*), *Ltd.*, [1961] 3 All E. R. 1154, C. A. and was regarded by the Court of Appeal in *Quinn* v. *J. W. Green* (*Painters*), *Ltd.*, [1965] 3 All E. R. 785, as having been approved by the House of Lords in *Ross* v. *Associated Portland Cement Manufacturers, Ltd.*, [1964] 2 All E. R. 452; [1964] 1 W. L. R. 768, H. L., where, in distinguishing *Ginty's* case on the facts, Lord REID said that, in the context of the question "Whose fault was it?", fault is not necessarily equivalent to blameworthiness. These cases show

that a plaintiff need do no more than prove a breach of an enactment making the factory occupier absolutely liable, and that the breach caused the accident. The onus is then upon the factory occupier to prove that he was not in any way at fault but that the plaintiff was alone to blame. To discharge this onus, the factory occupier must establish that he took all reasonable steps to avoid the breach including, in appropriate cases, steps to acquaint the plaintiff with the provisions of the breached enactment though on the facts of the particular case a failure to take such steps would not constitute negligence at common law (*Boyle* v. *Kodak, Ltd.*, [1969] 2 All E. R. 439, [1969] 1 W. L. R. 661; H. L.). Nevertheless, there may be cases in which an injury suffered by a plaintiff may be held to have been entirely caused by his own fault although there has been a breach of statutory duty on the part of his employer, and although the *Ginty* situation of co-terminous and co-extensive fault does not exist (see *Horne* v. *Lec. Refrigeration, Ltd.*, [1965] 2 All E. R. 898; *Leach* v. *Standard Telephones and Cables, Ltd.*, [1966] 2 All E. R. 523).

PART I

OFFICES, SHOPS AND RAILWAY PREMISES

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INTRODUCTION TO THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

With the passing of this Act statutory control of the conditions of work, which began with the early nineteenth century regulation of the textile industry, received a wide extension, estimated to cover the employment of eight million people in the non-industrial field. It followed—after some fourteen years—the recommendations of the Gowers Committee (which reported in March 1949 (Cmd. 7664)) with regard to shops and offices, but the recommendations concerning the railway industry were given but limited effect and those concerning theatres still await legislation. The present Act superseded the Offices Act 1960, introduced by Mr. Richard Marsh, M.P., as a Private Member's Bill, which enabled the Secretary of State to make regulations for securing the health, safety and welfare of persons employed in offices, but since no regulations were made under that Act its repeal had solely formal effect. The present Act follows the general pattern of the Factories Act 1961, in that it contains both a number of important substantive provisions and extensive powers to make regulations governing matters of detail, and the wording of the Factories Act has been deliberately adhered to where it is relevant to the scope of this Act—not, perhaps, with altogether satisfactory results. This Act, like the Factories Act, although enforceable by criminal process, gives rise to a civil action for breach of statutory duty where the breach is of a provision designed to promote safety (see *Groves* v. *Wimborne* (*Lord*), [1898] 2 Q.B. 402; *Britannic Merthyr Coal Co., Ltd.* v. *David*, [1910] A.C. 74; *Black* v. *Fife Coal Co., Ltd.*, [1912] A.C. 149 and *Westwood* v. *Post Office* (1973), *Times*, 1 August, but as to whether a civil action will lie for breach of those provisions which appear to be designed to promote health or welfare, see the General Introduction to this book. The Act does not, however, extend

to protect a shop customer (*Reid* v. *Galbraith's Stores*, 1970 S.L.T. (notes) 83).

With the exception of certain provisions relating to shops in covered markets the Offices, Shops and Railway Premises Act 1963 has been brought into force by commencement orders made under *ibid.*, s. 91 (2), the effect of which is set out in the notes to each section. Subordinate legislation has already to some extent implemented the purpose of the Act, and such statutory instruments as have so far been made are set out in the following pages.

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

(1963 c. 41)

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An Act to make fresh provision for securing the health, safety and welfare of persons employed to work in office or shop premises and provision for securing the health, safety and welfare of persons employed to work in certain railway premises; to amend certain provisions of the Factories Act 1961; *and for purposes connected with the matters aforesaid.*

[31st July 1963]

Scope of Act

1. Premises to which this Act applies.—(1) The premises to which this Act applies are office premises (*a*), shop premises (*b*) and railway premises (*c*), being (in each case) premises in the case of which persons (*d*) are employed (*e*) to work therein.

(2) In this Act—

(a) "office premises" means a building (*f*) or part (*f*) of a building, being a building or part the sole or principal use of which is as an office or for office purposes (*g*);

(b) "office purposes" includes the purposes of administration, clerical work, handling money and telephone and telegraph operating; and

(c) "clerical work" includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication;

and for the purposes of this Act premises occupied together with office premises for the purposes of the activities (*h*) there carried on shall be treated (*i*) as forming part of the office premises.

(3) In this Act—

(a) "shop premises" means—

(i) a shop (*j*);

(ii) a building (*f*) or part (*f*) of a building, being a building or part which is not a shop but of which the sole or principal use is the carrying on there of retail trade or business (*k*);

(iii) a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale or a part of a building so occupied where goods are so kept, but not including a warehouse (*l*) belonging to the owners, trustees or conservators of a dock, wharf or quay;

(iv) a building to which members of the public are invited to resort for the purpose of delivering there goods for repair or other treatment or of themselves there carrying out repairs to, or other treatment of, goods, or a part of a building to which members of the public are invited to resort for that purpose;

(v) any premises (in this Act referred to as "fuel storage premises") occupied for the purpose of a trade or business which consists of, or includes, the sale of solid fuel, being premises used for the storage of such fuel intended to be sold in the course of that trade or business, but not including dock storage premises or colliery storage premises;

(b) "retail trade or business" (*k*) includes the sale to members of the public of food or drink for immediate consumption, retail sales by auction and the business

of lending books or periodicals for the purpose of gain (*m*);

(c) "solid fuel" means coal, coke and any solid fuel derived from coal or of which coal or coke is a constituent;

(d) "dock storage premises" means fuel storage premises which constitute or are comprised in premises to which certain provisions of the Factories Act 1961 apply (*n*) by virtue of section 125 (1) (docks, etc.) of that Act; and

(e) "colliery storage premises" means fuel storage premises which form part of premises which, for the purposes of the Mines and Quarries Act 1954 (*o*), form part of a mine or quarry, other than premises where persons are regularly employed (*e*) to work by a person other than the owner (as defined by that Act) of the mine or quarry;

and for the purposes of this Act premises occupied together with a shop or with a building or part of a building falling within sub-paragraph (ii), (iii) or (iv) of paragraph (a) above for the purposes of the trade or business carried on in the shop or, as the case may be, the building or part of a building, shall be treated as forming part of the shop or, as the case may be, of the building or part of the building, and premises occupied together with fuel storage premises for the purposes of the activities there carried on (not being office premises) shall be treated as forming part of the fuel storage premises, but for the purposes of this Act office premises comprised in fuel storage premises shall be deemed not to form part of the last-mentioned premises.

(4) In this Act "railway premises" (*p*) means a building (*f*) occupied by railway undertakers (*q*) for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way or a part (*f*) (so occupied) of a building so situate, but does not include—

(a) office or shop premises (*r*);

(b) premises used for the provision of living accommodation for persons employed (*e*) in the undertaking, or hotels;

or

(c) premises wherein are carried on such processes or operations as are mentioned in section 123 (1) (electrical stations) of the Factories Act 1961 (*s*) and for such supply as is therein mentioned.

(5) For the purposes of this Act premises maintained in conjunction with office, shop or railway premises for the purpose of the sale or supply for immediate consumption of food or drink wholly or mainly to persons employed (*e*) to work in the premises in conjunction with which they are maintained shall, if they neither form part of those premises nor are required by the foregoing provisions of this section to be treated as forming part of them, be treated for the purposes of this Act as premises of the class within which fall the premises in conjunction with which they are maintained.

General note. This section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

Sections 2 and 3 exclude from the application of the Act premises in which only employer's relatives or outworkers work, and premises where only 21 man-hours weekly are normally worked.

Special provisions apply with respect to buildings of which part only fall within the definition in s. 1 (see s. 42), with respect to buildings plurally owned (see s. 43) and with respect to contiguous fuel storage premises in single ownership (see s. 44).

With the exception of s. 25 (2) (which relates to the making of regulations with regard to first-aid requirements) nothing in the Act applies to factory premises within the Factories Act 1961 (see s. 85 (1)).

With the exception of s. 75 (3) (which places a limitation upon the application of the Factories Act 1961 to warehouses) nothing in the Act applies to certain premises used for the sale of fish by wholesale (see s. 85 (2)).

Nothing in the Act applies to underground parts of mines within the Mines and Quarries Act 1954 (see s. 85 (3)).

Special provisions apply to premises used for transitory purposes (see s. 86).

(*a*) ***Office premises.*** See sub-ss. (2) and (5).

(*b*) ***Shop premises.*** See sub-ss. (3) and (5).

(*c*) ***Railway premises.*** See sub-ss. (4) and (5).

(*d*) ***Persons.*** Since, by virtue of the Interpretation Act 1889, s. 1 (1) (*b*), the plural includes the singular, premises are not outside the Act merely because only one person is employed to work therein (see *Griffith* v. *Ferrier*, 1952 S.C. (J.) 56, so interpreting the similar words of what is now s. 175 of the Factories Act 1961).

(*e*) ***Employed.*** For definition, see s. 90 (1). For the exception of premises in which only employer's relatives or outworkers work, see

s. 2; for the exception of premises where only 21 man-hours weekly are worked, see s. 3. As to the protection of this Act extending only to employed persons, see the Introduction to this Act at pp. 3, 4.

(*f*) ***Building.*** By s. 90 (1) "building", except in s. 1 (4) (occupation by railway undertakers), includes structure; the term is not further defined. The meaning of the term as used in other legislation has been judicially considered; for example, in relation to public health legislation (see Halsbury's Laws of England, 3rd Edn., vol. 31, pp. 270, 271) and in relation to the factory legislation (see Redgrave's Factories Acts, 22nd Edn., p. 466, note (*b*)). It is thought that the principal difficulty in the interpretation of the words "building or part of a building", in s. 1 (2) (a) of the present Act will arise when it becomes necessary to distinguish between a "building", on the one hand, and a "part of a building", on the other hand. It is submitted that a "building" must have its feet upon the ground, so that in the case of a multi-storey building each storey is a part of a building and not a separate building in itself. Where, however, what outwardly appears to be a single building is divided vertically by party walls, and the various divisions are occupied as separate units without inter-communication, it is thought that each such division will constitute a separate "building" for the purpose of the Act. The question is in any event one of fact and degree, to be decided upon an examination of the circumstances of each particular case.

(*g*) ***Office purposes.*** See sub-s. (2) (b).

(*h*) ***Activities.*** It is not enough that the ancillary premises are occupied for the purposes of the office premises if they are not occupied for the purposes of the activities there carried on.

(*i*) ***Treated as forming part of the office premises.*** This deeming provision only operates when the premises in question are neither a "building . . . the sole or principal use of which is as an office or for office purposes" nor a "part of a building the sole or principal use of which is as an office or for office purposes"; see s. 1 (2) (a).

(*j*) ***Shop.*** This term in not defined in the Act (compare s. 74 (1) of the Shops Act 1950 which defines "shop" for the purposes of that Act as including "any premises where any retail trade or business is carried on"; by s. 74 (1) of that Act, "retail trade or business" includes "the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, the business of lending books or periodicals when carried on for purposes of gain, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement"). The definition in the Shops Act 1950 cannot be applied in construing the word "shop" for the purposes of the present Act, and any attempt to make use of it for that purpose would be misleading. In view of the extended definition of "shop premises" contained in s. 1 (3) (a) of the present Act, the difficulties which have arisen in interpreting the statutory definition of "shop" contained in s. 74 (1) of the Shops Act 1950 seem unlikely to arise.

Since a "shop" is a species of the genus "shop premises" for the purpose of s. 1 (3) (a), it seems clear that nothing can be a "shop" unless it is also "premises". Thus, it would seem that a mobile shop is not a

"shop" within the Act (compare the similar interpretation accorded to s. 74 (1) of the Shops Act 1950 in *Stone* v. *Boreham*, [1959] 1 Q.B. 1; [1958] 2 All E.R. 715, D.C., and see, also, *Kahn* v. *Newberry*, [1959] 2 Q.B. 1; [1959] 2 All E.R. 202, D.C.; *Greenwood* v. *Whelan*, [1967] 1 Q.B. 396; [1967] 1 All E.R. 294 (D.C.) and *Maby* v. *Warwick Corporation*, [1972] 2 Q.B. 242; [1972] 2 All E.R. 1198, D.C.).

In deciding what is a "shop" for the purposes of the Act, it is submitted that once it is clear that there are "premises" the sole remaining question is whether what is being considered is a "shop" in the ordinary and natural sense of the word. "Where words are . . . perfectly familiar, all one can do is to say whether or not one regards them as apt to cover or describe the circumstances in question in any particular case" (*per* SOMERVELL, L.J., in *Bath* v. *British Transport Commission*, [1954] 2 All E.R. 542, at p. 543). It is probably true to say, however, that the carrying on of a retail trade is the hallmark of a "shop" (see *per* TINDAL, C.J., in *R.* v. *Chapman and Alderman* (1843), 7 J.P. 132).

(*k*) ***Retail trade or business.*** "Carrying on" involves a degree of permanency (see *Golder* v. *Thomas Johnston's (Bakers), Ltd.*, 1950 S.L.T. (Sh. Ct.) 50, decided upon the Tenancy of Shops (Scotland) Act 1949). The definition of "retail trade or business" in s. 1 (3) (b) is plainly not intended to be exhaustive (for a discussion of the meaning of the word "includes" in statutory definitions, see *Dilworth* v. *Commissioner of Stamps*, [1899] A.C. 99, P.C.). It is less comprehensive than the corresponding definition in s. 74 (1) of the Shops Act 1950. A retailer is one who deals with customers, as opposed to a wholesaler, who deals only with persons who buy to sell again (*per* Bacon, V.C., in *Treacher & Co., Ltd.* v. *Treacher*, [1874] W.N. 4); and see, further, *Staincross Revenue Officer* v. *Staincross Assessment Committee and Whitehead* (1930), 143 L.T. 525 at p. 567 and *Phillips* v. *Parnaby*, [1934] 2 K.B. 299. The interpretation of the words, "retail trade or business", in s. 74 (1) of the Shops Act 1950 has raised the problem whether they are apt to cover the provision of services as well as the supply of goods. In *M. & F. Frawley, Ltd.* v. *Ve-Ri-Best Manufacturing Co., Ltd.*, [1953] 1 Q.B. 318; [1953] 1 All E.R. 50, C.A., SOMERVELL, L.J., took the view that the word "retail" primarily suggested the selling of goods rather than the selling of services, and whilst both he and JENKINS, L.J., thought that the terms of the definition suggested that a business might be a retail business although it was concerned with matters other than the sale of goods, they also took the view that to satisfy the definition where there was a sale of services the services rendered must be performed in circumstances comparable with those in which a sale of goods is carried on in a retail shop. The Court of Appeal therefore held that the business in issue, which was that of a builder and decorator, fell outside the definition. The dictum of JENKINS, L.J., was considered in *Ilford Corporation* v. *Betterclean (Seven Kings), Ltd.*, [1965] 2 Q.B. 222; [1965] 1 All E.R. 900, D.C., in which PARKER, L.J. (at p. 904) expressed the view that, within certain limits, a "retail business" in the Shops Act 1950 covered the provision of services. These dicta, however, were not followed by the High Court of Justiciary in *Boyd* v. *A. Bell & Sons, Ltd.*, 1969 S.L.T. 156, holding that "retail trade or business" in s. 74 (1) only applied to the selling of goods and holding, accordingly, that premises used for taking in dry cleaning were not a "shop". It will be noted that

the expression, "retail trade or business", in s. 74 (1) of the Shops Act 1950, is used in order to define the word "shop" therein, so that the interpretation of that expression is necessarily coloured by its being linked with the word "shop" (see *M. & F. Frawley, Ltd.* v. *Ve-Ri-Best Manufacturing Co., Ltd., supra*, at p. 323; p. 52). In s. 1 (3) (a) (ii) of the present Act the expression, "retail trade or business", is expressly used in connection with buildings which are not shops, so that there is room for interpreting that expression in a wider sense than it is capable of bearing in the context of the Shops Act 1950.

(*l*) ***Warehouse.*** Such warehouses as are here excepted fall within the provisions of s. 125 of the Factories Act 1961 (see Redgrave's Factories Acts, 22nd Edn., pp. 358 *et seq.*), provided that mechanical power is used in or for the purposes of the warehouse; and by s. 125 thereof certain provisions of the Factories Act 1961, are applied thereto. A transit shed may be a "warehouse" (*Fisher* v. *Port of London Authority*, [1962] 1 All E.R. 458).

(*m*) ***Gain.*** The ordinary meaning of "gain" is acquisition. "Gain is something obtained or acquired. It is not limited to pecuniary gain . . . and still less is it limited to commercial profits . . . " (*per* JESSEL, M.R., in *Ex parte Hargrove & Co.* (1875), 10 Ch. App. 542 at pp. 546, 547, *n*, construing the words "not involving the acquisition of gain by the company" in s. 31 of the Companies Act 1862); see, further, on the construction of the word "gain" in this context, *Greenberg* v. *Cooperstein*, [1926] Ch. 657. The construction of the phrase, "for purposes of gain", in what is now s. 175 (1) of the Factories Act 1961 was considered by the Court of Appeal in *Hendon Corpn.* v. *Stanger*, [1948] 1 All E.R. 377, to include indirect as well as direct gain; see Redgrave's Factories Acts, 22nd Edn., p. 455, note (*i*).

(*n*) ***Premises to which . . . Factories Act 1961 apply.*** The premises referred to in s. 125 (1) are ". . . every dock, wharf or quay (including any warehouse belonging to the owners, trustees or conservators of the dock, wharf or quay, and any line or siding used in connection with and for the purposes of the dock, wharf or quay and not forming part of a railway or tramway) and every other warehouse (not forming part of a factory) in or for the purposes of which mechanical power is used. . ." For the provisions of this section and notes thereon see Redgrave's Factories Acts, 22nd Edn., pp. 358 *et seq.* See, also, the amendment to s. 125 (1) of the Factories Act 1961, made by s. 75 of the present Act.

(*o*) ***Mines and Quarries Act 1954.*** See Halsbury's Laws of England, 3rd Edn., vol. 26, pp. 559, 560.

(*p*) ***Railway premises.*** It is to be noted that, by virtue of s. 85 (1), the Act does not, in general, apply to factory premises for the purposes of the Factories Act 1961. By s. 175 (2) of that Act (see Redgrave's Factories Acts, 22nd Edn., pp. 441, 442), the expression "factory" includes the following premises in which persons are employed in manual labour:

> "(f) except as provided in subsection (10) of this section, any premises in which the construction, reconstruction or repair of locomotives, vehicles or other plant for use for transport purposes

is carried on as ancillary to a transport undertaking or other industrial or commercial undertaking".

By s. 175 (10) of that Act:

"Premises used for the purpose of housing locomotives or vehicles where only cleaning, washing, running repairs or minor adjustments are carried out shall not be deemed to be a factory by reason only of paragraph (f) of subsection (2) of this section, unless they are premises used for the purposes of a railway undertaking where running repairs to locomotives are carried out".

The effect of s. 175 (2) (f), (10) of the Factories Act 1961 is that railway running sheds where running repairs to locomotives are carried out are subject to the provisions of that Act and (by virtue of the Railway Running Sheds Order 1961 (S.I. 1961 No. 1250) and the Railway Running Sheds (No. 1) Regulations 1961 (S.I. 1961 No. 1251)) many of the orders and regulations made under the Factories Acts are extended so as to apply to such running sheds. It follows that such running sheds are excepted from the definition of "railway premises" contained in the present Act.

(*q*) ***Railway undertakers.*** For definition, see s. 90 (1).

(*r*) ***Office or shop premises.*** See s. 1 (2), (3).

(*s*) ***Factories Act 1961.*** The processes, operations and supply mentioned in s. 123 (1) of that Act are "the processes or operations of generating, transforming or converting, or of switching, controlling or otherwise regulating, electrical energy for supply by way of trade, or for supply for the purposes of any transport undertaking or other industrial or commercial undertaking or of any public building or public institution, or for supply to streets or other public places. . . .". For the provisions of this section and notes thereon, see Redgrave's Factories Acts, 22nd Edn., pp. 353 *et seq.* See, also, the amendment to s. 123 (1) of the Factories Act 1961, made by s. 74 of the present Act, p. 170.

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2. Exception for premises in which only employer's relatives or outworkers work.—(1) This Act shall not apply to any premises to which it would, apart from this subsection, apply, if none of the persons employed (*a*) to work in the premises is other than the husband, wife, parent, grandparent, son, daughter, grandchild, brother or sister of the person by whom they are so employed (*a*).

(2) A dwelling shall not, for the purposes of this Act, be taken to constitute or comprise premises to which this Act applies by reason only that a person dwelling there who is employed (*a*) by a person who does not so dwell does there the work that he is employed (*a*) to do in compliance with a term of his contract of service that he shall do it there.

General note. This section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) For definition, see s. 90 (1).

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3. Exception for premises where only 21 man-hours weekly normally worked.—(1) This Act shall not apply to any premises to which it would, apart from this subsection, apply, if the period of time worked (*a*) there during each week (*b*) does not normally exceed twenty-one hours.

(2) For the purposes of this section the period of time worked (*a*) in any premises shall be deemed to be—

(a) as regards a week (*b*) in which one person only is employed (*c*) to work (*a*) in the premises, the period of time worked (*a*) by him there;

(b) as regards a week (*b*) in which two persons or more are so employed, the sum of the periods of time for which respectively those persons work (*a*) there.

(3) The Minister (*d*) may by regulations (*e*) direct that, in relation to premises generally, or any class of premises (*f*), subsection (1) of this section shall have effect with the substitution, for the reference to twenty-one hours, of a reference to such lesser number of hours as may be specified in the regulations.

(*a*) ***Worked; work.*** As to when persons employed by railway undertakers shall be deemed to be employed to work in premises to which the Act applies, see s. 90 (3).

(*b*) ***Week.*** For definition, see s. 90 (1).

(*c*) ***Employed.*** For definition, see s. 90 (1) (4).

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*f*) ***Class of premises.*** See s. 90 (5).

Health, Safety and Welfare of Employees (General Provisions)

4. Cleanliness.—(1) All premises to which this Act applies (*a*), and all furniture, furnishings and fittings in such premises shall be kept in a clean state.

(2) No dirt or refuse shall be allowed to accumulate in any

part of premises to which this Act applies (*a*) in which work, or through which pass, any of the persons employed (*b*) to work in the premises; and the floors of, and any steps comprised in, any such part as aforesaid shall be cleaned not less than once a week (*c*) by washing or, if it is effective and suitable, by sweeping or other method.

(3) The Minister (*d*) may by regulations (*e*) made as respects premises to which this Act applies (*a*), or any class of such premises (*f*), require that, in addition to the taking of the steps whose taking is requisite to secure compliance with the last foregoing subsection, there shall be taken, for the purpose of securing the cleanliness of premises to which the regulations (*e*) apply and of the furniture, furnishings and fittings therein, such steps as may be prescribed by the regulations (*e*).

(4) Neither subsection (2) of this section nor anything in regulations (*e*) under the last foregoing subsection shall be construed as being in derogation of the general obligation imposed by subsection (1) of this section.

(5) Nothing in this section or in regulations (*e*) thereunder shall apply to fuel storage premises (*g*) which are wholly in the open, and, in the case of such premises which are partly in the open, so much of them as is in the open shall, for the purposes of this section and of such regulations (*e*), be treated as not forming part of the premises.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). As to whether a breach of the provisions of this section gives rise to civil liability, see the General Introduction.

Accumulations of dirt or refuse may also constitute a statutory nuisance; see the Public Health Act, 1936, s. 92 (1), and the Public Health (London) Act 1936, s. 82 (1). The latter Act was repealed as from 1st April 1965 and the Public Health Act 1963 applies throughout the Greater London Area; see the London Government Act 1963, s. 93 (1), Sch. 18, Part II, and s. 40.

For special provisions as to the cleanliness of the common parts of buildings, part of which consists of premises within the Act, see s. 42 (1), (2), (5) and s. 43 (1), (2). See also s. 8 (3) (cleanliness of windows and skylights), s. 9 (2) (cleanliness of sanitary conveniences) and s. 10 (2) (cleanliness of washing places).

For the cognate provisions of s. 1 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 24.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1) (4). As to persons employed by railway undertakers, see note (*a*) to s. 3.

(*c*) ***Week.*** For definition, see s. 90 (1).

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*f*) ***Class of premises.*** See s. 90 (5).

(*g*) ***Fuel storage premises.*** For definition, see s. 1 (3) (a) (v).

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5. Overcrowding.—(1) No room comprised in, or constituting, premises to which this Act applies (*a*) shall, while work (*b*) is going on therein, be so overcrowded as to cause risk of injury to the health of persons working therein; and in determining, for the purposes of this subsection, whether any such room is so overcrowded as aforesaid, regard shall be had (amongst other things) not only to the number of persons who may be expected to be working in the room at any time but also to the space in the room occupied by furniture, furnishings, fittings, machinery, plant, equipment, appliances and other things (whether similar to any of those aforesaid or not).

(2) The number of persons habitually employed at a time to work in such a room as aforesaid shall not be such that the quotient derived by dividing by that number the number which expresses in square feet the area of the surface of the floor of the room is less than forty or the quotient derived by dividing by the first-mentioned number the number which expresses in cubic feet the capacity of the room is less than four hundred.

(3) Subsection (2) of this section—

(a) shall not prejudice the general obligation imposed by subsection (1) thereof;

(b) shall not apply to a room to which members of the public are invited to resort; and

(c) shall not, in the case of a room comprised in, or constituting, premises of any class (being a room which at the passing of this Act (*c*) is comprised in, or constitutes, premises to which this Act applies (*a*)), have effect until the expiration of the period of three years (*d*) beginning with the day on which the said

subsection (1) comes into force as respects premises of that class.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

With respect to civil liability, see the General Introduction.

Overcrowding may constitute a statutory nuisance; see the general note to s. 4.

The Minister has power to exempt premises or rooms of any class from the provisions of sub-s. (2) (s. 45 (1)), and the enforcing authority has power to exempt particular premises or rooms from those provisions (s. 46 (1)).

For the cognate provisions of s. 2 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 28.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***Passing of this Act.*** The date is 31st July 1963.

(*d*) ***Period of three years . . .*** In calculating the period of three years, the day from which it runs (1st August 1964) must be included; see *Hare* v. *Gocher*, [1962] 2 Q.B. 641; [1962] 2 All E.R. 763.

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6. Temperature.—(1) Effective provision shall be made for securing and maintaining a reasonable temperature in every room comprised in, or constituting, premises to which this Act applies (*a*), being a room in which persons are employed (*b*) to work (*c*) otherwise than for short periods, but no method shall be used which results in the escape into the air of any such room of any fume (*d*) of such a character and to such extent as to be likely to be injurious or offensive to persons working therein.

(2) Where a substantial proportion of the work (*c*) done in a room to which the foregoing subsection applies does not involve severe physical effort, a temperature of less than 16 degrees Centigrade (which is equivalent to 60.8 degrees Fahrenheit) shall not be deemed, after the first hour, to be a reasonable temperature while work (*c*) is going on.

(3) The foregoing subsections shall not apply—

(a) to a room which comprises, or is comprised in or constitutes, office premises (*e*), being a room to which members of the public are invited to resort, and in which the maintenance of a reasonable temperature is not reasonably practicable (*f*); or

(b) to a room which comprises, or is comprised in or constitutes, shop (*g*) or railway premises (*h*), being a room in which the maintenance of a reasonable temperature is not reasonably practicable (*f*) or would cause deterioration of goods;

but there shall be provided for persons who are employed (*b*) to work (*c*) in a room to which, but for the foregoing provisions of this subsection, subsection (1) of this section would apply, conveniently accessible and effective means of enabling them to warm themselves.

(4) In premises to which this Act applies (*g*) there shall, on each floor on which there is a room to which subsection (1) of this section applies, be provided in a conspicuous place and in such a position as to be easily seen by the persons employed (*b*) to work (*c*) in the premises on that floor a thermometer of a kind suitable for enabling the temperature in any such room on that floor to be readily determined; and a thermometer provided in pursuance of this subsection shall be kept available for use by those persons for that purpose.

(5) The Minister (*i*) may, by regulations (*k*) for premises to which this Act applies (*a*), or for any class of such premises (*l*), prescribe a standard of reasonable temperature (which may vary the standard prescribed by subsection (2) of this section and to which conformity shall be obligatory and a sufficient compliance with subsection (1) of this section so far as it relates to temperature) and prohibit the use of any methods of maintaining a reasonable temperature which, in his opinion (*m*), are likely to be injurious to the persons employed (*b*), and direct that thermometers shall be provided and maintained in specified places and positions in addition to any required by subsection (4) of this section to be provided.

(6) It shall be the duty of the employer of persons for whom means of enabling them to warm themselves are provided in pursuance of subsection (3) of this section to afford them reasonable opportunities for using those means, and if he fails so to do he shall be guilty of an offence (*n*).

(7) In this section "fume" includes gas or vapour.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act

1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)), and replaces s. 38 (1) (b) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2). With respect to civil liability, see the General Introduction, and, in particular, *Murray* v. *Walnut Cabinet Works, Ltd.* (1954), 105 L. Jo. 41, in which CASSELS, J., held (it appears) that a breach of the corresponding provision of the Factories Act 1937 gave rise to civil liability. On appeal, the Court of Appeal expressed no view on the matter (see 105 L. Jo. 41).

The Minister has power to exempt premises or rooms of any class from the provisions of this section (s. 45 (1)), and the enforcing authority has power to exempt particular premises or rooms from those provisions (s. 46 (1)). For an exception relating to office premises at building and engineering sites see the Offices, Shops and Railway Premises Act 1963 (Exemption No. 1) Order 1964 (S.I. 1964 No. 964), printed below.

For the cognate provisions of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 30.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition see s. 90 (1) (4).

(*c*) ***Work; working.*** See note (*a*) to s. 3.

(*d*) ***Fume.*** See sub-s. (7).

(*e*) ***Office premises.*** See s. 1 (2), (5).

(*f*) ***Reasonably practicable.*** In the present Act, as in the Factories Act, 1961 and other protective legislation, an obligation is frequently qualified by the phrase, "so far as reasonably practicable", or by the phrase, "so far as practicable". Each of these phrases affects in a different manner the obligation which it qualifies. "Reasonably practicable" is a narrower term than "physically possible", and implies that a computation must be made in which the *quantum* of risk is placed in one scale and the sacrifice involved in the measures necessary for averting the risk (whether in money, time or trouble) is placed in the other, and that, if it be shown that there is a gross disproportion between them—the risk being insignificant in relation to the sacrifice—the defendants discharge the onus on them. Moreover, this computation falls to be made by the owner at a point of time anterior to the accident (see *per* ASQUITH, L.J., in *Edwards* v. *National Coal Board*, [1949] 1 K.B. 704; [1949] 1 All E.R. 743, C.A., at p. 747, a case upon the interpretation of s. 102 (8) of the Coal Mines Act 1911). This construction of "reasonably practicable" was followed in *McCarthy* v. *Coldair, Ltd.*, [1951] 2 T.L.R. 1226, C.A., and was approved in *Marshall* v. *Gotham Co., Ltd.*, [1954] A.C. 360; [1954] 1 All E.R. 937, H.L., *per* Lord REID at p. 373; p. 942 and, *semble*, per Lord OAKSEY at p. 370; p. 939.

Where the statutory obligation is qualified solely by the word "practicable" a stricter standard is imposed. Measures may be "practicable" which are not "reasonably practicable" (*per* Lord REID in *Marshall* v. *Gotham Co., Ltd., supra*, at 373; p. 942), but, none the less, "practicable" means something more than physically possible. The measures must be possible in the light of current knowledge and invention (see *per* PARKER, J., in *Adsett* v. *K. & L. Steelfounders and Engineers, Ltd.*, [1953] 1 All E.R. 97, *n.*, approved by the Court of Appeal at [1953] 2 All E.R. 320). See also *per* PARKER, L.C.J., in *Moorcroft* v. *Thomas Powles & Sons, Ltd.*, [1962] 3 All E.R. 741, D.C., at p. 746. In *Jayne* v. *National*

Coal Board, [1963] 2 All E.R. 220 (decided upon s. 157 of the Mines & Quarries Act 1954) VEALE, J., held that "impracticability" was a conception different from that of impossibility: "the latter is absolute, the former introduces at all events some degree of reason and involves at all events some regard for practice". However, the fact that the risks involved in taking the relevant precaution may outweigh the benefits thereby achieved does not make the taking of that precaution "impracticable" (*Boyton* v. *Willment Brothers, Ltd.*, [1971] 3 All E.R. 624; [1971] 1 W.L.R. 1625, C.A.).

The onus of proving that compliance with a statutory obligation is not "reasonably practicable" lies upon the occupier, so that the plaintiff need neither aver nor prove that it was reasonably practicable for the occupier to comply with it (*Nimmo* v. *Alexander Cowan & Sons, Ltd.*, [1968] A.C. 107; [1967] 3 All E.R. 187, H.L.). Although *Nimmo's* case turned upon the construction of s. 29 (1) of the Factories Act 1961 in which the qualifying phrase is "reasonably practicable", it is plain that the onus is likewise on the occupier where the qualifying phrase is "practicable".

(*g*) ***Shop premises.*** See s. 1 (3), (5).

(*h*) ***Railway premises.*** See s. 1 (4), (5).

(*i*) ***The Minister.*** For definition, see s. 90 (1).

(*k*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*l*) ***Class of premises.*** See s. 90 (5).

(*m*) ***Opinion.*** The Minister, acting in good faith, is the sole judge of the matter in question; cf. *Allcroft* v. *London* (*Lord Bishop*), [1891] A.C. 666 and *Re City of Plymouth* (*City Centre*) *Declaratory Order, 1946*, *Robinson* v. *Minister of Town and Country Planning*, [1947] K.B. 702; [1947] 1 All E.R. 851; C.A. See, however, in particular, *Ross-Clunis* v. *Papadopoullos*, [1958] 2 All E.R. 23, P.C. and *Customs and Excise Comrs.* v. *Cure and Deeley, Ltd.*, [1962] 1 Q.B. 340; [1961] 3 All E.R. 641; and note s. 80 (2).

(*n*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1); and note sub-s. (6) of this section.

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 (EXEMPTION No. 1) ORDER 1964

(S.I. 1964 No. 964)

Dated 25th June 1964

The Minister of Labour—

(a) by virtue of the powers conferred on him by section 45 of the Offices, Shops and Railway Premises Act 1963 (hereinafter in this Order referred to as "the Act") and of all other powers enabling him in that behalf; and

(b) after consulting, pursuant to section 45 (4) of the Act, organisations appearing to him to be representative of workers concerned and employers concerned, respectively, and it appearing to him that there are no other persons concerned;

hereby makes the following Order:—

1.—(1) This Order may be cited as the Offices, Shops and Railway Premises Act 1963 (Exemption No. 1) Order 1964 and shall come into operation on 1st August 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. The Minister of Labour hereby exempts the following class of premises, that is to say, office premises to which the Act applies, being premises erected at, or adjacent to, a place where there are carried on operations to which section 127 (1) (building operations and works of engineering construction) of the Factories Act 1961 applies or works to which that section applies, and erected for the purpose of, or in connection with, the operations or works—

(a) from the requirements imposed by section 6 (which relates to temperature) of the Act, subject to the conditions specified in Article 3 of this Order; and

(b) from so much of section 10 (1) (which relates to washing facilities) of the Act as requires water supplied to be running water.

3. The conditions referred to in Article 2 (a) of this Order are—

(a) that there shall be provided for persons who are employed to work in any premises of a class to which this Order applies conveniently accessible and effective means of enabling them to warm themselves:

(b) that the persons for whom means of enabling them to warm themselves are provided in pursuance of this Order shall be afforded reasonable opportunities for using those means; and

(c) that no method of providing means of enabling persons to warm themselves shall be used which results in the escape into the air of any such premises as aforesaid of any fume (including gas or vapour) of such a character and to such extent as to be likely to be injurious or offensive to persons working therein.

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7. Ventilation.—(1) Effective and suitable provision shall be made for securing and maintaining, by the circulation of adequate supplies of fresh or artificially purified air, the ventilation of every room comprised in, or constituting, premises to which this Act applies (*a*), being a room in which persons are employed (*b*) to work (*c*).

(2) The Minister (*d*) may by regulations (*e*) prescribe, for premises to which this Act applies (*a*) or for any class of such premises (*f*), a standard of adequate ventilation conformity to which shall be obligatory and a sufficient compliance with the foregoing subsection.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into

operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). It replaces s. 38 (1) (a) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

With respect to civil liability, see the General Introduction. It is established that the ventilation provisions of the Factories Act 1961 give rise to such liability (*Nicholson* v. *Atlas Steel Foundry and Engineering Co., Ltd.*, [1957] 1 All E.R. 776).

Lack of ventilation may constitute a statutory nuisance; see the general note to s. 4.

See also s. 9 (2) (ventilation of sanitary conveniences).

For the cognate provisions of s. 4 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 31.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*f*) ***Class of premises.*** See s. 90 (5).

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8. Lighting.—(1) Effective provision shall be made for securing and maintaining, in every part of premises to which this Act applies (*a*) in which persons are working (*b*) or passing, sufficient and suitable lighting, whether natural or artificial.

(2) The Minister (*c*) may by regulations (*d*) made as respects premises to which this Act applies (*a*), or any class of such premises (*e*), prescribe a standard of lighting conformity to which shall be obligatory and a sufficient compliance with the foregoing subsection.

(3) All glazed windows and skylights used for the lighting of any part of premises to which this Act applies (*a*), in which work (*b*), or through which pass, any of the persons employed (*f*) to work (*b*) in the premises shall, so far as reasonably practicable (*g*), be kept clean on both the inner and outer surfaces and free from obstruction; but this subsection shall not affect the white-washing or shading of windows or skylights for the purpose of mitigating heat or glare.

(4) All apparatus installed at premises to which this Act applies (*a*) for producing artificial lighting thereat in parts in which the securing of lighting is required by this section to be provided for shall be properly maintained (*h*).

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). It replaces s. 38 (3) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

A breach of s. 8 (1) gives rise to a civil remedy (*Thornton* v. *Fisher and Ludlow, Ltd.*, [1968] 2 All E.R. 241; [1968] 1 W.L.R. 655, C.A.; *Lane* v. *Gloucester Engineering Co., Ltd.*, [1967] 2 All E.R. 293; [1967] 1 W.L.R. 767, C.A., cases decided upon the similar provisions of s. 5 (1) of the Factories Act 1961).

See also, s. 9 (2) (lighting of sanitary conveniences) and s. 10 (2) (lighting of washing places).

For special provisions as to the lighting of the common parts of buildings, part of which consists of premises to which this Act applies, see ss. 42 (1), (3), (5), and 43 (1), (2).

For the cognate provisions of s. 5 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 35.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Working; work.*** See note (*a*) to s. 3.

(*c*) ***The Minister.*** For definition, see s. 91 (1).

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made; an advisory publication, "Lighting in Offices, Shops and Railway Premises" has, however, been issued by the Department of Employment.

(*e*) ***Class of premises.*** See s. 90 (5).

(*f*) ***Employed.*** For definition, see s. 90 (1), (4).

(*g*) ***Reasonably practicable.*** See note (*f*) to s. 6.

(*h*) ***Properly maintained.*** In s. 22 (1) of the Factories Act 1937 (now s. 22 (1) of the Factories Act 1961) this expression imposes an absolute obligation to "maintain in an efficient state, in efficient working order and in good repair"; see *Galashiels Gas Co., Ltd.* v. *O'Donnell (or Millar)*, [1949] A.C. 275; [1949] 1 All E.R. 319, H.L. Although this decision is based upon the definition of "maintained" in s. 152 (1) of the Factories Act 1937 (now s. 176 (1) of the Factories Act 1961) and this Act contains no similar definition, it is submitted that the obligation properly to maintain is here also an absolute one and "describes a result to be achieved rather than the means of achieving it" (*per* Lord MACDERMOTT in *Galashiels Gas Co., Ltd.* v. *O'Donnell (or Millar)*, *supra*, at pp. 287; p. 324).

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9. Sanitary conveniences.—(1) There shall, in the case of premises to which this Act applies (*a*), be provided, at places conveniently accessible to the persons employed (*b*) to work (*c*) in the premises, suitable and sufficient sanitary conveniences for their use.

(2) Conveniences provided in pursuance of the foregoing subsection shall be kept clean and properly maintained (*d*) and effective provision shall be made for lighting and ventilating them.

(3) The Minister may make regulations determining for premises to which this Act applies (*a*), or for any class of such premises (*e*), what is suitable and sufficient provision for the purposes of subsection (1) of this section.

(4) Regulations (*f*) under this section may provide that, where persons of both sexes are employed (*b*) to work (*c*) in premises to which the regulations apply, provision shall be deemed not to be suitable for the purposes of subsection (1) of this section unless it affords proper separate accommodation for persons of each sex.

(5) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed (*b*) to work (*c*) in the premises to have the use of sanitary conveniences provided for the use of others, being conveniences whose provision would have constituted compliance with that subsection had they been provided in pursuance thereof for the first-mentioned persons and with respect to which the requirements of subsection (2) of this section are satisfied.

(6) Neither sections 44 to 46 of the Public Health Act 1936 nor section 29 of the Public Health (Scotland) Act 1897 *nor section 106 of the Public Health (London) Act 1936* (which relate to the provision and repair of sanitary conveniences for factories, &c.) shall apply to premises to which this Act applies.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). It replaces s. 38 (2) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

The words in italics in sub. s. (6) were repealed as from 1st April 1965 by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

With respect to civil liability, see the General Introduction.

The Minister has power to exempt premises of any class from the provisions of this section (s. 45 (1)), and the enforcing authority has power to exempt particular premises from those provisions (s. 46 (1)). The Minister has exempted certain small buildings and structures used for

retail sales and situated in certain public open spaces or on or near beaches (see the Offices, Shops and Railway Premises Act 1963 (Exemption No. 7) Order 1968, printed at p. 33).

For the cognate provisions of s. 7 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 40.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***Properly maintained.*** See note (*h*) to s. 8.

(*e*) ***Class of premises.*** See s. 90 (5).

(*f*) ***Regulations.*** As to the making of regulations, see s. 80. The following regulations have been made:—

THE SANITARY CONVENIENCES REGULATIONS 1964

(S.I. 1964 No. 966)

Dated 25th June 1964.

The Minister of Labour by virtue of the powers conferred on him by sections 9 and 80 (3) of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Sanitary Conveniences Regulations 1964 and shall come into operation on 1st January 1966.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"chemical closet" means a closet having a receptacle for the reception of faecal matter and its deodorisation by the use of suitable chemicals;

"drainage system" means a drainage system connected to a sewer, to a cesspool or to a settlement tank or other tank for the reception or disposal of foul matter;

"urinal" means a urinal which is connected to a drainage system and which has provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action; and

"watercloset" means a closet which has a separate fixed receptacle connected to a drainage system and separate provision for flushing from a supply of clean water either by the operation of mechanism or by automatic action.

Application of Regulations

2.—(1) Subject to paragraph (2) of this Regulation, these Regulations shall apply to all office premises, shop premises and railway premises to which the Act applies.

(2) Nothing in these Regulations shall apply to any premises to which the Act applies which are aggregated in a market, being either—

(a) a market held by virtue of a grant from the Crown or of prescription or under statutory authority and which is maintained or regulated by a local or other authority;

(b) any market (other than as aforesaid) held in a market place of which the sole or principal use is for and in connection with the sale of horticultural produce by wholesale; or

(c) any market (other than a market specified in sub-paragraph (a) or (b) of this paragraph) which is a covered market place to which section 51 (power to adapt Act in relation to covered markets) of the Act relates.

Provision of sanitary conveniences.

3.—(1) Except as otherwise provided in these Regulations, in the case of premises to which these Regulations apply the provision of sanitary conveniences for the use of persons employed to work therein shall not be suitable and sufficient provision for the purposes of section 9 (1) of the Act—

(a) unless provision is made—

(i) in the case of premises other than those to which sub-paragraph (ii) of this paragraph applies, in accordance with the appropriate provisions of Part I of the Schedule to these Regulations (which relates to the provision of *waterclosets* and *urinals*); or

(ii) where it is not reasonably practicable in the case of any premises to provide a *drainage system* for, and a supply of clean water for flushing, *waterclosets* and *urinals*, in accordance with the appropriate provisions of Part II of the said Schedule (which relates to the provision of *chemical closets*); and

(b) unless the following provisions of these Regulations are observed.

(2) Sanitary conveniences available for use by all members of the public (or all members of the public of the same sex) and provided by a county council or local authority by virtue of powers contained in any enactment shall not constitute the provision of suitable and sufficient sanitary conveniences for the purposes of section 9 (1) of the Act.

(3) Subject to paragraph 4 of this Regulation, in reckoning, for the purposes of Regulations 4, 5 and 9 and paragraphs 1 (a), 2, 4 (a) and 5 of the said Schedule, a number of persons, no account shall be taken of any person whose daily hours of work in the premises do not normally exceed two.

(4) In its application to persons employed by railway undertakers, who, by virtue of section 90 (3) of the Act, are deemed to be employed

to work in the premises at which the general control of the doing of their work is exercised, the last foregoing paragraph shall have effect as if the expression "in the premises" were omitted.

Sanitary conveniences the use of which is shared

4.—(1) Where in the case of any premises to which these Regulations apply—

(a) there are in operation arrangements made in pursuance of section 9 (5) of the Act for enabling all or any of the persons employed to work in the premises to have the use of sanitary conveniences provided for the use of others; or

(b) sanitary conveniences provided for the use of all or any of the persons employed to work in the premises are made available for regular use by other persons (not being members of the public);

then in either of such cases, in determining the number of sanitary conveniences required by these Regulations to be provided in the case of the said premises for the said employed persons, the total number of persons for whose regular use the said sanitary conveniences are made available during the periods during which persons are employed to work in the said premises shall be treated as if that were the number of persons regularly employed to work in the said premises at any one time.

(2) Where in any of the following cases, that is to say—

(a) in the case of a building to which section 42 of the Act applies containing two sets or more of premises to which the Act applies;

(b) in the case of a part in single ownership of a building to which section 43 of the Act applies containing two sets or more of premises to which the Act applies; or

(c) in the case of a parcel of land in single ownership containing two sets or more of fuel storage premises to which section 44 of the Act applies;

all or any of the persons employed to work in any two sets or more of any such premises have the use of the same sanitary conveniences provided in pursuance of section 9 of the Act, the total number of the persons regularly so employed at any one time for whose use the conveniences are provided shall, for the purpose of applying these Regulations, be treated as if that were a number of persons all of whom are employed to work in one set of premises to which the Act applies.

Sanitary conveniences used by the public

5. Where in the case of any premises to which these Regulations apply in which the number of persons employed to work therein at any one time regularly exceeds ten, the sanitary conveniences provided for the use of, or used by arrangements by, all or any of such persons are also ordinarily made available for general use by members of the public resorting to the premises, the number of *waterclosets* or *chemical closets* (as the case may be) required by the other provisions of these Regulations to be provided, or to be provided separately according to their sex (as the case may be), for the use of those persons shall in every case be increased by one.

Situation of sanitary conveniences

6.—(1) No sanitary convenience provided in pursuance of these Regulations shall be situated in any room in which any person (other than a lavatory attendant) is employed to work.

(2) Except as provided in paragraph (3) of this Regulation, no *watercloset* and *chemical closet*, no accommodation in which a *urinal* is provided and no accommodation containing a *watercloset* or *chemical closet* which, in either case, is not wholly enclosed shall be so situated that access to it is obtained directly from any room in which any person (other than a lavatory attendant) is employed to work.

(3) The requirements of paragraph (2) of this Regulation shall not apply where—

(a) it is not reasonably practicable to comply with such requirements in the case of any *watercloset*, *chemical closet* or accommodation of any kind referred to in the said paragraph (as the case may be); and

(b) the *watercloset*, *chemical closet* or accommodation (as the case may be) was first installed or constructed before the date of the making of these Regulations in a building for use therein;

and in any such case the *watercloset*, *chemical closet* or accommodation shall be provided with effective mechanical means of ventilation which shall discharge directly into the open air and which shall be kept in operation during the periods during which any person is employed to work in the room from which access is obtained directly to the *watercloset*, *chemical closet* or accommodation (as the case may be).

(4) Any enclosed space between a *watercloset*, *chemical closet* or accommodation where a *urinal* is provided and any room in which any person (other than a lavatory attendant) is employed to work shall be provided with effective means of ventilation.

Protection and privacy of sanitary conveniences

7.—(1) All accommodation where any *watercloset*, *chemical closet* or *urinal* is provided in pursuance of these Regulations shall be covered to an extent sufficient to ensure protection from the weather for persons using it.

(2) Every *watercloset* and *chemical closet* provided in pursuance of these Regulations shall be enclosed to an extent sufficient to ensure privacy and be fitted with a suitable door and door fastening.

(3) Every *urinal* provided in pursuance of these Regulations shall be so placed or so screened as not to be visible from outside the accommodation where the *urinal* is situated.

Marking of sanitary accommodation

8. Where in accordance with these Regulations separate accommodation is provided for persons of each sex, the accommodation shall be clearly marked to show for persons of which sex it is so provided.

Disposal of sanitary dressings

9.—(1) Where in any case the total number of female persons (not being members of the public) for whose regular use sanitary conveniences are made available exceeds ten, suitable and effective means for the disposal of sanitary dressings shall be provided.

(2) All means provided for the disposal of sanitary dressings in accordance with the foregoing paragraph of this Regulation shall be constantly maintained in proper condition and where the means provided consist of or include bins the contents of the bins shall be disposed of at suitable intervals.

SCHEDULE

Regulation 3

PART I

WATERCLOSETS AND URINALS TO BE PROVIDED IN ACCORDANCE WITH SECTION 9 OF THE ACT

1. In the case of premises (whether or not persons of both sexes are employed to work therein) where—

(*a*) the number of persons employed to work therein does not regularly exceed five at any one time; or

(*b*) of the number of persons regularly employed to work therein there is none whose daily hours of work in the premises normally exceed two;

one *watercloset*.

2. In the case of premises other than premises to which paragraph 1 of this Schedule applies—accommodation in accordance with the following scales, which accommodation shall be provided separately for persons of each sex—

(*a*) for females, and

(*b*) for males (where *urinal* accommodation is not provided in accordance with the scale set out in sub-paragraph (*c*) of this paragraph)—

Number of persons of each sex regularly employed to work in the premises at any one time	*Number of watercloset*
1 to 15	1
16 to 30	2
31 to 50	3
51 to 75	4
76 to 100	5
Exceeding 100	5, with the addition of one for every unit of 25 persons by which the number of persons exceeds 100 (any fraction of a unit of 25 persons being treated as one).

(*c*) for males (where urinal accommodation is provided)—

Number of male persons regularly employed to work in the premises at any one time	*Number of watercloset*s	*Units of urinal accommodation*
1 to 15	1	—
16 to 20	1	1
21 to 30	2	1
31 to 45	2	2
46 to 60	3	2
61 to 75	3	3
76 to 90	4	3
91 to 100	4	4
Exceeding 100	4	4

with the addition of one sanitary convenience (being either a *watercloset* or a unit of *urinal* accommodation) for every unit of 25 persons by which the number of persons exceeds 100 (any fraction of a unit of 25 persons being treated as one) of which additional number of sanitary conveniences not less than three-quarters shall be *watercloset*s (any fraction being treated as one):

3. For the purposes of this Part of this Schedule, the expression "unit of urinal accommodation" means one stall of a *urinal* or, where stalls are not provided, two feet of space of a *urinal*.

PART II

CHEMICAL CLOSETS TO BE PROVIDED IN ACCORDANCE WITH SECTION 9 OF THE ACT

4. In the case of premises (whether or not persons of both sexes are employed to work therein) where—

(*a*) the number of persons employed to work therein does not regularly exceed five at any one time; or

(*b*) of the number of persons regularly employed to work therein there is none whose daily hours of work in the premises normally exceed two;

one *chemical closet*.

5. In the case of premises other than premises to which paragraph 4 of this Schedule applies—accommodation in accordance with the following scales, which accommodation shall be provided separately for persons of each sex—

Number of persons of each sex regularly employed to work in the premises at any one time	*Number of chemical closets*
1 to 15	1
16 to 30	2
31 to 50	3
51 to 75	4
76 to 100	5
Exceeding 100	5, with the addition of one for every unit of 25 persons by which the number of persons exceeds 100 (any fraction of a unit of 25 persons being treated as one).

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 (EXEMPTION NO. 7) ORDER 1968

(S.I. 1968 No. 1947)

Dated 6th December 1968, *made by the Secretary of State under s.* 45 *of the Offices, Shops and Railway Premises Act* 1963 *and all other enabling powers.*

1.—(1) This Order may be cited as the Offices, Shops and Railway Premises Act 1963 (Exemption No. 7) Order 1968 and shall come into operation on 1st January 1969.

(2) The Offices, Shops and Railway Premises Act 1963 (Exemption No. 3) Order 1965 is hereby revoked.

(3) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament, and as if this Order and the Order hereby revoked were Acts of Parliament.

(4) For the purposes of this Order "building" includes structure.

2. The Secretary of State hereby exempts the class of premises specified in Article 3 of this Order from the requirements imposed by section 9 (which relates to sanitary conveniences) of the Act, subject to the conditions specified in Article 4 of this Order.

3. Article 2 of this Order applies to *buildings* in the case of which all the following circumstances exist, that is to say—

(a) that they consist of one room only;

(b) that their floor area does not exceed one hundred square feet;

(c) that they do not form part of a larger *building* and are unconnected with and separate from any other *building*;

(d) that members of the public are not permitted to enter therein;

(e) that they are used solely or principally for the purpose of retail sales (including the sale to members of the public of food or drink for immediate consumption);

(f) that they are situated in a public park, garden, pleasure ground, ornamental enclosure or recreation ground, or in public grounds

being or containing any place of historic, architectural, artistic or similar interest, or on a heath or common, or on or immediately adjacent to any public walk or promenade by sea, river or lake, or in a public open space similar to any of the foregoing, or on or in the immediate vicinity of a beach; and

(g) that members of the public are admitted to the place where the *building* is situated for the purposes of recreation and are able to resort to the *building* without payment for admission to that place.

4. The conditions referred to in Article 2 of this Order are the following, that is to say—

(a) that suitable and conveniently accessible sanitary conveniences (whether or not they are sanitary conveniences available for use by all members of the public, or all members of the public of the same sex, and whether or not provided by a county council or local authority by virtue of powers contained in any enactment) shall be available for use by persons employed to work in any premises of the class to which Article 2 of this Order applies;

(b) that the said sanitary conveniences shall be kept clean and properly maintained and that effective provision shall be made for lighting and ventilating them;

(c) that the accommodation in which the said sanitary conveniences are situated shall be covered to an extent sufficient to ensure protection from the weather for persons using them;

(d) that every such sanitary convenience (other than urinals) shall be enclosed to an extent sufficient to ensure privacy and be fitted with a suitable door and door fastening;

(e) that every urinal shall be so placed or so screened as not to be visible outside the accommodation where the urinal is situated;

(f) except in the case of sanitary conveniences which are not available for general use by members of the public and are not regularly available for use by more than five persons, that there shall be separate accommodation available for persons of each sex; and

(g) that the occupier of any premises of the class to which Article 2 of this Order applies shall pay or discharge on behalf of the persons employed to work in those premises or shall refund to them any charge in respect of the use of the said sanitary conveniences.

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10. Washing facilities.—(1) There shall, in the case of premises to which this Act applies (*a*), be provided, at places conveniently accessible to the persons employed (*b*) to work (*c*) in the premises, suitable and sufficient washing facilities, including a supply of clean, running hot and cold or warm water and, in addition, soap and clean towels or other suitable means of cleaning or drying.

(2) Every place where facilities are provided in pursuance of this section shall be provided with effective means of lighting

it and be kept clean and in orderly condition, and all apparatus therein for the purpose of washing or drying shall be kept clean and be properly maintained (*d*).

(3) The Minister (*e*) may make regulations (*f*) determining, for premises to which this Act applies (*a*), or for any class of such premises (*g*), what is suitable and sufficient provision for the purposes of subsection (1) of this section.

(4) Regulations (*f*) under this section may provide that, where persons of both sexes are employed (*b*) to work (*c*) in premises to which the regulations apply, provision shall be deemed not to be suitable for the purposes of subsection (1) of this section unless it affords proper separate accommodation for persons of each sex.

(5) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed (*b*) to work (*c*) in the premises to have the use of washing facilities provided for the use of others, being facilities whose provision would have constituted compliance with that subsection had they been provided in pursuance thereof for the first-mentioned persons and which are provided at a place with respect to which the requirements of subsection (2) of this section are satisfied.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). It replaces s. 38 (4) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

With respect to civil liability, see the General Introduction, and, in particular, *Reid* v. *The Westfield Paper Co., Ltd.*, 1957 S.C. 218, in which the Inner House of the Court of Session decided that a pursuer could recover damages in respect of dermatitis caused by a breach of the corresponding provisions of the Factories Act 1937.

The Minister has power to exempt premises of any class from the provisions of this section (s. 45 (1)), and the enforcing authority has power to exempt particular premises from the requirement to supply running water (s. 46 (2)). The Minister has exempted (i) certain railway signal boxes from some of the requirements of s. 10 (see the Offices, Shops and Railway Premises Act 1963 (Exemption No. 10) Order 1972, printed at p. 41) and (ii) office premises at building and engineering sites from so much of s. 10 (1) as requires running water to be supplied (see the Offices, Shops and Railway Premises Act 1963 (Exemption No. 1) Order 1964 (S.I. 1964 No. 964), printed at p. 22).

For the cognate provisions of s. 58 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 199.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***Properly maintained.*** See note (*h*) to s. 8.

(*e*) ***The Minister.*** For definition, see s. 90 (1).

(*f*) ***Regulations.*** As to the making of regulations, see s. 80. The Washing Facilities Regulations 1964 have been made under this section and are printed below.

(*g*) ***Class of premises.*** See s. 90 (5).

THE WASHING FACILITIES REGULATIONS 1964
(S.I. 1964 No. 965)

Dated 25th June 1964

The Minister of Labour by virtue of the powers conferred on him by sections 10 and 80 (3) of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Washing Facilities Regulations 1964 and shall come into operation on 1st January 1966.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"trough" means a trough measuring internally at least four feet over its longest or widest part with a smooth impervious surface and fitted with an unplugged waste pipe and having a supply of warm water laid on at points above the trough and at suitable intervals of not more than two feet;

"unit of trough or washing fountain accommodation" means two feet of length of a *trough* or, in the cases of circular or oval *troughs* and *washing fountains*, two feet of the circumference of the *trough* or fountain;

"wash-basin" means a fixed basin with a smooth impervious surface, having a supply of clean running hot and cold or warm water and fitted with a waste pipe and (except where the supply of water is from a spray tap) with a plug;

"wash-bowl" includes any water container suitable for use as a washing facility; and

"washing fountain" means a washing fountain measuring internally at least three feet over its widest part, with a smooth impervious surface and fitted with an unplugged waste pipe and having a supply of running warm water.

Application of Regulations

2.—(1) Subject to paragraph (2) of this Regulation, these Regulations shall apply to all office premises, shop premises and railway premises to which the Act applies.

(2) Nothing in these Regulations shall apply to any premises to which the Act applies which are aggregated in a market, being either—

(a) a market held by virtue of a grant from the Crown or of prescription or under statutory authority and which is maintained or regulated by a local or other authority;

(b) any market (other than as aforesaid) held in a market place of which the sole or principal use is for and in connection with the sale of horticultural produce by wholesale; or

(c) any market (other than a market specified in sub-paragraph (a) or (b) of this paragraph) which is a covered market place to which section 51 (power to adapt Act in relation to covered markets) of the Act relates.

Provision of washing facilities

3.—(1) Except as otherwise provided in these Regulations, in the case of premises to which these Regulations apply the provision of washing facilities for the use of persons employed to work therein shall not be suitable and sufficient provision for the purposes of section 10 (1) of the Act—

(a) unless, in addition to the provision of the facilities specified in the said section 10 (1), provision is made—

(i) in the case of premises other than those to which sub-paragraph (ii) of this paragraph applies, in accordance with the appropriate provisions of Part I of the Schedule to these Regulations (which relates to the provision of *wash-basins*, *troughs* and *washing fountains*); or

(ii) in the case of premises to which Part II of the said Schedule applies, in accordance with the appropriate provisions of that Part of the said Schedule (which relates to the provision of fixed or portable *wash-bowls*); and

(b) unless the following provisions of these Regulations are observed.

(2) The premises to which Part II of the said Schedule applies are—

(a) premises of a class which by virtue of an order of the Minister of Labour pursuant to section 45 of the Act is for the time being exempted from so much of section 10 (1) of the Act as requires the water supplied to be running water; and

(b) premises which by virtue of section 46 of the Act are for the time being exempted from so much of section 10 (1) of the Act as requires the water supplied to be running water.

(3) Where in the case of any premises to which these Regulations apply—

(a) the number of persons employed to work therein regularly exceeds five at any one time;

(b) persons of each sex are regularly employed to work therein; and

(c) the circumstances affecting the premises are such that it is reasonably practicable to provide washing facilities in proper separate accommodation for persons of each sex;

the provision of washing facilities shall be deemed not to be suitable for the purposes of section 10 (1) of the Act unless it affords proper separate accommodation for persons of each sex.

(4) Subject to paragraph 5 of this Regulation, in reckoning, for the purposes of this Regulation, Regulations 4 and 5 and paragraphs 1 (*a*), 2, 3 (*a*) and 4 of the said schedule, a number of persons, no account shall be taken of any person whose daily hours of work in the premises do not normally exceed two.

(5) In its application to persons employed by railway undertakers, who, by virtue of section 90 (3) of the Act, are deemed to be employed to work in the premises at which the general control of the doing of their work is exercised, the last foregoing paragraph shall have effect as if the expression "in the premises" were omitted.

Washing facilities the use of which is shared

4.—(1) Where in the case of any premises to which these Regulations apply—

(a) there are in operation arrangements made in pursuance of section 10 (5) of the Act for enabling all or any of the persons employed to work in the premises to have the use of washing facilities provided for the use of others; or

(b) washing facilities provided for the use of all or any of the persons employed to work in the premises are made available for regular use by other persons (not being members of the public);

then in either of such cases, in determining the number of *wash-basins*, *wash-bowls* or *units of trough or washing fountain accommodation* (as the case may be) required by these Regulations to be provided in the case of the said premises for the said employed persons, the total number of persons for whose regular use the said washing facilities are made available during the periods during which persons are employed to work in the said premises shall be treated as if that were the number of persons regularly employed to work in the said premises at any one time.

(2) Where in any of the following cases, that is to say—

(a) in the case of a building to which section 42 of the Act applies containing two sets or more of premises to which the Act applies;

(b) in the case of a part in single ownership of a building to which

section 43 of the Act applies containing two sets or more of premises to which the Act applies; or

(c) in the case of a parcel of land in single ownership containing two sets or more of fuel storage premises to which section 44 of the Act applies;

all or any of the persons employed to work in any two sets or more of any such premises have the use of the same washing facilities provided in pursuance of section 10 of the Act, the total number of the persons regularly so employed at any one time for whose use the facilities are provided shall, for the purpose of applying these Regulations, be treated as if that were a number of persons all of whom are employed to work in one set of premises to which the Act applies.

Washing facilities used by the public

5. Where in the case of any premises to which these Regulations apply in which the number of persons employed to work therein at any one time regularly exceeds ten, the washing facilities provided for the use of, or used by arrangements by, all or any of such persons are also ordinarily made available for general use by members of the public resorting to the premises, the total number of *wash-basins*, *wash-bowls* and *units of trough and washing fountain accommodation* (as the case may be) required by the other provisions of these Regulations to be provided, or to be provided separately according to their sex (as the case may be), for the use of those persons shall in every case be increased by one.

Protection of washing facilities

6. All accommodation where washing facilities are provided in pursuance of section 10 (1) of the Act and of these Regulations shall be covered and enclosed to an extent sufficient to ensure protection from the weather for persons using them.

Ventilation of washing accommodation

7. Effective provision shall be made, as far as reasonably practicable, for ventilating rooms in which washing facilities are situated.

Marking of washing accommodation

8. Where in accordance with these Regulations separate accommodation is provided for persons of each sex, the accommodation shall be clearly marked to show for persons of which sex it is so provided.

SCHEDULE

Regulation 3

PART I

WASH-BASINS, TROUGHS OR WASHING FOUNTAINS TO BE PROVIDED AS WASHING FACILITIES IN ACCORDANCE WITH SECTION 10 OF THE ACT IN THE CASE OF PREMISES NOT EXEMPTED FROM THE REQUIREMENT TO SUPPLY RUNNING WATER

1. In the case of premises (whether or not persons of both sexes are employed to work therein) where—

(*a*) the number of persons employed to work therein does not regularly exceed five at any one time; or

(*b*) of the number of persons regularly employed to work therein there is none whose daily hours of work in the premises normally exceed two;

one *wash-basin* or *trough* or *washing fountain*.

2. In the case of premises other than premises to which paragraph 1 of this Schedule applies—*wash-basins*, *troughs* or *washing fountains* in accordance with the following scale—

Number of persons regularly employed to work in the premises at any one time (or, where separate accommodation for the sexes is required to be provided, number of such persons of each sex)	*Number of wash-basins or units of trough or washing fountain accommodation*
1 to 15	1
16 to 30	2
31 to 50	3
51 to 75	4
76 to 100	5
Exceeding 100	5, with the addition of one for every unit of 25 persons by which the number of persons exceeds 100 (any fraction of a unit of 25 persons being treated as one).

PART II

FIXED OR PORTABLE WASH-BOWLS TO BE PROVIDED AS WASHING FACILITIES IN ACCORDANCE WITH SECTION 10 OF THE ACT IN THE CASE OF PREMISES EXEMPTED FROM THE REQUIREMENT TO SUPPLY RUNNING WATER

3. In the case of premises to which this Part of this Schedule applies (whether or not persons of both sexes are employed to work therein) where—

(*a*) the number of persons employed to work therein does not regularly exceed five at any one time; or

(*b*) of the number of persons regularly employed to work therein there is none whose daily hours of work in the premises normally exceed two;

one fixed or portable *wash-bowl*.

4. In the case of premises to which this Part of this Schedule applies, other than premises to which paragraph 3 of this Schedule applies—facilities on the scale of one fixed or portable *wash-bowl* for every unit of five persons (or, where separate accommodation for the sexes is required to be provided, for every unit of five persons of each sex) regularly employed at any one time to work therein (any fraction of a unit being treated as one).

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 (EXEMPTION NO. 10) ORDER 1972

(S.I. 1972 No. 1086)

Dated 19th July 1972, made by the Secretary of State under s. 45 of the Offices, Shops and Railway Premises Act 1963 and all other enabling powers.

1.—(1) This Order may be cited as the Offices, Shops and Railway Premises Act 1963 (Exemption No. 10) Order 1972 and shall come into operation on the 1st August 1972.

(2) The Offices, Shops and Railway Premises Act 1963 (Exemption No. 9) Order 1970 is hereby revoked.

2.—(1) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament, and as if this Order and the Order hereby revoked were Acts of Parliament.

(2) In this Order the expression "railway signal box" means a railway signal box which is, or is comprised in, railway premises to which the Act applies.

3. The Secretary of State hereby exempts the following classes of premises from the requirements of the Act specified in relation to each class of premises, that is to say—

(a) *railway signal boxes* the construction of which was completed before 1st August 1964 and which are so situated that there is no piped water supply available within a distance of 180 metres from them, from so much of section 10 (1) (which relates to washing facilities) of the Act as requires water supplied to be running water;

(b) *railway signal boxes* the construction of which was completed before 1st August 1964 and in the case of which—

(i) there is a piped water supply available within a distance of 180 metres from them; but

(ii) there are no effective means of heating running water;

from so much of the said section 10 (1) as requires washing facilities provided thereunder to include a supply of clean, running hot and cold or warm water, subject to the conditions specified in Article 4 of this Order.

4. The conditions referred to in Article 3 (*b*) of this Order are that in the case of premises of the class to which the said Article 3 (*b*) applies washing facilities provided shall include—

(a) a supply of clean, running cold water; and

(b) effective means of heating water for washing.

5. The exemptions granted by this Order shall be for the period of two years commencing with 1st August 1972.

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11. Supply of drinking water.—(1) There shall in the case of premises to which this Act applies (*a*), be provided and

maintained, at suitable places conveniently accessible to the persons employed (*b*) to work (*c*) in the premises, an adequate supply of wholesome drinking water.

(2) Where a supply of water provided at a place in pursuance of the foregoing subsection is not piped, it must be contained in suitable vessels and must be renewed at least daily; and all practicable steps (*d*) must be taken to preserve it and the vessels in which it is contained from contamination.

(3) Where water a supply of which is provided in pursuance of this section is delivered otherwise than in a jet from which persons can conveniently drink, there shall either—

(a) be provided, and be renewed so often as occasion requires, a supply of drinking vessels of a kind designed to be discarded after use; or

(b) be provided a sufficient number of drinking vessels of a kind other than as aforesaid, together with facilities for rinsing them in clean water.

(4) Subsection (1) of this section shall be deemed to be complied with in relation to any premises as regards any period during which there are in operation arrangements for enabling the persons employed (*b*) to work (*c*) in the premises to avail themselves of a supply of drinking water provided and maintained for the use of others, being a supply whose provision and maintenance would have constituted compliance with that subsection had it been provided and maintained for the use of the first-mentioned persons, and—

(a) where the supply provided is not piped, the requirements of subsection (2) of this section are satisfied as respects it and the vessels in which it is contained; and

(b) where the water supplied is delivered as mentioned in subsection (3) of this section, the requirements of that subsection are satisfied.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability, see the General Introduction.

For the cognate provisions of s. 57 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 198.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***All practicable steps.*** For a discussion of the meaning of, and the distinction between, "reasonably practicable" and "practicable" see note (*f*) to s. 6, and, in particular, *Adsett* v. *K. and L. Steelfounders and Engineers, Ltd.*, [1953] 1 All E.R. 97, *n.*

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12. Accommodation for clothing.—(1) There shall, in the case of premises to which this Act applies (*a*),—

(a) be made, at suitable places, suitable and sufficient (*b*) provision for enabling such of the clothing of the persons employed (*c*) to work (*d*) in the premises as is not worn by them during working hours to be hung up or otherwise accommodated; and

(b) be made, for drying that clothing, such arrangements as are reasonably practicable (*e*) or, if a standard of arrangements for drying that clothing is prescribed (*f*), such arrangements as conform to that standard.

(2) Where persons are employed (*c*) to do such work (*d*) in premises to which this Act applies (*a*) as necessitates the wearing of special clothing, and they do not take that clothing home, there shall, in the case of those premises,—

(a) be made, at suitable places, suitable and sufficient provision for enabling that clothing to be hung up or otherwise accommodated; and

(b) be made, for drying that clothing, such arrangements as are reasonably practicable (*e*) or, if a standard of arrangements for drying that clothing is prescribed (*f*), such arrangements as conform to that standard.

(3) The Minister may make regulations (*g*)—

(a) determining for premises to which this Act applies (*a*), or for any class of such premises (*h*), what is suitable and sufficient provision for the purposes of the foregoing provisions of this section;

(b) prescribing for such premises as aforesaid, or for any class thereof, a standard of arrangements for drying clothing.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

With respect to civil liability, see the General Introduction. In *McCarthy* v. *Daily Mirror Newspapers, Ltd.*, [1949] 1 All E.R. 801, the Court of Appeal accepted without discussion that an action lay for a breach of the similar provisions of s. 43 (1) of the Factories Act 1937 (now s. 59 (1) of the Factories Act 1961), and it has been expressly so held in Scotland (*Barr* v. *Cruickshank & Co., Ltd.* 1958, 74 Sh. Ct. Rep. 218).

For the cognate provisions of s. 59 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 201.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Suitable and sufficient.*** Whether the provision is suitable and sufficient is, it is submitted, a question of fact in the circumstances of each case. In *McCarthy* v. *Daily Mirror Newspapers, Ltd., supra*, and *Barr* v. *Cruickshank & Co., Ltd., supra*, it was held that the obligation under the corresponding provision of the Factories Act 1937, to provide "adequate and suitable accommodation for clothing not worn during working hours" did not include a duty to keep the clothing safe, but that nevertheless the risk of theft was an element to be taken into consideration in deciding whether the accommodation was suitable.

(*c*) ***Employed.*** For definition, see s. 90 (1), (4).

(*d*) ***Work.*** See note (*a*) to s. 3.

(*e*) ***Reasonably practicable.*** See note (*f*) to s. 6.

(*f*) ***Prescribed.*** See sub-s. (3) (b).

(*g*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*h*) ***Class of premises.*** See s. 90 (5).

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13. Sitting facilities.—(1) Where persons who are employed (*a*) to work (*b*) in office (*c*), shop (*d*) or railway premises (*e*) have, in the course of their work (*b*), reasonable opportunities for sitting without detriment to it, there shall be provided for their use, at suitable places conveniently accessible to them, suitable facilities for sitting sufficient to enable them to take advantage of those opportunities.

(2) Where persons are employed (*a*) to work (*b*) in a room which comprises, or is comprised in or constitutes, shop premises (*d*), being a room whereto customers are invited to resort, and have in the course of their work, reasonable opportunities for sitting without detriment to it, facilities provided for their use in pursuance of subsection (1) of this section shall be deemed not to be sufficient if the number of seats provided

and the number of the persons employed are in less ratio than 1 to 3.

(3) It shall be the duty of the employer of persons for whose use facilities are provided in pursuance of the foregoing provisions of this section to permit them to use them whenever the use thereof does not interfere with their work, and if he fails so to do he shall be guilty of an offence (*f*).

General note. Except in relation to shop premises which are in a covered market place as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)), and replaces s. 37 of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

Requirements as to the seating to be provided for sedentary work are contained in s. 14, *infra*.

As to civil liability, see the General Introduction.

For the cognate provisions of s. 60 (1) of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 202.

(*a*) ***Employed.*** For definition, see s. 90 (1), (4).

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***Office premises.*** See s. 1 (2), (5).

(*d*) ***Shop premises.*** See s. 1 (3), (5).

(*e*) ***Railway premises.*** See s. 1 (4), (5).

(*f*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

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14. Seats for sedentary work.—(1) Without prejudice to the general obligation imposed by the last foregoing section, where any work done in any premises to which this Act applies (*a*) is of such a kind that it (or a substantial part of it) can, or must, be done sitting, there shall be provided for each person employed (*b*) to do it there (*c*) a seat of a design, construction and dimensions suitable for him and it, together with a foot-rest on which he can readily and comfortably support his feet if he cannot do so without one.

(2) A seat provided in pursuance of the foregoing subsection, and a foot-rest so provided that does not form part of a seat, must be adequately and properly supported while in use for the purpose for which it is provided.

(3) For the purpose of subsection (1) of this section, the dimensions of an adjustable seat shall be taken to be its dimensions as for the time being adjusted.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability, see the General Introduction.

For the cognate provisions of s. 60 (2) of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 202.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***To do it there.*** See note (*a*) "worked; work" to s. 3.

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15. Eating facilities.—Where persons employed (*a*) to work (*b*) in shop premises (*c*) eat meals there, suitable and sufficient facilities for eating them shall be provided.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)). It replaces s. 38 (5) of the Shops Act 1950, repealed by this Act (s. 91 and Sch. 2).

As to civil liability, see the General Introduction.

(*a*) ***Employed.*** For definition, see s. 90 (1), (4).

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***Shop premises.*** See s. 1 (3), (5).

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16. Floors, passages and stairs.—(1) All floors (*a*), stairs, steps, passages and gangways (*b*) comprised in premises to which this Act applies (*c*) shall be of sound construction and properly maintained (*d*) and shall, so far as is reasonably practicable (*e*), be kept free (*f*) from obstruction (*g*) and from any substance (*h*) likely to cause persons to slip (*i*).

(2) For every staircase (*k*) comprised in such premises as aforesaid, a substantial hand-rail (*l*) or hand-hold (*m*) shall be provided and maintained, which, if the staircase (*k*) has an open side, shall be on that side; and in the case of a staircase (*k*) having two open sides or of a staircase (*k*) which, owing to the nature of its construction or the condition of the surface of the steps or other special circumstances (*n*), is specially liable to cause accidents (*n*), such a hand-rail (*l*) or hand-hold (*m*) shall be provided and maintained on both sides.

(3) Any open side of a staircase (*k*) to which the last foregoing subsection applies, shall also be guarded by the provision and maintenance of efficient means of preventing any

person from accidentally falling through the space between the hand-rail (*l*) or hand-hold (*m*) and the steps of the staircase (*k*).

(4) All openings (*o*) in floors (*a*) comprised in premises to which this Act applies (*c*) shall be securely fenced (*p*) except in so far as the nature of the work renders such fencing impracticable (*e*).

(5) The foregoing provisions of this section shall not apply to any such part of any fuel storage premises (*q*) as is in the open, but in relation to any such part the following provisions shall have effect, namely,—

(a) the surface of the ground shall be kept in good repair;

(b) all steps and platforms shall be of sound construction and properly maintained (*d*);

(c) all openings in platforms shall be securely fenced (*p*), except in so far as the nature of the work renders such fencing impracticable (*e*).

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability, see the General Introduction. This section protects employees, and not shop customers (*Reid* v. *Galbraith's Stores*, 1970 S.L.T. (notes) 83.

Sub-ss. (1) to (4) of this section substantially reproduce s. 28 (1) to (4) of the Factories Act 1961, the provisions of which were formerly contained in s. 25 of the Factories Act 1937 and s. 4 of the Factories Act 1959; see Redgrave's Factories Acts, 22nd Edn., pp. 106 *et seq.* In the notes which follow, the cases cited are, unless otherwise stated, decisions upon the provisions of those Acts. As to the interpretation of statutes *in pari materia* see the General Introduction.

(*a*) ***Floors, etc.*** The subject matter of this section has been the subject of much controversy. In holding that a dry dock was not an "opening in a floor" within the meaning of s. 25 (3) of the 1937 Act (now s. 28 (4) of the 1961 Act), SOMERVELL, L.J., in *Bath* v. *British Transport Commission*, [1954] 2 All E.R. 542; [1954] 1 W.L.R. 1013, said "Where words are . . . perfectly familiar all one can do is to say whether or not one regards them as apt to cover or describe the circumstances in question in any particular case", and in *Johnston* v. *Colvilles*, 1966 S.L.T. 30, Ct. of Session, it was held that "floor" meant the ordinary floor of a factory which was used by those employed in the ordinary course of their employment. See the following cases: *Hosking* v. *De Havilland Aircraft Co., Ltd.*, [1949] 1 All E.R. 540 (plank across duct held to be a gangway); *Morris* v. *P.L.A.* (1950), 84 Lloyd L.R. 564 (floor of a gantry held to be within the section); *Taylor* v. *R. H. Green & Silley Weir, Ltd.*

(1950), 84 Lloyd L.R. 570 (affirmed by the C.A., [1951] 1 Lloyd's Rep. 345) (sill round inside of dry dock held to be a floor); *Harrison* v. *Metropolitan-Vickers Electrical Co., Ltd.*, [1954] 1 All E.R. 404; [1954] 1 W.L.R. 324 (sand bed of foundry held to be a floor and an excavation in it an "opening in a floor"); *Tate* v. *Swan, Hunter and Wigham Richardson, Ltd.*, [1958] 1 All E.R. 150; [1958] 1 W.L.R. 39 (planks laid across steelwork of crane gantry held not to be a floor); *Newberry* v. *Westwood (Jos.) & Co.*, [1960] 2 Lloyd's Rep. 37 ("mother earth" held not to be a floor, passage or gangway); *Sullivan* v. *Hall, Russell & Co.*, 1964 S.L.T. 192 (unmade earthen surface of a woodyard held not to be a floor); *Thornton* v. *Fisher and Ludlow, Ltd.*, [1968] 2 All E.R. 241; [1968] 1 W.L.R. 655 (30 ft. wide roadway in the open not a floor, passage or gangway).

(*b*) ***Gangway.*** In *Hosking* v. *De Havilland Aircraft Co., Ltd.*, [1949] 1 All E.R. 540, a plank laid across a duct was held to be a gangway.

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Of sound construction and properly maintained.*** It is submitted that these words should receive the same interpretation as in s. 28 (1) of the Factories Act 1961. There, it has been held that the duty flowing from the use of these words is absolute and applies primarily to the structural condition of floors, etc., but it may also apply to something put upon a floor, if it can be regarded as part of the floor although not incorporated in it (*Latimer* v. *A.E.C., Ltd.*, [1953] A.C. 643; [1953] 2 All E.R. 449, H.L.). Where, therefore, a floor, etc., is in some transient and exceptional condition, or there is temporarily something upon it which gives rise to danger, there has been no breach of this obligation if the floor, etc., is otherwise sound. In determining whether a floor is "of sound construction and properly maintained" regard must be had to the purpose for which it is intended to be used (*Mayne* v. *Johnstone and Cumbers, Ltd.*, [1947] 2 All E.R. 159). In each case the criterion is safety, which is a question of degree dependent upon the particular facts (*Payne* v. *Weldless Steel Tube Co., Ltd.*, [1956] 1 Q.B.; 196; [1956] 3 All E.R. 612, C.A.). As to "properly maintained" in other contexts, see note (*h*) to s. 8.

(*e*) ***Reasonably practicable; impracticable.*** See note (*f*) to s. 6 and, as to the responsibility of the occupier for the acts of his servants and independent contractors, see *Taylor* v. *Coalite Oils and Chemicals, Ltd.*, (1967), 3 K.I.R. 315, C.A., decided upon the provisions of s. 29 of the Factories Act 1961, and explaining *Braham* v. *J. Lyons & Co., Ltd.*, [1962] 3 All E.R. 281; [1962] 1 W.L.R. 1048, C.A.

(*f*) ***Kept free.*** In *Hall* v. *Fairfield Shipbuilding and Engineering Co., Ltd.* 1964 S.L.T. 97, the House of Lords held that the duty to keep a floor free from obstruction and from any substance likely to cause persons to slip requires the occupier, so far as reasonably practicable, both to prevent things from getting on to the floor and to remove things which have got on to it.

(*g*) ***Obstruction.*** An obstruction is something which has no business to be on the floor etc. and which ought not reasonably to be there (*Churchill* v. *Louis Marx & Co.* (1964), 108 Sol. Jo. 334, C.A.); "an object whose presence on the floor might cause an accident and whose presence there served no useful purpose" (*per* Lord REID in *Jenkins* v.

Allied Ironfounders, Ltd., [1969] 3 All E.R. 1609, at p. 1611). No obstruction within the meaning of the section is occasioned by the proper storage of things on the floor (*Pengelley* v. *Bell Punch Co.*, [1964] 2 All E.R. 945; [1964] 1 W.L.R. 1055, C.A.) or by the presence of a trolley in a gangway in the ordinary course of work (*Marshall* v. *Ericsson Telephones, Ltd.*, [1964] 3 All E.R. 609; [1964] 1 W.L.R. 1367, C.A.) or by part of a machine fixed to the floor (*Drummond* v. *Harland Engineering Co.*, 1963 S.C. 162).

(*h*) ***Substance.*** In *Hall* v. *Fairfield Shipbuilding & Engineering Co.*, 1963 S.L.T. 37, affirmed by the House of Lords, 1964 S.L.T. 97, the Court of Session held that a short length of metal rod of unspecified dimensions which had fallen from a bench was a "substance" likely to cause persons to slip. They held, further, that the words "likely to cause persons to slip" qualify only the word "substance", and do not limit the area to be kept free. In *Dorman Long (Steel), Ltd.* v. *Bell*, [1964] 1 All E.R. 617, H.L., the plaintiff fell when walking on some metal plates which were themselves "obstructions" and he fell because of the slope of the plates and a slippery film on them. Lord REID (at p. 618) expressed the opinion that the obligation was to keep the floor free from slippery substances on which anyone on the floor was likely to slip and that it was immaterial whether or not the slippery substance was entirely in contact with the floor. In *Taylor* v. *Gestetner* (1967), 2 K.I.R. 133, it was held that water might be a substance likely to cause persons to slip.

(*i*) ***Likely to cause persons to slip.*** It is submitted that in determining what is "likely" to cause persons to slip similar considerations apply as are applied to the question of whether a part of a machine is a "dangerous part" within the meaning of s. 17 (1), *infra*, for which see the General Note to s. 17.

(*k*) ***Staircase.*** See the general remarks on interpretation in the note, "Floors . . . gangways", to sub-s. (1), *ante*. See, also *Kimpton* v. *Steel Company of Wales*, [1960] 2 All E.R. 274 (three steps from floor to part of a machine in factory held not to be a "staircase").

(*l*) ***Hand-rail.*** A hand-rail is a rail that can be gripped by the hand; it need not necessarily act as a physical barrier; it need only be such a rail as to enable any person, by gripping it, to steady himself against falling (*Corn* v. *Weir's Glass (Hanley), Ltd.*, [1960] 2 All E.R. 300, C.A., so interpreting reg. 27 (1) of the Building (Safety, Health and Welfare Regulations) 1948 (S.I. 1948 No. 1145)). Note, however, sub-s. (3) of this section.

(*m*) ***Hand-hold.*** A hand-hold is something which a man can hold or grab from time to time as and when he wishes to do so; see *Wigley* v. *British Vinegars, Ltd.*, [1961] 3 All E.R. 418, C.A., affirmed (without touching the point) [1962] 3 All E.R. 161, H.L.

(*n*) ***Special circumstances; specially liable to cause accidents.*** See the discussion of these words, in the context of s. 28 (2) of the Factories Act 1961, in *Harris* v. *Rugby Portland Cement Co., Ltd.*, [1955] 2 All E.R. 500. See also *Luttman* v. *Imperial Chemical Industries, Ltd.*, [1955] 3 All E.R. 481.

(*o*) ***Openings in floors.*** In certain circumstances an excavation may constitute an "opening" in a floor (*Harrison* v. *Metropolitan-Vickers Electrical Co., Ltd.*, [1954] 1 All E.R. 404). Compare *Tate* v. *Swan*

Hunter and Wigham Richardson, Ltd., [1958] 1 All E.R. 150, C.A. (*Quaere*, whether space at edge of floor could be an "opening") and *Moorcroft* v. *Thomas Powles & Sons, Ltd.*, [1962] 3 All E.R. 741, D.C. (opening in roof).

(*p*) ***Securely fenced.*** It is submitted that "securely fenced" in this context has the same meaning as in the context of fencing dangerous parts of machinery, as to which see the General Note to s. 17.

(*q*) ***Fuel storage premises.*** See s. 1 (3) (a) (i), (5).

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17. Fencing of exposed parts of machinery.—(1) Every dangerous part (*a*) of any machinery (*a*) used as, or forming, part of the equipment (*a*) of premises to which this Act applies (*b*) shall be securely fenced (*a*) unless it is in such a position or of such construction as to be as safe to every person working in the premises as it would be if securely fenced (*a*).

(2) In so far as the safety of a dangerous part of any machinery cannot, by reason of the nature of the operation effected by means of the machinery, be secured by means of a fixed guard, the requirements of the foregoing subsection shall be deemed to be complied with if a device (*c*) is provided that automatically prevents the operator from coming into contact with that part.

(3) In determining, for the purposes of subsection (1) of this section, whether a moving part of any machinery is in such a position or of such construction as is therein mentioned, no account shall be taken of any person carrying out while the part is in motion (*d*) an examination thereof or any lubrication or adjustment shown by the examination to be immediately necessary, if the examination, lubrication or adjustment can only be carried out while the part is in motion.

(4) Fencing provided in pursuance of the foregoing provisions of this section shall be of substantial construction, be properly maintained (*e*) and be kept in position while the parts required to be fenced are in motion or use (*f*), except when any such parts are necessarily exposed (*g*) for examination and for any lubrication or adjustment (*h*) shown by the examination to be immediately necessary.

(5) Subsection (3) of this section, and so much of subsection (4) thereof as relates to the exception from the requirement thereby imposed, shall only apply where the examination, lubrication or adjustment in question is carried out by such

persons who have attained the age (*i*) of eighteen as may be specified in regulations (*j*) made by the Minister (*k*) and all other such conditions as may be so specified are complied with.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order, 1964 (S.I. 1964 No. 191)).

INTRODUCTORY NOTE TO SECTION 17

For provisions relating to the safety of hoists and lifts see the Offices, Shops and Railway Premises (Hoists and Lifts) Regulations, 1968, printed at p. 69. This section may be compared with the provisions of ss. 14 to 16 of the Factories Act 1961, for which see Redgrave's Factories Acts, 22nd Edn., pp. 63 *et seq.*, and the "Introductory Note to Sections 12–16" at pp. 50 *et seq.* thereof. The wording of s. 17 of the present Act is plainly modelled upon that of ss. 14 to 16 of the Factories Act 1961, and where the phraseology is identical it should, it is submitted, bear the same interpretation as has been accorded to the cognate provisions of the Factories Act 1961. (As to the judicial interpretation of statutes *in pari materia*, see the General Introduction and 36 Halsbury's Laws (3rd Edn.) 403, 404). The language of ss. 14 to 16 of the Factories Act 1961 (and that of the corresponding provisions of the Factories Act 1937, which were replaced by those of the later Act) has been the subject of extensive judicial interpretation. In the Introductory Note which follows an attempt is made to provide a short exegesis of the case law relating to the factories legislation; in accordance with the principle cited earlier in this note, that case law is authoritative upon the interpretation of s. 17 of the present Act, save where the context may indicate that a departure from the meaning of the factories legislation is intended.

1. *Machinery*

The machinery dealt with by ss. 12 to 16 of the Factories Act 1961 is prime movers (s. 12), transmission machinery (s. 13) and any other machinery (s. 14), and includes machinery not driven by mechanical power (*Richard Thomas & Baldwins, Ltd.* v. *Cummings*, [1955] A.C. 321; [1955] 1 All E.R. 285, H.L.). The Offices, Shops and Railway Premises Act 1963 contains no provisions expressly regulating the fencing of prime movers and transmission machinery which fall, therefore, within the term "any machinery" in *ibid.*, s. 17 (1). The wording of *ibid.*, s. 17, makes it plain that the obligation imposed relates only to machinery "used as, or forming, part of the equipment of premises" to which the Act applies, thereby expressly introducing a qualification which, in the case of s. 14 of the Factories Act 1961, has been effected by judicial interpretation (see *Parvin* v. *Morton Machine Co., Ltd.*, [1952] 1 All E.R. 670, H.L., *Cherry* v. *International Alloys, Ltd.*, [1960] 3 All E.R. 264, *Thurogood* v. *Van Den Berghs & Jurgens, Ltd.*, [1951] 2 K.B. 537, C.A., *Quintas* v. *National Smelting Co., Ltd.*, [1961] 1 All E.R. 630, C.A., and *Irwin* v. *White, Tomkins and Courage, Ltd.*, [1964] 1 All E.R. 545, H.L.).

Mobile machinery is not by virtue only of its mobility excluded from the ambit of s. 14 (1) (*British Railways Board* v. *Liptrot*, [1969] 1 A.C. 136; [1967] 2 All E.R. 1072, H.L., overruling *Cherry* v. *International Alloys, Ltd.*, [1961] 1 Q.B. 136; [1960] 3 All E.R. 264, C.A.). "Dangerous parts of machinery, not danger in movement of the whole machinery, are the considerations to which s. 14 is directed" (*per* Lord HODSON in *Liptrot*, *supra*, at pp. 162; 1083). The machinery in question must form part of the equipment of the premises but, if it does so, it is no answer to an allegation based upon a breach of s. 14 that it may move from one place to another. Thus, the machinery of a mobile crane is within this section (*Liptrot*, *supra*); so also is the machinery of a coke-distributing machine which travels on rails (see *Dobson* v. *Colvilles*, 1958 S.L.T. (Notes) 30). In *Quintas* v. *National Smelting Co., Ltd.*, [1961] 1 All E.R. 630; [1961] 1 W.L.R. 401, C.A., the defendants operated in their factory an overhead travelling cable-way supported by stanchions, so that material might be transported from one part of the factory to another. The material was placed in buckets suspended from the cable, which at one part of the route passed close to a flat roof, to which workmen might be expected to come. It was held that the cable-way, regarded as a whole, was not one piece of machinery within s. 14, and therefore that the whole of the cable-way need not be fenced. However, the decision of the majority of the Court was based, in part at least, upon *Cherry* v. *International Alloys, Ltd.*, *supra*, and its correctness has been doubted (*per* Lord HODSON in *Liptrot*, *supra*, at pp. 163; 1083).

2. *The part required to be fenced* (*foreseeability of danger*)

Sections 12 and 13 of the Factories Act 1961 specify those parts of prime movers and transmission machinery which must be fenced. Other machinery is dealt with in s. 14, which requires (subject to exceptions) the fencing of "every dangerous part of any machinery, other than prime movers and transmission machinery". It is to be noted that these sections require the fencing of "parts" of "machinery", and not the fencing of machines as such (see *British Railways Board* v. *Liptrot*, [1969] 1 A.C. 136; [1967] 2 All E.R. 1072, H.L.), from which it follows that there is no obligation thereunder to fence a machine if it is dangerous as a whole but has no dangerous parts which can properly be described as parts of machinery (see *per* Lord HAILSHAM of ST. MARYLEBONE, L.C., in *F. E. Callow* (*Engineers*), *Ltd.* v. *Johnson*, [1971] A.C. 335 at p. 342; [1970] 3 All E.R. 639 at p. 641).

The test of what is a "dangerous part" has been the subject of extended judicial decision, beginning with *Hindle* v. *Birtwistle*, [1897] 1 Q.B. 192, and (for the present) ending with *F. E. Callow* (*Engineers*), *Ltd.* v. *Johnson*, [1971] A.C. 335; [1970] 3 All E.R. 639, H.L. The authoritative exposition to be found in *Close* v. *Steel Company of Wales, Ltd.*, [1962] A.C. 367; [1961] 2 All E.R. 953, H.L., stamps the imprimatur of the House of Lords upon the proposition that the test of danger depends here (as in certain other parts of the factory legislation and the regulations made thereunder) upon what is reasonably foreseeable. In *Close* v. *Steel Company of Wales, Ltd.*, [1962] A.C. 367; [1961] 2 All E.R. 953, H.L., Lord GUEST said (at pp. 412; 975):—

> "I take the test whether a part of a machine is dangerous from the dictum of DU PARCQ, J., in *Walker* v. *Bletchley Flettons, Ltd.*, [1937]

1 All E.R. 170, at p. 175, as qualified by Lord REID in *John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 746 at p. 766; [1955] 1 All E.R. 870 at p. 882, whether it might be ' . . . a reasonably foreseeable cause of injury to anybody acting in a way in which a human being may be reasonably expected to act in circumstances which may be reasonably expected to occur' ".

This test was supported by the remaining Law Lords (see *per* Lord DENNING, at pp. 381; 955–956; *per* Lord GODDARD, at pp. 389; 960; *per* Lord MORTON, at pp. 398; 966; and *per* Lord MORRIS OF BORTH-Y-GEST, at pp. 398; 967). It is the test which is now accepted; *per* Lord GUEST in *Irwin* v. *White, Tomkins and Courage, Ltd.*, [1964] 1 All E.R. 545; [1964] 1 W.L.R. 387, H.L. It follows that the facts that the machine is capable of causing injury and that injury has happened to the operator are not conclusive that the part concerned is a dangerous part (*Carr* v. *Mercantile Produce Co., Ltd.*, [1949] 2 K.B. 601; [1949] 2 All E.R. 531, D.C.).

On the question of what is reasonably foreseeable, it is submitted that the same considerations apply as when the question of foresight is in issue in cases of common law negligence, subject to the qualification that at common law a plaintiff has to show reasonable foresight of injury to himself, whereas in an action for breach of statutory duty he has merely to show such foresight in relation to any person employed. Indeed, in *Eaves* v. *Morris Motors, Ltd.*, [1961] 2 Q.B. 385; [1961] 3 All E.R. 233, C.A., a decision upon s. 14 (1), PEARSON, L.J. (at pp. 401; 242), referred to the speech of Lord PORTER in *Bolton* v. *Stone*, [1951] A.C. 850; [1951] 1 All E.R. 1078 (a negligence case) where he said;

> "Nor is the remote possibility of injury occurring enough. There must be sufficient probability to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken."

In deciding what is reasonably foreseeable it is material to consider both the behaviour of operators or persons employed and the behaviour of the machine. The behaviour of persons which is thus material is such behaviour as is reasonably foreseeable, which is not necessarily confined to such behaviour as is reasonable behaviour. Merely because a workman does something stupid whereby he is injured upon a part of a machine it cannot be concluded that the part is not a dangerous part. Some kinds of stupid behaviour are foreseeable; other kinds of stupid behaviour are egregious and unforeseeable. Only the former kinds are relevant to the enquiry, whether the part was a dangerous part. In *Mitchell* v. *North British Rubber Co., Ltd.*, 1945 S.C.(J.) 69, the Lord Justice-Clerk, Lord COOPER, said (at p. 73) that a machine is dangerous if

> " . . . in the ordinary course of human affairs danger may reasonably be anticipated from its use unfenced, not only to the prudent, alert and skilled operative intent upon his task but also to the careless and inattentive worker whose inadvertent or indolent conduct may expose him to risk of injury or death from the unguarded part".

This passage was approved in *John Summers & Sons, Ltd.*, v. *Frost*, [1955] A.C. 740; [1955] 1 All E.R. 870, H.L. and the principle was

applied in *Smithwick* v. *National Coal Board*, [1950] 2 K.B. 335, C.A. (decided upon s. 55 of the Coal Mines Act, 1911), in *Woodley* v. *Meason Freer & Co., Ltd.*, [1963] 3 All E.R. 636; [1963] 1 W.L.R. 1409, D.C., and in *Uddin* v. *Associated Portland Cement Manufacturers, Ltd.*, [1965] 2 Q.B. 582; [1965] 2 All E.R. 213, C.A. Once, however, it has been proved that a part of a machine is dangerous, that it is unfenced, and that a workman has been injured by reason of the lack of fencing, foreseeability is no longer relevant, and so the fact that the accident occurred in an entirely unexpected way will not absolve the occupier (*Millard* v. *Serck Tubes, Ltd.*, [1969] 1 All E.R. 598; [1969] 1 W.L.R. 211, C.A., approved in *F. E. Callow (Engineers), Ltd.* v. *Johnson*, [1971] A.C. 335; [1971] 3 All E.R. 639, H.L.).

On the other hand, the fact that at the time of his injury the plaintiff was acting outside the scope of his employment is irrelevant (*Uddin* v. *Associated Portland Cement Manufacturers, Ltd.*, [1965] 2 Q.B. 582; [1965] 2 All E.R. 213, C.A., and *Westwood* v. *Post Office* (1973), *Times* 1 August, in which the House of Lords, approving *Uddin's* case, held that an employee who, for purposes of his own had entered a lift motor room, on the door of which was a notice permitting only the authorised attendant to enter, was none the less entitled to the protection of the Act). *Uddin's* case was followed in *Allen* v. *Aeroplane and Motor Aluminium Castings, Ltd.*, [1965] 3 All E.R. 377; [1965] 1 W.L.R. 1244, C.A., in which it was held that although a plaintiff may be unable to satisfy the court precisely how the accident occurred, yet, if he shows that it occurred because of failure to fence a dangerous part securely, it is unnecessary for him to go further and to show that he was injured in the course of his employment. However, if, at the material time, the plaintiff is not employed by the factory occupier at all, but, for example, is pursuing a hobby of his own in his own time, then the fencing provisions do not apply (*Napieralski* v. *Curtis (Contractors), Ltd.*, [1959] 2 All E.R. 426).

The behaviour of the machine which is material to the issue of foreseeability is its behaviour in the ordinary course of working, and not aberrant behaviour which cannot be foreseen (*Eaves* v. *Morris Motors, Ltd.*, [1961] 2 Q.B. 385; [1961] 3 All E.R. 233, C.A.; *Horne* v. *Lec Refrigeration, Ltd.*, [1965] 2 All E.R. 898). It is submitted that if the machine has behaved abnormally in the past to such an extent that a reasonable man would anticipate abnormal behaviour in the future then such behaviour, even though abnormal, must be taken into account in deciding whether a part of it is a dangerous part.

Close v. *Steel Company of Wales, Ltd.*, *supra*, decided that the obligation imposed by s. 14 (1) of the Factories Act 1911 to fence securely does not require the dangerous part to be fenced for the purpose of preventing fragments of it, if shattered, from flying out of the machine. This aspect of the decision is considered later in this note. It was, however, accepted by two of their Lordships that a part of machinery was a "dangerous part" if it is likely in the ordinary course of working to throw off flying bits (see *per* Lord DENNING at pp. 382–383 956–957, and *per* Lord MORRIS OF BORTH-Y-GEST at pp. 398–399 967). In *Carroll* v. *Andrew Barclay & Sons, Ltd.*, [1948] A.C. 477, Lord DU PARCQ (at pp. 486–487) and, it appears, Lord PORTER (at p. 485) took the same view, but Viscount JOWITT (at p. 482) and Lord NORMAND (at p. 490) expressly reserved the question. In view, however, of the *ratio* of

Close v. *Steel Company of Wales*, *supra*, the point is now of academic interest only.

3. *The part required to be fenced* (*the character of the part*)

In order that s. 14 of the Factories Act 1961 may apply, the dangerous part must be part of "machinery". For this purpose a distinction must be drawn between material which is being worked upon in a machine, and which is dangerous when in motion, and parts of the machinery itself which are dangerous when in motion. It is only in the latter case that the obligation to fence arises (*Eaves* v. *Morris Motors, Ltd.*, [1961] 2 Q.B. 385; [1961] 3 All E.R. 233, C.A.). Thus, in *Bullock* v. *G. John Power* (*Agencies*), *Ltd.*, [1956] 1 All E.R. 498, C.A., it was held that a loose end of wire which was being wound upon an electric drum was not part of the machinery; and in *Eaves* v. *Morris Motors, Ltd.*, *supra*, sharp bolts undergoing a milling operation while being held in a moving vice were similarly regarded. A more difficult problem arises where the material being worked upon is not itself dangerous, but becomes so by reason of its juxtaposition with part of the machine itself. Divergent views were expressed in *Lewis* v. *High Duty Alloys, Ltd.*, [1957] 1 All E.R. 740, *Lenthall* v. *Gimson & Co.* (*Leicester*), *Ltd.* (unreported, but see [1961] 3 All E.R. at p. 238) and *Hoare* v. *M. & W. Grazebrook, Ltd.*, [1957] 1 All E.R. 470; but in *Eaves* v. *Morris Motors, Ltd.*, *supra*, Holroyd Pearce, L.J., said (at pp. 396; 238):

> "If a moving arm of the machine does not project, and is, therefore, safe when the machine is empty, but projects dangerously when the machine is supplied with its proper material, it can obviously be labelled as dangerous machinery. And if it creates a dangerous nip when supplied with its normal material and when working normally (or in a foreseeable manner) I see no reason in principle why the court cannot consider the machinery dangerous, even if that nip is only created by the juxtaposition of material and machinery. For in that case it is not the nature of the material and it is not the material itself which causes the danger. The danger is caused by the design of the machine itself working normally with harmless material."

The view of Holroyd Pearce, L.J., has now been approved by the House of Lords in *Midland & Low Moor Iron & Steel Co., Ltd.* v. *Cross*, [1965] A.C. 357; [1964] 3 All E.R. 752. Their lordships there held that whether a part of machinery was a dangerous part had to be determined on consideration of the machine when in actual operation doing the work which it was ordinarily designed to do and that if the juxtaposition of a moving part and a workpiece resulted in a dangerous nip, then the moving part was not the less a dangerous part because in the absence of the workpiece there was no danger. Their Lordships expressly reserved the question, whether a stationary part of a machine could constitute a dangerous part by reason of the fact that danger was created when a moving workpiece came close to it, as had been held or suggested in certain unreported decisions at first instance which are cited in the speech of Lord Reid; the question thus reserved has since been answered in the affirmative (*F. E. Callow* (*Engineers*), *Ltd.* v. *Johnson*, [1971] A.C. 335; [1970] 3 All E.R. 639, H.L.).

A tool which is used for adjusting a machine and which can be

removed from it is not a "part of any machinery" (*Sarwar* v. *Simmons and Hawker, Ltd.*, (1971), 11 K.I.R. 300, C.A.).

There is no duty to fence against a danger which only arises because of the proximity of a moving part of a machine to some stationary object extraneous to the machine: *Pearce* v. *Stanley-Bridges, Ltd.*, [1965] 2 All E.R. 594; [1965] 1 W.L.R. 931, C.A., distinguishing *Irwin* v. *White, Tomkins & Courage, Ltd.*, [1964] 1 All E.R. 545; [1964] 1 W.L.R. 387, H.L., in which danger was caused by the proximity of the moving part to a stationary part of the same apparatus.

The duty to fence securely is subject to the exception that fencing is not required where the part of the machine concerned is "in such a position or of such construction as to be as safe to every person working in the premises as it would be if securely fenced". The mere fact that unfenced machinery is inaccessible save by a ladder is not enough to bring it within the exception: *Butler* v. *Glacier Metal Co.* (1924) (D.C., unreported, but see [1926] 1 K.B. at p. 317); *Atkinson* v. *London & N. E. Rly. Co.*, [1926] 1 K.B. 313, D.C.; *Hodkinson* v. *Henry Wallwork & Co., Ltd.*, [1955] 3 All E.R. 236, C.A. It is submitted that the words "dangerous" and "safe" in s. 17 of the Offices, Shops and Railway Premises Act 1963 are intended to be mutually exclusive, and that therefore the same test of reasonable foresight which is applied as the criterion of danger must logically be applied also, in a reverse sense, as the criterion of safety.

In determining whether any part of machinery is in such a position or of such construction as to be safe within the intendment of the excepting words, no account must be taken of the matters specified in *ibid.*, s. 17 (3).

4. *The dangers against which fencing is required*

The obligation to fence securely which may arise under s. 14 (1) of the Factories Act 1961 and under s. 17 (1) of the Offices, Shops and Railway Premises Act 1963 is not unlimited in scope, but is restricted to fencing against certain hazards only. It is now settled by the House of Lords that the obligation to fence requires that the dangerous part be fenced securely for the purpose of preventing the body of the operator from coming into contact with it, but that the obligation does not extend to require that the dangerous part be fenced securely for the purpose of preventing fragments of the dangerous part from flying out of the machine (*Close* v. *Steel Company of Wales, Ltd.*, [1962] A.C. 367; [1961] 2 All E.R. 953, so interpreting *Nicholls* v. *Austin (Leyton), Ltd.*, [1964] A.C. 493; [1964] 2 All E.R. 92, H.L., and *Carroll* v. *Andrew Barclay & Sons, Ltd.*, [1948] A.C. 477; [1948] 2 All E.R. 386, H.L., and overruling on this point three decisions of the Court of Appeal: *Dickson* v. *Flack*, [1953] 2 Q.B. 464; [1953] 2 All E.R. 840; *Newnham* v. *Taggart Morgan & Coles, Ltd.* (July 19th, 1956, unreported); and *Rutherford* v. *R. E. Glanville & Sons (Bovey Tracey), Ltd.*, [1958] 1 All E.R. 532). *Carroll* v. *Andrew Barclay & Sons, Ltd.*, *supra*, placed a similar interpretation upon s. 13 (1). The decision in *Close* v. *Steel Company of Wales, Ltd.*, *supra*, was a majority decision from which Lord DENNING vigorously dissented and with which Lord MORRIS of BORTH-Y-GEST did not agree. Of the majority, Lord GODDARD's opinion was expressed with reluctance (at pp. 389; 961), and Lord GUEST (at pp. 409; 974) appeared to consider

the decision in *Nicholls* v. *Austin* (*Leyton*), *Ltd.*, *supra*, by which he held himself bound, to be based upon an illogical distinction. In *Eaves* v. *Morris Motors, Ltd.*, [1961] 2 Q.B. 385; [1961] 3 All E.R. 233, C.A., HOLROYD PEARCE, L.J., having considered the effect of *Close* v. *Steel Company of Wales*, *supra*, expressed himself in these terms:

> "The argument (of Counsel for the Plaintiff) has shown how technical and artificial the question of protection under s. 14 has become and how illusory in certain respects the words 'Every dangerous part of any machinery . . . shall be securely fenced' have now become. One may venture, perhaps, to express regret that an important part of the protection accorded to the workman by the Factory and Workshops Acts 1878 and 1891, has been destroyed by the wording of the Factories Act 1937, and the authorities based on that wording . . . There is no protection under s. 14 against a class of obvious perils caused by dangerous machinery, namely, perils which arise from a dangerous machine ejecting at the worker pieces of the material or even pieces of the machinery itself. Thus, there is now left a gap which neither logic nor common sense appears to justify."

This gap has not been closed by the Factories Act 1961 or by the Offices, Shops and Railway Premises Act 1963. Although in such circumstances a plaintiff cannot avail himself of the statutory provisions if upon the premises there is a machine which it is known from experience has a tendency to throw out parts of the machine itself or of the material on which it is working, so as to be a danger to the operator, the absence of a shield to protect him may well afford him a cause of action at common law (*per* Lord GODDARD in *Close* v. *Steel Company of Wales*, [1962] A.C. 367; [1961] 2 All E.R. 960 at pp. 390, 961). For an example, see *Kilgollan* v. *W. Cooke & Co., Ltd.*, [1956] 2 All E.R. 294, C.A.

Since the obligation to fence in the sections under consideration is one to fence machinery, it follows that there is no obligation to fence against articles not part of the machinery (such as material being worked upon) being ejected (*Nicholls* v. *Austin* (*Leyton*), *Ltd.*, [1946] A.C. 493; [1946] 2 All E.R. 92, H.L.; *Close* v. *Steel Company of Wales, Ltd.*, [1962] A.C. 367; [1961] 2 All E.R. 953, H.L.). Nor is there any obligation so to fence that a tool being held by an operator does not come into contact with the dangerous part (*Sparrow* v. *Fairey Aviation Co., Ltd.*, [1964] A.C. 1019; [1962] 3 All E.R. 706, H.L., overruling *Johnson* v. *J. Stone & Co.* (*Charlton*), *Ltd.*, [1961] 1 All E.R. 869). In *Sparrow's* case Lord MORRIS OF BORTH-Y-GEST (at pp. 1051, 720) reserved the question, whether in particular circumstances some equipment or apparatus could be so attached to an operator that, in his capacity as an operator, such equipment or apparatus could rationally be regarded as being a part of him. It seems probable that the obligation to fence extends to preventing a workman's clothing from fouling the dangerous part; see *John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 740; [1955] 1 All E.R. 870, *per* Lord MORTON at pp. 756, 875; *Sparrow* v. *Fairey Aviation Co., Ltd.*, *supra*, *per* Lord REID (at pp. 1033; 709), Lord MACDERMOTT (at pp. 1039; 713), who dissented, and Lord MORRIS OF BORTH-Y-GEST (at pp. 1051; 720) and *F. E. Callow* (*Engineers*), *Ltd.* v. *Johnson*, [1971] A.C. 335; [1970] 3 All E.R. 639 *per* Lord HAILSHAM OF ST. MARYLEBONE, L.C. (at pp. 342, 641).

5. *The absolute nature of the duty*

The duty, imposed by s. 14 (1) of the Factories Act 1961, to fence securely is an absolute one (*John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 740; [1955] 1 All E.R. 870, H.L., affirming *Davies* v. *Thomas Owen & Co.*, [1919] 2 K.B. 39, a decision upon the comparable provision of s. 10 of the Factory and Workshop Act 1901). The duty is not to be qualified by such words as "so far as practicable" or "so long as it can be fenced consistently with its being used for the purpose for which it was intended", and if the result of a machine being securely fenced is that it does not remain commercially practicable or mechanically possible, that does not affect the obligation (*per* Viscount SIMONDS in *John Summers & Sons, Ltd.* v. *Frost*, *supra*). The courts have not shrunk from the conclusion that the absolute nature of the obligation may, in effect, prohibit the use of the machine altogether, and this result has been reached in the case of a calendering machine (*Davies* v. *Thomas Owen & Co.*, [1919] 2 K.B. 39); a power press (*Sowter* v. *Steel Barrel Co., Ltd.* (1935), 154 L.T. 85); a cutting machine (*Dennistoun* v. *Charles E. Greenhill, Ltd.*, [1944] 2 All E.R. 434); a drilling machine (*Mackay* v. *Ailsa Shipbuilding Co., Ltd.*, 1945 S.C. 414), and a grinding wheel (*John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 740; [1955] 1 All E.R. 870). In *John Summers & Sons, Ltd.* v. *Frost*, *supra*, it was pointed out that the apparent harshness of thus construing the duty to fence is mitigated in so far as the Minister has power by s. 76 of the Factories Act 1961 to modify by special regulations its absolute character and has, indeed, done so in the case of certain machinery (see the Woodworking Machinery Regulations 1922 and the Abrasive Wheels Regulations 1970). By s. 20 (3) (b) of the Offices, Shops and Railway Premises Act 1963 the Minister may by special regulation impose requirements with respect (inter alia) to the safeguarding of dangerous parts of machinery, and, by *ibid.*, s. 20 (9), such a requirement may be expressed to take effect in addition to, or in lieu of, a requirement imposed by *ibid.*, s. 17. Furthermore, by *ibid.*, s. 67, it is a defence to a charge of a contravention of a provision of the Act to prove that the person charged used all diligence to secure compliance with it; see the notes to s. 67.

6. *The standard of secure fencing*

The extent of this duty is to fence securely. "Somewhat" secure fencing is not enough (*Sowter* v. *Steel Barrel Co., Ltd.* (1935), 154 L.T. 85, decided upon the similar provisions of s. 10 of the Factory and Workshop Act 1901; *Vowles* v. *Armstrong-Siddeley Motors, Ltd.*, [1938] 4 All E.R. 796, C.A., *per* SLESSER, L.J.). Nor is it enough that the dangerous part was provided with a means of achieving security; the sections under consideration require the result to be achieved (*Charles* v. *S. Smith & Sons (England), Ltd.*, [1954] 1 All E.R. 499; *Foster* v. *Flexible Metal Co., Ltd.* (1967), 4 K.I.R. 49). Fencing is secure which effectively protects the workman from the danger of contact with the exposed part of the machine (*John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 740; [1955] 1 All E.R. 870, *per* Viscount SIMONDS at pp. 752; 873; *per* Lord MORTON of HENRYTON at pp. 756; 875; *per* Lord REID at pp. 764; 882; and *per* Lord KEITH of AVONHOLM at pp. 774; 888). In considering whether secure fencing has been achieved, the behaviour of persons employed is material and the same criterion of reasonable fore-

seeability, discussed earlier in this note, must be used for this purpose as it must for the purpose of deciding whether a part of a machine is a dangerous part (*John Summers & Sons, Ltd.* v. *Frost, supra*; *Burns* v. *Joseph Terry & Sons, Ltd.*, [1951] 1 K.B. 454; [1950] 2 All E.R. 987, C.A.).

In the case of the Factories Act 1961, the fence supplied must comply with the provisions of s. 16 of that Act, which indicates how and when the duty imposed under ss. 12, 13 and 14 is to be carried out (*Smith* v. *Morris Motors, Ltd.*, [1949] 2 All E.R. 715, D.C.). Similarly, in the case of the Offices, Shops and Railway Premises Act 1963, s. 17 (4) indicates how and when the duty imposed under s. 17 (1) is to be carried out. The fence need not, however, be so constructed that it cannot be climbed over, or broken down, by an employee who is determined to get at the machinery, for that would be demanding the impossible of the employers (*per* Lord MORTON OF HENRYTON in *John Summers & Sons, Ltd.* v. *Frost*, [1955] A.C. 740 at p. 758; [1955] 1 All E.R. 870, at p. 876; and see *Carr* v. *Mercantile Produce Co., Ltd.*, [1949] 2 All E.R. 531, D.C.).

7. *The behaviour of persons employed*

The foreseeable behaviour of persons employed, whether they are operating the machine in question or whether they are employed elsewhere on the premises, is thus relevant in the following respects:

(i) in considering whether the part of the machine is a dangerous part within s. 17 (1):

(ii) in considering whether the part of the machine is securely fenced;

(iii) in considering whether the part of the machine is in such position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced.

The actual behaviour of a person employed who has been injured by the machine is irrelevant to the foregoing heads of enquiry, which are concerned not with actual, but with foreseeable behaviour, and which are concerned with the foreseeable behaviour not only of the person who has been injured, but of any person employed on the premises. It follows that it must not be concluded from the facts that the operator or person employed has been careless, and that his carelessness was the proximate cause of the accident, that there has been no breach of the statute (*Blenkinsop* v. *Ogden*, [1898] 1 Q.B. 783; *Atkinson* v. *London & N.E. Rly. Co.*, [1926] 1 K.B. 313; *Smith* v. *Chesterfield and District Co-operative Society, Ltd.*, [1953] 1 All E.R. 447; [1953] 1 W.L.R. 370, C.A.; *Dunn* v. *Birds Eye Foods, Ltd.*, [1959] 2 Q.B. 265; [1959] 2 All E.R. 403, D.C.). The behaviour of the person injured may, however, be very relevant to the issue of contributory negligence in any civil proceedings he may bring upon a breach of the statute.

(*a*) ***Dangerous part; machinery; equipment; securely fenced.*** See the Introductory note, *supra*.

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Device.*** Compare the provisions of s. 14 (2) of the Factories Act 1961, as to which see Redgrave's Factories Acts, 22nd Edn., pp. 63 *et seq.*

(*d*) ***In motion.*** Compare the provisions of s. 15 (1) (a) of the Factories Act 1961, as to which see Redgrave's Factories Acts, 22nd Edn., pp. 65 *et seq.* The application of s. 17 (3) of the present Act is not limited, as is that of s. 15 of the Factories Act, 1961, to operations carried out by such male persons over 18 as are specified by regulations; the limitation imposed by s. 17 (5) of the present Act enables the Minister to specify persons of either sex.

It is submitted that the words "in motion" in sub-s. (3) bear the same meaning as they do in sub-s. (4); see note (*f*), *infra*.

(*e*) ***Properly maintained.*** Compare the cognate provisions of s. 16 of the Factories Act 1961, as to which see Redgrave's Factories Acts, 22nd Edn., pp. 75 *et seq.* It is submitted that "properly maintained" in s. 17 (4) of the present Act bears the same meaning as in s. 8 (4); see note (*h*) to that section.

(*f*) ***Motion or use.*** The fencing referred to in this section has only to be constantly maintained and kept in position while the parts required to be fenced are "in motion or use", and, even in such case, those parts may be lawfully exposed if the requirements of the exception are complied with. The interpretation of the phrase, "in motion or use", has given rise to no little difficulty. It is clear that the two parts of the phrase bear different meanings. A part may be in motion but not in use; it may be in use but not in motion. A guide to the meaning of the term "in use" was given by Lord PORTER in *Richard Thomas and Baldwins, Ltd.* v. *Cummings*, [1955] A.C. 321; [1955] 1 All E.R. 285, H.L., an authority upon the corresponding phrase, "in motion or in use", in s. 16 of the Factories Act, 1937. At pp. 332, 289 he said:

> "'In use' would certainly mean running as it was meant to run and doing the work it was meant to do. But provision is required for cases where it was running as it was meant to run but not doing the work it was meant to do. In such a case it would, in my view, be in motion but not in use."

Thus, in *Knight* v. *Leamington Spa Courier, Ltd.*, [1961] 2 Q.B. 253; [1961] 2 All E.R. 666, C.A., a printing press was not being used for its ordinary commercial purpose of printing, but, during a slack period, was being slowly rotated by an inching button. It was held not to be "in use". A similar decision was reached in *Kelly* v. *John Dale, Ltd.*, [1965] 1 Q.B. 185; [1964] 2 All E.R. 497, another inching button case, even though the process there being carried out by the plaintiff (that of cleaning an inking cylinder on a printing machine) was one which had frequently to be performed. In *Conboy* v. *King and Hutchings* (1963), 61 L.G.R. 516, however, the inching was being carried out as part of the actual use of the press for printing, and it was held that the machine was "in motion or in use". In *Horne* v. *Lec Refrigeration, Ltd.*, [1965] 2 All E.R. 898, a toolsetter was setting a mould in a plastic forming machine, preparatory to its being used for its commercial purpose. It was held that the machine was not then "in use". It is clear, none the less, that a machine may be "in use" notwithstanding the fact that it is, for the time being, inert; " . . . a machine may be 'in use' notwithstanding some temporary halt in the running of it" (*per* DONOVAN, L.J., in *Knight's* case, *supra*, at pp. 265; 671).

Far more difficult problems have arisen in the interpretation of the term "in motion". It was decided in *Richard Thomas and Baldwins, Ltd.* v. *Cummings, supra,* that "in motion" meant more than "in movement", but it is not easy to discover what factors, other than mere movement, must be found to exist before motion can be said to be present. In *Cumming's* case their Lordships did not speak with a single voice and the ratio is obscure (see the discussion of that case in *Irwin* v. *White, Tomkins and Courage, Ltd.*, [1964] 1 All E.R. 545; [1964] 1 W.L.R. 387, H.L.). *Cumming's* case was explained by HOLROYD PEARCE, L.J., in *Knight's* case, *supra,* at pp. 262, 263; 669, 670, in terms which the Court of Appeal, in *Mitchell* v. *W. S. Westin, Ltd.*, [1965] 1 All E.R. 657; [1965] 1 W.L.R. 297, has accepted as authoritative. That part of the judgment of HOLROYD PEARCE, L.J., which was thus approved was as follows:

> "The construction of the words 'in motion or in use' must be the same whether the object was repair or cleaning. In my judgment, that case [*Cumming's* case] is authority for the proposition that the words 'in motion or in use' connote the substantial movement of its normal working or, if it is not at the time achieving its normal purpose, some movement reasonably comparable to its normal working. This view is in accord with that expressed by FINNEMORE, J., in *Dodd* v. *Ben Capper, Ltd.* (*unreported*). The slow, sporadic rotation or intermittent movement of machinery intended to place it more advantageously for cleaning or repair is not normally motion or use within the section, whether it be produced by manpower or mechanical power. In some cases it may be clear into which category the movement fits. In borderline cases it must be a question of fact and degree. Here the judge was right in deciding that the machinery was not in motion."

In *Mitchell* v. *W. S. Westin, Ltd.*, PEARSON, L.J., while accepting as authoritative the explanation of *Cumming's* case given by HOLROYD PEARCE, L.J., himself deduced from *Cumming's* case the following propositions (see at pp. 307, 308; 664):

> "First: in ascertaining whether machinery in fact moving is 'in motion' for the purposes of the section, regard should be had to the character of the movement more than to its purpose. If machinery is revolving rapidly in a place where a workman may come in contact with it, the guard should be kept in place on the machinery, whatever may be the purpose for which the movement is being made, whether it be production, examination, demonstration, adjustment, repairing, testing, or whatever the purpose may be. Secondly: the obvious and typical case of machinery in motion is, of course, machinery running in the usual way in its ordinary course of operation. Thirdly: there must, however, be other cases of machinery which is 'in motion', because the object of the statute is to protect the workman, and machinery may be running dangerously even though not in the ordinary course of operation or perhaps even though not running in the usual way. Fourthly: in deciding whether in a particular case the movement is or is not of such a character that the machinery is 'in motion', the factors to be taken into account include the speed of the

movement, its duration, the method of starting the machinery, and probably to some extent or in some cases also the purpose for which the movement has been instituted. Then, fifthly: when the factors are rightly taken into account, it must be a question of fact and of degree whether or not the machinery is 'in motion' within the meaning of the section."

The "inching button" cases were distinguished by the Court of Appeal in *Stanbrook* v. *Waterlow & Sons, Ltd.*, [1964] 2 All E.R. 506; [1964] 1 W.L.R. 825, in which the cylinder of a printing machine was caused to revolve at high speed for a fraction of a second only. The court held that the fact that the motion was not intended to last for an appreciable time was immaterial, and that there was a vital distinction between a thing which is "being moved" slowly and a thing which is "in motion" at a fast pace; on the facts of the case before them the cylinder was "in motion" within s. 16. However, mere slowness of movement does not take the case out of s. 16 (*Joy* v. *News of the World* (1972), 13 K.I.R. 57); compare *Foster* v. *Flexible Metal Co., Ltd.* (1967), 4 K.I.R. 49, in which manual motion was held not to fall within s. 16, *sed quaere*.

In *Horne* v. *Lec Refrigeration, Ltd.*, [1965] 2 All E.R. 898, the question arose, whether inadvertent movement of the dangerous part constituted "motion" within s. 16. In that case the dangerous part was caused to move because its operating switch was accidentally fouled by the cable of a portable electric drill held by the workman. The machine was operated by a switch provided to produce the motion which occurred; it was moving in the same manner and place as in its normal working; and it was working at the same speed and to the same extent as in its normal working. It was held that the machine was "in motion". The result might well be different, however, should a machine behave in an abnormal way, a situation envisaged by WILLMER, L.J., in *Eaves* v. *Morris Motors, Ltd.*, [1961] 2 Q.B. 385; [1961] 3 All E.R. 233, C.A., at pp. 398; 239:

"But there is, I think, another and broader ground for holding that there was no breach of the statute in the present case. The provisions relating to fencing of dangerous machinery in Part II of the Act are designed, as I see it, to prevent dangers arising in the course of the normal operation of the machinery. I do not think that dangers due to the machinery breaking down or behaving in some abnormal and unexpected way are within the purview of the Act. I think that is implicit in the provisions of the Act itself. Thus it seems to me that the 'motion' referred to in s. 15, and the 'motion' and 'use' referred to in s. 16 must in their context refer to motion and use in the course of normal operation."

(*g*) ***Necessarily exposed.*** The burden of proving that the excepting words apply lies upon the employer, who must prove that the parts required to be fenced were necessarily exposed for the operation actually being done at the material time (*Nash* v. *High Duty Alloys, Ltd.*, [1947] 1 K.B. 377; [1947] 1 All E.R. 363, C.A.).

(*h*) ***For examination . . . lubrication or adjustment.*** These words do not include repair (*Richard Thomas & Baldwins, Ltd.* v.

Cummings, [1955] A.C. 321; [1955] 1 All E.R. 285, H.L.) or cleaning (*Knight* v. *Leamington Spa Courier, Ltd.*, [1961] 2 Q.B. 253; [1961] 2 All E.R. 666, C.A.).

(*i*) ***Age.*** A person attains a particular age expressed in years at the commencement of the relevant anniversary of the date of his birth (Family Law Reform Act 1969, s. 9).

(*j*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*k*) ***The Minister.*** For definition, see s. 90 (1).

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18. Avoidance of exposure of young persons to danger in cleaning machinery.—(1) No young person (*a*) employed (*b*) to work (*c*) in premises to which this Act applies (*d*) shall clean (*e*) any machinery (*f*) used as, or forming part of the equipment (*g*) of the premises if doing so exposes (*h*) him to risk of injury from a moving part of that or any adjacent machinery.

(2) In this section "young person" means a person who has not attained the age (*i*) of eighteen.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability, see the General Introduction.

For the cognate provisions of s. 20 of the Factories Act 1961, see Redgrave's Factories Act, 22nd Edn., p. 83.

(*a*) ***Young person.*** See sub-s. (2).

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*e*) ***Clean.*** In *Taylor* v. *Dawson* (*Mark*) *& Son, Ltd.*, [1911] 1 K.B. 145, a child was removing fluff from the rollers of a machine in motion. The fluff would have clogged the machine had it not been removed, but it had a commercial value, and was in fact sold. It was held that the child was "cleaning" the machine.

(*f*) ***Machinery.*** See the Introductory Note to s. 17.

(*g*) ***Equipment.*** See the Introductory Note to s. 17.

(*h*) ***Exposes.*** This word refers to the nature of the mechanism to which the employee is exposed, and if it is of a kind which may give rise to injury, even if used strictly in accordance with instructions, then it may be held to expose him to a risk of injury (*J. H. Dewhurst, Ltd.* v. *Coventry Corporation*, [1970] 1 Q.B. 20; [1969] 3 All E.R. 1225).

(*i*) ***Age.*** See note (*i*) to s. 17.

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19. Training and supervision of persons working at dangerous machines.—(1) No person employed (*a*) to work (*b*) in premises to which this Act applies (*c*) shall work (*b*) there at any machine to which this section applies unless he has been fully instructed as to the dangers arising in connection with it and the precautions to be observed, and—

(a) has received a sufficient training in work at the machine; or

(b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) This section applies to such machines as may be prescribed by order (*d*) of the Minister (*e*), being machines which in his opinion (*f*) are of such a dangerous character that persons ought not to work at them unless the foregoing requirements are complied with.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability, see the General Introduction.

In *M'Cafferty* v. *Brown*, 1950 S.C. 300, it was held that the cognate provisions of s. 21 of the Factories Act 1937 (now s. 31 of the Factories Act 1961) imposed no obligation on the person employed.

(*a*) ***Employed.*** For definition, see s. 90 (1), (4).

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Order.*** As to the making of orders, see s. 80. The Prescribed Dangerous Machines Order 1964 has been made under this section and is printed below.

(*e*) ***Minister.*** For definition, see s. 90 (1).

(*f*) ***Opinion.*** See note (*m*) to s. 6.

THE PRESCRIBED DANGEROUS MACHINES ORDER 1964
(S.I. 1964 No. 971)

Dated 25th June 1964

The Minister of Labour by virtue of the powers conferred on him by section 19 of the Offices, Shops and Railway Premises Act 1963 (hereafter in this Order referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Order:—

1.—(1) This Order may be cited as the Prescribed Dangerous Machines Order 1964 and shall come into operation on 1st August 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. The machines specified in the Schedule to this Order are hereby prescribed as being machines which in the opinion of the Minister of

Labour are of such a dangerous character that persons ought not to work at them unless the requirements of section 19 (1) of the Act are complied with.

SCHEDULE

Article 2

PART I

The following machines when worked with the aid of mechanical power—

1. Worm-type mincing machines.
2. Rotary knife bowl-type chopping machines.
3. Dough brakes.
4. Dough mixers.
5. Food mixing machines when used with attachments for mincing, slicing, chipping or any other cutting operation, or for crumbing.
6. Pie and tart making machines.
7. Vegetable slicing machines.
8. Wrapping and packing machines.
9. Garment presses.
10. Opening or teasing machines used for upholstery or bedding work.
11. Corner staying machines.
12. Loose knife punching machines.
13. Wire stitching machines.
14. Machines of any type equipped with a circular saw blade.
15. Machines of any type equipped with a saw in the form of a continuous band or strip.
16. Planing machines, vertical spindle moulding machines and routing machines, being, in any case, machines used for cutting wood, wood products, fibre-board, plastic or similar material.

PART II

The following machines whether worked with the aid of mechanical power or not—

17. Circular knife slicing machines used for cutting bacon and other foods (whether similar to bacon or not).
18. Potato chipping machines.
19. Platen printing machines, including such machines when used for cutting and creasing.
20. Guillotine machines.

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20. Regulations for securing health and safety.—(1) The Minister (*a*) may, as respects premises to which this Act applies (*b*) or any class of such premises (*c*), make special

regulations (*d*) for protecting persons, or persons of any class (*e*), working (*f*) in such premises or, as the case may be, in such premises of the class to which the regulations apply, against risks of bodily injury or injury to health arising out of the use of any machinery, plant, equipment, appliance (*g*) or substance, the carrying on of any operation or the use of any process.

(2) Regulations (*d*) under this section may make any such provision for the purpose aforesaid as appears (*h*) to the Minister (*i*) to meet the necessity of the case so far as is reasonably practicable (*k*), and may impose obligations, restrictions and prohibitions on those who employ persons to work (*f*) as aforesaid, on persons employed so to work (*f*), and on others.

(3) Without prejudice to the generality of the last foregoing subsection, regulations (*d*) under this section may provide for—

(a) regulating or prohibiting the use of any machinery, plant, equipment, appliance (*g*) or substance, the carrying on of any operation or the use of any process;

(b) imposing requirements with respect to the construction, installation, examination, repair, maintenance, alteration, adjustment and testing of machinery, plant, equipment or appliances (*g*) and the safeguarding of dangerous parts (*l*) thereof;

(c) prohibiting the sale or letting on hire for use in premises (*b*) in Great Britain (*m*) to which this Act applies (or, where the regulations relate to a class of such premises (*c*), for use in such premises of that class) of any machinery, plant, equipment or appliance (*g*) which does not comply with requirements of the regulations;

(d) any incidental, supplementary or consequential matters for which it appears (*h*) to the Minister (*i*) requisite or expedient to provide for the purposes of the regulations.

(4) A person who contravenes (*n*) a provision of regulations under this section (other than a provision having effect by virtue of paragraph (c) of the last foregoing subsection) shall be guilty of an offence (*o*).

(5) A person who contravenes (*n*) a provision of regulations having effect by virtue of paragraph (c) of subsection (3) of this section or, as agent of the seller or hirer, causes or procures (*p*) any machinery, plant, equipment or appliance (*g*) to be sold or let on hire in contravention (*n*) of any such provision, shall be guilty of an offence (*o*) and liable to a fine not exceeding two hundred pounds.

(6) An offence (*o*) under the last foregoing subsection shall, where necessary for conferring jurisdiction on a court to entertain proceedings for the offence (*o*), be deemed to have been committed in the place where the machinery, plant, equipment or appliance (*g*) in question is for the time being.

(7) Proceedings for an offence under subsection (5) of this section may be commenced (*q*) at any time within twelve months (*r*) from the time when the offence was committed.

(8) Where a contravention (*n*) of a provision of regulations under this section consists in a failure to do anything at or within a time specified in the regulations, and the regulations provide that this subsection shall apply to a failure so to do it, the contravention (*n*) shall be deemed to continue until that thing is done.

(9) A requirement imposed by virtue of subsection (3)(b) of this section with respect to the safeguarding of dangerous parts (*l*) of machinery may be expressed to take effect in addition to, or in lieu of, a requirement imposed by section 17 of this Act.

(10) So far as regards machinery, plant, equipment or appliances (*g*), nothing in this section shall be construed as restricting the exercise of the powers thereby conferred to the making of provision with respect to machinery, plant, equipment or appliances (*g*) wholly situate in premises to which this Act applies.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As to civil liability for breach of special regulations made under this section, see the General Introduction.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Class of premises.*** See s. 90 (5).

(*d*) ***Special Regulations.*** As to the making of special regulations, see s. 80 (8) and Sch. 1. The Offices, Shops and Railway Premises (Hoists and Lifts) Regulations 1968 have been made under this section and are printed at p. 69.

(*e*) ***Class of persons.*** See s. 90 (5).

(*f*) ***Working.*** See note (*a*) to s. 3.

(*g*) ***Machinery . . . appliance.*** See s. 90 (2).

(*h*) ***As appears.*** The word "appear" is clearly used to make the Minister, acting in good faith, the sole judge of the matter in question; see, in particular, *Robinson* v. *Sunderland Corporation*, [1899] 1 Q.B. 751, at pp. 756, 757, *per* CHANNELL, J.; *R.* v. *Comptroller-General of Patents, Ex parte Bayer Products, Ltd.*, [1941] 2 K.B. 306; [1941] 2 All E.R. 677, C.A., and *Point of Ayr Collieries, Ltd.* v. *Lloyd-George*, [1943] 2 All E.R. 546, C.A. See, however, in particular, *Ross-Clunis* v. *Papadopoullos*, [1958] 2 All E.R. 23, P.C., and *Customs and Excise Comrs.* v. *Cure and Deeley*, [1962] 1 Q.B. 340; [1961] 3 All E.R. 641; and note s. 80 (2).

(*i*) ***The Minister.*** For definition, see s. 90 (1).

(*k*) ***Reasonably practicable.*** See note (*f*) to s. 6.

(*l*) ***Dangerous parts.*** See the Introductory Note to s. 17.

(*m*) ***Great Britain.*** Great Britain comprises England, Wales and Scotland; see the Union with Scotland Act 1706 (c. 11), preamble, art. 1 and the Wales and Berwick Act 1746 (c. 42), s. 3.

(*n*) ***Contravenes; contravention.*** For definition, see s. 90 (1).

(*o*) ***Offence.*** For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1); and note sub-ss. (6) to (8) of this section.

(*p*) ***Causes or procures.*** In *McLeod* (*or Houston*) v. *Buchanan*, [1940] 2 All E.R. 179, H.L., at p. 187, Lord WRIGHT, said: "To 'cause' the user involves some express or positive mandate from the person 'causing' to the other person, or some authority from the former to the latter, arising in the circumstances of the case". See also, in particular, *Kirkheaton District Local Board* v. *Ainely, Sons & Co.*, [1892] 2 Q.B. 274, C.A.; *Shave* v. *Rosner*, [1954] 2 Q.B. 113; [1954] 2 All E.R. 280, *Lovelace* v. *Director of Public Prosecutions*, [1954] 3 All E.R. 481; and *Ellis* v. *Smith*, [1962] 3 All E.R. 954.

"Procure" has been defined as "obtain by care or effort" and can be more simply paraphrased as "see to it"; see *Re Royal Victoria Pavilion, Ramsgate, Whelan* v. *F.T.S.* (*Great Britain*), *Ltd.*, [1961] Ch. 581 at p. 587; [1961] 3 All E.R. 83 at p. 86. It would, therefore, seem that the word "procures" adds nothing to the scope of the phrase "causes or procures"; see also *R.* v. *Mackenzie and Higginson* (1910), 75 J.P. 159, and *R.* v. *Christian* (1913), 78 J.P. 112.

(*q*) ***Proceedings . . . commenced.*** The commencement of the proceedings is the date when the information is laid; see *Beardsley* v. *Giddings*, [1904] 1 K.B. 847, and *Brooks* v. *Bagshaw*, [1904] 2 K.B. 798; cf. also the Magistrates' Courts Act 1952, s. 104. A prosecution for aiding and abetting falls within the time-limit just as do proceedings against a principal; see *Gould & Co.* v. *Houghton*, [1921] 1 K.B. 509.

(*r*) ***Within twelve months.*** The normal time-limit is only six months; see the Magistrates' Courts Act 1952, s. 104.

The day on which the offence was committed is not to be included in calculating the period of twelve months; see, in particular, *Goldsmiths' Co.* v. *West Metropolitan Rail. Co.*, [1904] 1 K.B. 1, C.A., and *Stewart* v. *Chapman*, [1951] 2 K.B. 792; [1951] 2 All E.R. 613.

THE OFFICES, SHOPS AND RAILWAY PREMISES (HOISTS AND LIFTS) REGULATIONS 1968 (S.I. 1968 No. 849)

Dated 27th May 1968, *made by the Secretary of State under ss.* 20, 80 (5) *and* (6) *of the Offices, Shops and Railway Premises Act* 1963 *and all other enabling powers.*

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Offices, Shops and Railway Premises (Hoists and Lifts) Regulations 1968 and shall come into operation on 28th May 1969.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

"factory inspector for the district" means, as respects any premises, the factory inspector in charge of the district in which the premises are situate;

"inspector" means an inspector as defined in section 53 (1) of the Act;

"lift" includes a hoist but does not include any lifting machine or appliance unless it has a platform or cage the direction of movement of which is restricted by a guide or guides;

"liftway" includes a hoistway;

"mine and quarry inspector for the district" means, as respects any premises, the mine and quarry inspector in charge of the district in which the premises are situate;

"prescribed" means prescribed by order of the Secretary of State; and

"the Act" means the Offices, Shops and Railway Premises Act 1963 as amended by or under any other Act.

Application of Regulations

2.—(1) Except as provided in paragraph (2) of this Regulation and subject to the provisions of Regulation 3, these Regulations shall apply to *lifts* and *liftways* which are wholly or partly situate in office premises, shop premises and railway premises to which *the Act* applies, or which are wholly or partly situate in a part of a building which is used

for the purposes of, but is not comprised in, premises to which *the Act* applies.

(2) Nothing in these Regulations shall apply to premises which are in a covered market place, being a covered market place to which section 51 (power to adapt Act in relation to covered markets) of *the Act* relates.

Exemptions and modifications

3.—(1) In the case of a continuous *lift*, Regulations 7 to 9 shall not apply and in any such case Regulation 6 (1) shall have effect as if for the references to six months there were substituted references to twelve months.

(2) In the case of a *lift* not connected with mechanical power, Regulations 7 (2) and (3) and 9 shall not apply, and in any such case:—

(a) Regulation 6 (1) shall have effect as if for the references to six months there were substituted references to twelve months; and

(b) any gates required to be fitted under Regulation 7 (1) shall be kept closed and fastened except when the cage or platform is at rest at the landing.

(3) In the case of any class or description of *lift* or *liftway* specified in the first column of the Schedule to these Regulations, the requirements of the provisions of the Regulations specified in the second column of the said Schedule and set opposite to that class or description shall not apply; subject however to the conditions and limitations (if any) set opposite thereto in the third column of the said Schedule.

Obligations under Regulations

4.—(1) In relation to matters within his or their control or within the control of his or their servants or agents, the duty to comply with these Regulations shall be—

(a) in the case of a *lift* or *liftway* situate in a building to which section 42 of *the Act* applies or in premises outside the building being premises occupied together with office or shop premises forming part of the building, upon the owner of the building;

(b) in the case of a *lift* or *liftway* situate in a building to which section 43 of *the Act* applies or in premises outside the building being premises occupied together with office or shop premises forming part of the building, upon the persons who between them own the building; and

(c) in the case of a *lift* or *liftway* situate in a set of fuel storage premises to which section 44 of *the Act* applies, upon the owner of that set of premises.

(2) Except as provided in the foregoing paragraph of this Regulation, the duty to comply with these Regulations shall be upon the occupier of any premises to which *the Act* applies in connection with which the *lift* or *liftway* is used.

Construction and maintenance

5. Every *lift* shall be of good mechanical contruction, sound material and adequate strength, and shall be properly maintained.

Examinations and reports

6.—(1) Every *lift* shall be thoroughly examined by a competent person at least once in every period of six months and a report of the result of every such examination in the *prescribed* form and containing the *prescribed* particulars shall be signed by the person making the examination and shall within twenty-eight days be sent to the person having the duty under Regulation 4 to comply with these Regulations as respects that *lift*: provided that where a *lift* to which these Regulations apply is so situate that it or any part of it is required to be thoroughly examined by virtue of section 22 (2) of the Factories Act 1961, a thorough examination of that *lift* shall not be required on any occasion on which it would otherwise be required by the foregoing provisions of this paragraph if and to the extent to which a thorough examination of the *lift* or any part of it has been made within the period of six months then immediately preceding in accordance with the provisions of the said section 22 (2) and a report of the result of the examination has been made as required by the said section 22 (2).

(2) The report of the result of every examination made in pursuance of paragraph (1) of this Regulation shall be preserved and shall be kept readily available for inspection by any *inspector* for two years after the date of the signing of the report.

(3) Where the examination shows that the *lift* cannot continue to be used with safety unless certain repairs are carried out immediately or within a specified time, the person making the report shall within twenty-eight days of the completion of the examination also send a copy of the report—

(a) to such one or more of the following as the case may require, that is to say, the local authority, the *factory inspector for the district* and the *mine and quarry inspector for the district* having, in each case, the duty to enforce these Regulations in the premises in which the *lift* is situate or in connection with which the *lift* is used; and

(b) in the case of a *lift* or *liftway* situate in a building of which part consists of premises to which the Factories Act 1961 applies, to the *factory inspector for the district* (except in cases where a copy of the report is required to be sent to him by sub-paragraph (*a*) of this paragraph).

Enclosures and gates

7.—(1) Every *liftway* shall be efficiently protected by a substantial enclosure fitted with gates, and the enclosure shall be such as to prevent, when the gates are shut, any person falling down the way or coming into contact with any moving part of the *lift*.

(2) Any such gate shall, subject to Regulations 3 (1) and (2) and paragraph (3) of this Regulation, be fitted with efficient interlocking or other devices to secure that the gate cannot be opened except when

the cage or platform is at the landing and that the cage or platform cannot be moved away from the landing until the gate is closed.

(3) If in the case of a *lift* constructed or reconstructed before the date of the making of these Regulations, it is not reasonably practicable to fit it with such devices as are mentioned in the last foregoing paragraph, it shall be sufficient if the gate—

(a) is provided with such arrangements as will secure the objects of that paragraph so far as is reasonably practicable; and
(b) is kept closed and fastened except when the cage or platform is at rest at the landing.

(4) Every *lift* and every such enclosure as is mentioned in paragraph (1) of this Regulation shall be so constructed as to prevent any part of any person or any goods carried in the *lift* being trapped between any part of the *lift* and any fixed structure or between the counterbalance weight and any other moving part of the *lift*.

Maximum working load

8. There shall be marked conspicuously on every *lift* the maximum working load which it can safely carry, and no load greater than that load shall be carried on any *lift*.

Lifts used for carrying persons

9.—(1) The following additional requirements shall apply to *lifts* used for carrying persons, whether together with goods or otherwise:—

(a) efficient automatic devices shall be provided and maintained to prevent the cage or platform overrunning; and
(b) every cage shall on each side from which access is afforded to a landing be fitted with a gate, and in connection with every such gate efficient devices shall be provided to secure that, when persons or goods are in the cage, the cage cannot be raised or lowered unless the gate is closed, and will come to rest when the gate is opened.

(2) In the case of a *lift* constructed or reconstructed before the date of the making of these Regulations, in connection with which it is not reasonably practicable to provide such devices as are mentioned in sub-paragraph (b) of the foregoing paragraph, it shall be sufficient if—

(a) such arrangements are provided as will secure the objects of that paragraph so far as is reasonably practicable; and
(b) the gate is kept closed and fastened except when the cage is at rest or empty.

(3) In the case of a *lift* used as mentioned in paragraph (1) of this Regulation, which was constructed or reconstructed after the date of the making of these Regulations, where the platform or cage is suspended by rope or chain, there shall be at least two ropes or chains separately connected with the platform or cage, each rope or chain and its attachments being capable of carrying the whole weight of the platform or cage and its maximum working load, and efficient devices shall be provided and maintained which will support the platform or cage with its maximum working load in the event of a breakage of the ropes or chains or any of their attachments.

SCHEDULE

Regulation 3 (3)

Class or description of *lift* or *liftway*	Requirements of the Regulations which shall not apply	Conditions or limitations (if any)
1. *Liftways* of pavement *lifts*, that is to say, *lifts* in the case of which the provision of a permanent enclosure at the top landing would obstruct a street or public place, or yard or other open space within premises to which *the Act* applies where persons are required to pass.	Regulation 7 (1), in so far as it requires the *liftway* to be protected by an enclosure and gate at or above the top landing. Except in the case of a *lift* with more than one landing other than the top landing, Regulations 3 (2) (b) and 7 (2) and (3).	The *liftway* shall be securely covered or securely fenced at the top landing except when and where access is required for persons, goods or materials. Every gate shall be kept closed and fastened except when the cage or platform is at the landing.
2. Mobile *lifts* used in various positions for the stacking of goods or materials or for loading or unloading directly to or from vehicles, which have no fixed landings above the lowest landing.	Regulations 3 (2) (b) and 7 (1) to (3) and, when the maximum height of the platform above ground or floor level does not exceed six feet six inches, Regulation 9 (3).	The *lift* shall be so constructed that it is stable and its stability shall in all circumstances be maintained. Where the height of the platform of a *lift* used for carrying persons exceeds six feet six inches above ground or floor level, the edges of the platform on which persons stand shall be protected to a height of at least three feet above the platform by suitable guard rails, lower rails and toe boards of adequate strength or by other equally effective means; any gate provided shall, unless equally effective means are provided, open inwards only towards the platform and be arranged so as automatically to return to the closed and fastened position; and the button, handle or other device by which the movement of the platform is controlled shall be on the platform and be such that the platform cannot be in motion unless the control device is being held or pressed by a person on the platform.

Regulation 3 (3)—*continued*

Class or description of *lift* or *liftway*	Requirements of the Regulations which shall not apply	Conditions or limitations (if any)
3. *Lifts* which are fixed in position and which are used for the stacking of goods or materials or for loading or unloading directly to or from vehicles, which have no fixed landings above the lowest landing and in the case of which the maximum height of the cage or platform above ground or floor level exceeds six feet six inches.	Regulations 3 (2) (b) and 7 (1) to (3).	The *liftway* shall be protected at ground or floor level by an enclosure not less than seven feet in height and fitted with a gate or gates in connection with which Regulations 3 (2) (b) and 7 (2) and (3) shall apply, and if the *lift* is used for carrying persons it shall be provided with a cage.
4. Platform *lifts* which are fixed in position and in the case of which the maximum height of the platform above ground or floor level does not exceed six feet six inches.	Regulations 3 (2) (b), 7 (1) to (3) and 9 (3).	A gate or gates or other means shall be provided to prevent any person being endangered by the underside of the platform or by any fitting attached to it.
5. *Liftways* of *lifts* which are not used for carrying persons and into or from which goods or materials are not loaded or unloaded except at a height of not less than two feet nine inches above the level of the floor or ground where loading or unloading is performed.	Regulations 3 (2) (b) and 7 (2) and (3).	This exemption shall not apply to any gate unless there is a fixed enclosure not less than two feet nine inches in height below the bottom of the gate and reaching down to the level of the floor or ground; and every gate to which this exemption applies shall:— (i) be fitted with an efficient device to secure that the cage or platform cannot be raised or lowered unless the gate is closed, and will come to rest when the gate is opened or, (ii) where it is not reasonably practicable to fit such a device be kept closed and fastened except when the cage or platform is at rest at the gate.
6. *Lifts* which are not connected with me-	Regulation 7 (4).	

Regulation 3 (3)—*continued*

Class of description of *lift* or *liftway*	Requirements of the Regulations which shall not apply	Conditions or limitations (if any)
chanical power and which are not used for carrying persons, and the enclosures of the *liftways* of such *lifts*.		
7. *Lifts* in the case of which the doors of the *liftway* are of solid construction and the interior surfaces of the said doors and of the *liftway* opposite to any side of the cage in which there is an opening are, throughout the height of travel of the cage, smooth and flush with each other save for any recess designed for working purposes and not more than half-an-inch in depth, and hand grips not exceeding one inch in depth provided for closing doors and so constructed as to prevent trapping.	Regulations 9 (1) (b) and (2).	
8. *Liftways* of *lifts* into or from which goods or materials are loaded or unloaded automatically and to the platform or cage of which there is no access for persons	Regulation 7 (1) in so far as it requires a gate at the openings in the enclosure where goods or materials are loaded or unloaded automatically.	Means shall be provided at the loading and unloading openings in the enclosure to prevent, so far as is reasonably practicable, any person falling down the *liftway* or coming into contact with any moving part of the *lift*.
9. *Liftways* of *lifts* which are not used for carrying persons and on which the goods or materials stacked on the platform or in the cage are loaded or unloaded with the top	Regulations 3 (2) (b) and 7 (2) and (3).	This exemption shall not apply to any gate unless there is a fixed enclosure not less than two feet nine inches in height below the bottom of the gate and reaching down to the level of the floor or ground, and unless any such gate can

Regulation 3 (3)—*continued*

Class of description of *lift* or *liftway*	Requirements of the Regulations which shall not apply	Conditions or limitations (if any)
layer of the stack at landing level.		only be opened or remain open when the floor of the cage or platform is at the landing level or not more than five feet below that level; and when the gate is open the cage or platform shall not be capable of being moved more than twelve inches at one time and at a speed not greater than twenty-five feet per minute; and provision shall be made to prevent any person being trapped by the top of the cage. The arrangements shall be such that when the gate is open the platform or cage cannot be in motion unless the button, handle, or other device by which the movement of the cage or platform is controlled is being held or pressed by a person close to the gate.
10. *Lifts* and *liftways* the landing and cage entrances of which are protected by lattice gates.	Regulations 7 (1) and (4) in so far as they relate to the protection to be provided by the gates.	The gates when shut shall extend to the full height and width of the entrance openings and, except in the case of gates installed before the date of the coming into operation of these Regulations, shall have no openings exceeding two and a half inches in width. Measures shall be taken to prevent the access of feet through the cage gate or the landing gate into the *liftway*, and to prevent the access of fingers through the landing gate to the interlocking mechanism and control devices in the cage or on the platform.
11. *Lifts* used for raising or lowering or tipping standard gauge or broader	Regulation 7 (1) in so far as it requires the recognised entrances to the enclosure, being en-	So far as is reasonably practicable, means shall be provided at such entrances to the enclosure to prevent

Regulation 3 (3)—*continued*

Class of description of *lift* or *liftway*	Requirements of the Regulations which shall not apply	Conditions or limitations (if any)
gauge railway rolling-stock.	trances through which the rolling-stock passes, to be fitted with gates; Regulations 3 (2) (b), 7 (2) and (3), and 9 (1) (*b*) and (2).	any person from falling down the *liftway* or being struck by any moving part of the *lift*.

21. Regulations for controlling noise and vibrations.—(1) The Minister (*a*) may make special regulations (*b*) for protecting persons employed (*c*) to work (*d*) in premises to which this Act applies (*e*), or any class of such premises (*f*), from risks of bodily injury or injury to health arising from noise or vibrations and for preventing the welfare of persons so employed (*c*) from being adversely affected by noise or vibrations.

(2) Regulations under this section may make any such provision for the purpose aforesaid as appears (*g*) to the Minister (*a*) to meet the necessity of the case so far as is reasonably practicable (*h*), and may impose obligations, restrictions and prohibitions on those who employ persons to work (*d*) as aforesaid, on persons employed (*c*) so to work (*d*), and on others.

(3) A person who contravenes (*i*) a provision of regulations under this section shall be guilty of an offence (*k*).

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

For noise and vibration as a statutory nuisance, see the Noise Abatement Act 1960.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8) and Sch. 1. No special regulations under this section have yet been made.

(*c*) ***Employed.*** For definition, see s. 90 (1).

(*d*) ***Work.*** See note (*a*) to s. 3.

(*e*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*f*) ***Class of premises.*** See s. 90 (5).

(*g*) ***As appears.*** See note (*h*) to s. 20.

(*h*) ***Reasonably practicable.*** See note (*f*) to s. 6.

(*i*) ***Contravenes.*** For definition, see s. 90 (1).

(*k*) ***Offence.*** For provisions as to offences, see ss. 63 *et seq.*, 70, 86 (1).

22. Power of magistrates' courts and sheriffs to make orders for putting down dangerous conditions and practices.—(1) Where, in the case of premises to which this Act applies (*a*), an appropriate court (*b*) is satisfied, on a complaint (*c*) (or, in Scotland, a summary application) made by or on behalf of an authority or person having power to enforce (*d*), with respect to the premises any of the foregoing provisions of this Act—

(a) that any part of the premises is in such a condition or is so constructed that it cannot be used without risk of bodily injury or injury to health; or

(b) that any machinery, plant, equipment or appliance (*e*) used in the premises is in such a condition, is so constructed or is so placed that it cannot be used without such risk; or

(c) that an operation carried on in the premises, or a process used therein, is so carried on or used in such a manner as to cause such risk;

the following provisions shall have effect:—

(i) if the case falls within paragraph (a) of this subsection, the court may by order prohibit (*f*) the use of the part in question absolutely, unless it is satisfied that it can be so repaired or altered as to permit of its being used without such risk as aforesaid, in which case it may prohibit its use until it has been so repaired or altered;

(ii) if the case falls within paragraph (b) of this subsection, the court may by order prohibit (*f*) the use of the machinery, plant, equipment or appliance (*e*) in question absolutely, unless it is satisfied that it can be so repaired, altered or moved as to permit of its being used as aforesaid, in which case it may prohibit (*f*) its use until it has been so repaired, altered or moved;

(iii) if the case falls within paragraph (c) of this subsection, the court may by order prohibit (*f*) the carrying on or use of the operation or process in question absolutely, unless it is satisfied that there can be taken such steps as will enable it to be carried on or used otherwise than in such a manner as to cause such risk as aforesaid, in which case it may, as the cir-

cumstances require, prohibit (*f*) the carrying on or use of it unless such steps as aforesaid are taken in the course of the carrying on or use of it.

(2) Where a complaint (*c*) or summary application is, or has been, made under the foregoing subsection, the court—

(a) if satisfied on evidence tendered upon an application made by or on behalf of the authority or person by whom or on whose behalf the complaint (*c*) or summary application is, or was, made, that the use of the part of the premises or the thing, or, as the case may be, the carrying on or use of the operation or process, that is the subject of the complaint or summary application involves imminent risk of bodily injury or injury to health; and

(b) if satisfied also that three clear days' notice (*g*) of intention to make an application under this subsection (stating the time at which it would be made) has been given to the occupier (*h*) of the premises;

and after affording to the occupier (*h*) (if he appears) an opportunity to be heard, may make an interim order prohibiting, either absolutely or subject to conditions, the use of the part or thing or, as the case may be, the carrying on or use of the operation or process until the earliest opportunity for hearing and determining the complaint or summary application.

(3) In this section "appropriate court" means, as regards premises in England or Wales, a magistrates' court (*i*) acting for the petty sessions area (*k*) in which the premises are situate and, as regards premises in Scotland, the sheriff within whose jurisdiction the premises are situate; and, in exercising its powers under the last foregoing subsection, a magistrates' court (*i*) may be composed of a single justice.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

For the application of this section to the common parts of buildings, part of which consists of premises within this Act and to machinery etc. used in such parts, see s. 42 (1), (8), (9), where the building is in single ownership, and s. 43 (1), (6), (7), where the building is plurally owned.

Persons aggrieved by an order made under this section may appeal to the Crown Court; see s. 72, and note (*e*) thereto.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Appropriate court.*** See sub-s. (3), *infra*.

(*c*) ***Complaint.*** The procedure for the making and hearing of complaints is contained in ss. 43 to 49 of the Magistrates' Courts Act 1952.

(*d*) ***Authority or person having authority to enforce.*** See ss. 52, 83 (5).

(*e*) ***Machinery, plant, equipment or appliance.*** In relation to the cognate provisions of the Factories Acts it has been held that the careless packing of goods on a proper trolley is not a defect in plant (*Corcoran* v. *East Surrey Ironworks Co.* (1888), 58 L.J. Q.B. 145). Unfenced machinery may be defective plant (*Iles* v. *Abercarn Welsh Flannel Co.* (1886), 2 T.L.R. 547, D.C.); but machinery properly constructed, but dangerous if improperly used, is not, and does not become so because a young and experienced workman is not instructed in its use, or warned of the danger (*Greenwood* v. *Greenwood* (1907), 97 L.T. 771). See also *Watts* v. *Enfield Rolling Mills*, [1952] 1 All E.R. 1013, C.A., for a discussion of what may constitute plant. See also s. 90 (2).

(*f*) ***Prohibit.*** Disobedience to such an order is punishable under s. 54 (3) of the Magistrates' Courts Act 1952.

(*g*) ***Three clear days' notice.*** The notice must be in writing (s. 90 (1)) and in calculating the three days both the day of the notice and the day of the hearing are to be excluded; see, *e.g.*, *R.* v. *Herefordshire JJ.* (1820), 3 B. & Ald. 581; and compare *Thompson* v. *Stimpson*, [1961] 1 Q.B. 195; [1960] 3 All E.R. 500, C.A.

(*h*) ***Occupier.*** This term is not defined. It seems clear, however, that the occupier within the meaning of the Act is the person who runs the premises in question and who regulates and controls the work that is done there; cf. *Ramsay* v. *Mackie* 1904, 7 F. (Ct. of Sess.) 106, at p. 109, *per* Lord MACLAREN; *Smith* v. *Cammell Laird & Co., Ltd.*, [1940] A.C. 242 at p. 250; [1939] 4 All E.R. 381, at p. 384, *per* Viscount MAUGHAM; and *Cox* v. *Cutler & Sons. Ltd. and Hampton Court Gas Co.*, [1948] 2 All E.R. 665, C.A. That person may be a limited company; compare *Evans & Co., Ltd.* v. *London County Council*, [1914] 3 K.B. 315 and *Smith* v. *Cammell Laird & Co., Ltd., supra*. He may be a receiver and manager appointed by a debenture holder; see *Meigh* v. *Wickenden*, [1942] 2 K.B. 160; [1942] 2 All E.R. 68. See also *Turner* v. *Courtaulds, Ltd.*, [1937] 1 All E.R. 467, and *Rippon* v. *Port of London Authority & Russell & Co.*, [1940] 1 K.B. 858; [1940] 1 All E.R. 637.

(*i*) ***Magistrates' Court.*** For definition, see s. 90 (1).

(*k*) ***Petty sessions area.*** For definition, see s. 90 (1).

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23. Prohibition of heavy work.—(1) No person shall, in the course of his work (*a*) in premises to which this Act applies (*b*), be required to lift (*c*), carry or move a load so heavy as to be likely to cause injury (*d*) to him.

(2) The Minister (*e*) may make regulations (*f*) prescribing the maximum weights which persons employed (*g*) to work (*a*) in premises to which this Act applies (*b*) may lift, carry or move in the course of their work (*a*) there; and any such

regulations (*f*) may relate either generally to such persons as aforesaid or to any class of such persons (*h*).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1964 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

For the cognate provisions of s. 72 of the Factories Act 1961 see Redgrave's Factories Acts, 22nd Edn., p. 229.

(*a*) ***Work.*** See note (*a*) to s. 3.

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Required to lift.*** A person is not "employed to lift" (within s. 72 of the Factories Act 1961) a load so heavy as to be likely to cause injury to him if he lifts such a load by himself when he has been told to ask for help which was readily available (*Peat* v. *N. J. Muschamp & Co., Ltd.* (1969), 7 K.I.R. 469, C.A.).

(*d*) ***Likely to cause injury.*** In *Kinsella* v. *Harris Lebus* (1963), 108 Sol. Jo. 14, the Court of Appeal held that a weight of 145 lb. was not likely to cause injury to a man of experience. See also reg. 3 of the Agriculture (Lifting of Heavy Weights) Regulations 1959 (S.I. 1959 No. 2120), printed at p. 408.

(*e*) ***The Minister.*** For definition, see s. 90 (1).

(*f*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*g*) ***Employed.*** For definition, see s. 90 (1), (4).

(*h*) ***Class of persons.*** See s. 90 (5).

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24. First aid: general provisions.—(1) In the case of all premises to which this Act applies (*a*) there shall be provided so as to be readily accessible a first-aid box complying with the requirements of the next following subsection or a first-aid cupboard so complying, and, where the number of persons employed (*b*) to work (*c*) in the premises exceeds one hundred and fifty at any one time, an additional such box or cupboard for each unit of one hundred and fifty persons comprised in the excess (any fraction of a unit being treated as one).

(2) The said requirements are that the box or cupboard—

(a) contains first-aid requisites and appliances of such descriptions and in such quantities as may be prescribed by order (*d*) made by the Minister (*e*); and

(b) contains no articles other than first-aid requisites or appliances.

(3) A first-aid box or cupboard provided in the case of any premises in pursuance of the foregoing provisions of this section must be in the charge of a responsible person, and no box or

cupboard so provided must be in the charge of a person who has charge of another box or cupboard provided in those premises in pursuance of the said provisions.

(4) Where persons to a number exceeding the relevant number are employed (*b*) to work (*c*) at any one time in premises to which this Act applies (*a*), then—

(a) if no more than one first-aid box or cupboard is required by this section to be provided in the case of the premises, the person in charge of it must be trained in first-aid treatment and always available during working hours;

(b) if two or more boxes or cupboards are so required to be so provided, one of the persons in charge of the respective boxes or cupboards must be so trained and available.

In this subsection "relevant number", in relation to any premises, means one hundred and fifty, or such less number as may by regulations (*f*) be prescribed by the Minister (*e*) in relation either to premises generally or to premises of a class (*g*) within which the first-mentioned premises fall.

(5) Where paragraph (a) of the last foregoing subsection applies to any premises, there must be displayed therein, at such place, in such a position, and in such characters, as to be easily seen and read by the persons employed (*b*) to work (*c*) in the premises, a notice (*h*) stating the name of the person in charge of the box or cupboard and the fact of his being in charge of it; and where paragraph (b) of that subsection applies to any premises, there must be displayed therein, at such place, in such a position, and in such characters, as aforesaid, a notice (*h*) stating—

(a) in a case where the availability of a single person is relied on to secure compliance with that paragraph, his name, the fact of his being in charge of a first-aid box or cupboard and that he is always available during working hours;

(b) in a case where the availability of one or other of two or more persons is so relied on, the names of each of them, the fact of their each being in charge of a first-aid box or cupboard, and that one or other of them is always so available.

(6) For the purposes of this section a person shall be

deemed not to be trained in first-aid treatment unless he satisfies such conditions as may be prescribed by order (*d*) made by the Minister (*e*).

(7) Where a first-aid room is maintained at, or in conjunction with, premises to which this Act applies (*a*), and arrangements exist for securing the immediate treatment in that room of persons who, while in the premises, suffer bodily injury or become ill, the authority (*i*) having power to enforce compliance, in the case of those premises, with the foregoing provisions of this section, may by instrument in writing served (*k*) on the occupier (*l*) of the premises, exempt the premises, so long as the arrangements continue in force, from the requirements of the said provisions to such extent and subject to such conditions as may be specified in the instrument.

(8) Subsection (5) of this section shall not apply to fuel storage premises (*m*) which are wholly in the open, but in the case of such premises which are wholly in the open there must be given (*k*) to each person employed (*b*) to work (*c*) there a notice (*h*) stating the like particulars as would be stated in such a notice (*h*) as for the time being would, by virtue of that subsection, be required to be displayed in the premises if that subsection applied to them.

(9) This section shall not apply to premises which, for the purposes of the Mines and Quarries Act 1954, form part of a mine or quarry or which are comprised in an institution which provides medical or surgical treatment for in-patients or an institution which, not being such an one as aforesaid, is carried on by a person registered under Part VI of the Public Health Act 1936, the Nursing Homes Registration (Scotland) Act 1938 *or Part XI of the Public Health (London) Act 1936.*

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation as follows—

sub-ss. (1), (2), (3), (7), (9) on 1st December 1964;

sub-ss. (4), (5), (6), (8) on 1st September 1965;

see the Offices, Shops and Railway Premises Act 1963 (Commencement No. 2) Order 1964 (S.I. 1964 No. 1045)).

The words in italics in sub-s. (9) were repealed as from 1st April 1965 by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***Order.*** As to the making of orders, see s. 80. The Offices, Shops and Railway Premises First Aid Order 1964 has been made under subss. (2) and (6) of this section and is printed below.

(*e*) ***The Minister.*** For definition, see s. 90 (1).

(*f*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations have yet been made under this section.

(*g*) ***Class of premises.*** See s. 90 (5).

(*h*) ***Notice.*** A notice in writing (s. 90 (1)).

(*i*) ***Authority having power to enforce.*** See s. 52.

(*k*) ***Served; given.*** For the provisions relating to the service or giving of notices, etc., see s. 81.

(*l*) ***Occupier.*** See note (*h*) to s. 22.

(*m*) ***Fuel storage premises.*** See s. 1 (3) (a) (i), (5).

THE OFFICES, SHOPS AND RAILWAY PREMISES FIRST AID ORDER 1964

(S.I. 1964 No. 970)

Dated 25th June 1964

The Minister of Labour by virtue of the powers conferred on him by sections 24 (2) and (6) and 80 (3) and (4) of the Offices, Shops and Railway Premises Act 1963 (hereafter in this Order referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Order:—

1.—(1) This Order may be cited as the Offices, Shops and Railway Premises First Aid Order 1964 and shall come into operation on 1st December with the exception of Article 4 which shall come into operation on 1st September 1965.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

(3) In this Order—

"approved" means approved for the time being by instrument in writing by the Minister of Labour;

"first-aid box or cupboard" means a first-aid box or cupboard required by section 24 of the Act to be provided.

2. Each *first-aid box or cupboard* required by section 24 (1) of the Act to be provided in the case of any office, shop or railway premises to which the Act applies shall contain first-aid requisites and appliances of the descriptions and in the quantities specified in the provisions of the Schedule to this Order appropriate to the premises in the case of which the box or cupboard is so provided and to the circumstances for the time being existing therein.

3. All materials for dressings required by this Order to be contained in *first-aid boxes and cupboards* shall be those designated in, and of a grade or quality not lower than the standard specified by, the British Pharmaceutical Codex and any supplement thereto, being the British Pharmaceutical Codex and any supplement current at the date of this Order or approved for the purposes of this Order.

4.—(1) For the purposes of section 24 of the Act a person shall be deemed not to be trained in first-aid treatment unless—

(a) he is a registered or enrolled nurse within the meaning of the Nurses Acts 1957 and 1961 or the Nurses (Scotland) Acts 1951 and 1961; or

(b) he is the holder of a certificate in first-aid issued within the immediately preceding period of three years by, or is otherwise recognised as being qualified in first-aid treatment by, a training organisation:

Provided that until the expiration of 31st December 1966 a person shall be deemed to be so trained if at any time during the period of ten years immediately preceding the date of the making of this Order he was the holder of a certificate in first-aid treatment issued by a training organisation.

(2) In this Article—

(a) "certificate in first-aid" does not include any certificate in first-aid of a kind which is issued to persons under the age of 15 years, whether or not any such kind of certificate is also issued to persons aged 15 years or over;

(b) "training organisation" means the St. John Ambulance Association of the Order of St. John, the St. Andrew's Ambulance Association, the British Red Cross Society, or any other body or society *approved* for the purposes of this Article (*a*).

SCHEDULE

Article 2

CONTENTS OF FIRST-AID BOXES AND CUPBOARDS

PART I

1. In the case of all office and shop premises to which the Act applies, other than those to which paragraphs 2 and 3 of this Schedule apply, the contents of a *first-aid box or cupboard* to be provided shall be in accordance with the following scale:—

Number of persons employed to work in the premises at any one time	*Contents of first-aid box or cupboard*
1 to 10	Contents No. 1.
11 to 50	Contents No. 2.
51 to 150	Contents No. 3.
exceeding 150	Contents No. 3 for each unit of 150, and for any number in excess o a multiple of 150 the contents required to be provided where that number of persons is employed to work in premises at any one time.

(*a*) By Certificate of Approval No. 5, dated 15th October 1969, the following were approved:

The Harlow Industrial Health Service Limited;

the Inner London Education Authority;

the Greater London Council, in respect of the full course of training in first aid for civil defence volunteers;

the West Midlands Industrial Health Service Limited; and

the Central Middlesex Industrial Health Service Limited.

2. In the case of the following premises, that is to say—

(a) railway premises;

(b) fuel storage premises; and

(c) warehouses in or for the purposes of which mechanical power is used;

the contents of a *first-aid box or cupboard* to be provided shall be in accordance with the following scale:—

Number of persons employed to work in the premises at any one time	*Contents of first-aid box or cupboard*
1 to 10	Contents No. 2.
11 to 50	Contents No. 3.
51 to 150	Contents No. 4.
exceeding 150	Contents No. 4 for each unit of 150, and for any number in excess of a multiple of 150 the contents required to be provided where that number of persons is employed to work in premises at any one time.

3. In the case of the following premises (not being premises to which paragraph 2 of this Schedule applies), that is to say—

(a) premises in which butchery work is carried on; and

(b) premises in which machinery is used for all or any of the following, that is to say, cutting, slicing and sawing;

the contents of a *first-aid box or cupboard* to be provided shall be in accordance with the following scale:—

Number of persons employed to work in the premises at any one time	*Contents of first-aid box or cupboard*
1 to 50	Contents No. 2.
51 to 150	Contents No. 3.
exceeding 150	Contents No. 3 for each unit of 150, and for any number in excess of a multiple of 150 the contents required to be provided where that number of persons is employed to work in premises at any one time.

4. For the purposes of this Part of this Schedule the expressions "contents No. 1", "contents No. 2", "contents No. 3" and "contents No. 4" mean first-aid requisites and appliances of the descriptions and in the quantities specified in this paragraph in relation, respectively, to each such expression, namely:—

Descriptions of first-aid requisites and appliances	*Quantities*			
	Contents No. 1	*Contents No. 2*	*Contents No. 3*	*Contents No. 4*
(1) Sterilised unmedicated dressings—				
(a) finger	3	6	12	24
(b) medium-sized	2	3	6	12
(c) large	1	3	6	12

(2) Adhesive wound dressings of assorted sizes and of a description specified in Part II of this Schedule	12	12	24	36

Descriptions of first-aid requisites and appliances	*Quantities*			
	Contents No. 1	*Contents No. 2*	*Contents No. 3*	*Contents No. 4*
(3) Triangular bandages of unbleached calico, the longest side of which measures not less than 51 inches and each of the other sides not less than 36 inches	1	2	4	8
(4) Adhesive plaster (one inch in width)	5 yards	5 yards	10 yards	10 yards
(5) ½ oz. packets of absorbent sterilised cotton wool	1	2	3	6
(6) Sterilised eye-pads in separate sealed packets	1	2	4	8
(7) Safety-pins	6	6	12	12
(8) Rubber bandage or pressure bandage	—	1	1	1
(9) Leaflet (SHW.1) giving advice on first-aid treatment issued by the Minister of Labour	1	1	1	1

PART II

Description of adhesive wound dressing

An adhesive wound dressing shall consist of a pad fixed to a piece of plaster, waterproof or otherwise, as centrally as possible so as to leave an adequate margin of adhesive surface all round. The pad and the margin of adhesive surface shall be protected by muslin or other suitable material for removal before use. The pad shall be a piece of absorbent lint or other suitable material which, in either case, shall either be unmedicated or contain a medication specified for surgical dressings in the British Pharmaceutical Codex and any supplement thereto, being the British Pharmaceutical Codex and any supplement current at the date of this Order or approved for the purposes of this Order. Each dressing shall be put up in an individual sealed pack marked clearly to indicate its content.

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25. First aid: premises inside, but for purposes of Factories Act 1961 not forming part of, factory.—(1) The Minister (*a*) may by special regulations (*b*) provide that premises to which this Act applies (*c*) which are not, for the purposes of the Factories Act 1961, a factory but which, but for the operation of section 175 (6) of that Act, would, for the

purposes of that Act, form part of a factory, or such premises as aforesaid of a class (*d*) specified in the regulations,—

(a) shall be excepted from the operation of the last foregoing section; and

(b) shall, notwithstanding the said subsection (6), be deemed for the purposes of section 61 (first aid) of that Act to form part of the factory of which, but for that subsection, they would, for the purposes of that Act, form part.

(2) Regulations (*b*) under this section may provide that, for the purposes of the application to a factory of subsection (4) of the said section 61 (which, amongst other things, requires that the person under whose charge is placed a first-aid box or cupboard provided in a factory in pursuance of that section must, where more than fifty or other a lower prescribed number of persons are employed (*e*), be trained in first-aid treatment), persons employed (*e*) to work (*f*) in premises which, by virtue of the regulations (*b*), are deemed, for the purposes of that section, to form part of the factory shall (according as may be specified in the regulations) be left out of account or be taken into account to a number (ascertained in accordance with the regulations) less than the full number thereof.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st December 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 2) Order 1964 (S.I. 1964 No. 1045)).

Section 175 (6) of the Factories Act 1961 provides that "where a place situate within the close, curtilage or precincts forming a factory is solely used for some purpose other than the processes carried on in the factory, that place shall not be deemed to form part of the factory for the purposes of this Act . . . " These words are to be construed as though they read "for some purpose other than the processes for or incidental to the main purpose of the factory"; *Thurogood* v. *Van Den Berghs and Jurgens Ltd.*, [1951] 2 K.B. 537 at p. 545; [1951] 1 All E.R. 682 at p. 686 (a construction approved by the House of Lords in *Longhurst* v. *Guildford, Godalming and District Water Board*, [1963] A.C. 265; 3 All E.R. 545). As to the interpretation of this provision, see Redgrave's Factories Acts, 22nd Edn., pp. 457 *et seq.* This section relates to premises within the Offices, Shops and Railway Premises Act 1963 which are physically within the close, etc. of a factory but which, for the reasons given above, are deemed not to form part of the factory.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8) and Sch. 2. The Offices and Shops in Factories (First

Aid) Regulations 1964 have been made under this section and are printed below.

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Class of premises.*** See s. 90 (5).

(*e*) ***Employed.*** For definition, see s. 90 (1), (4).

(*f*) ***Work.*** See note (*a*) to s. 3.

THE OFFICES AND SHOPS IN FACTORIES (FIRST AID) REGULATIONS 1964

(S.I. 1964 No. 1321)

Dated 17th August 1964

The Minister of Labour—

(a) by virtue of the powers conferred on him by section 25 of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act of 1963") and of all other powers enabling him in that behalf; and

(b) after publishing, pursuant to Schedule 1 to the Act of 1963, notice of the proposal to make the Regulations and not having received any objection to the draft in regard to which he is required by the said Schedule to direct an inquiry to be held,

hereby makes the following special Regulations:—

1.—(1) These Regulations may be cited as the Offices and Shops in Factories (First Aid) Regulations 1964 and shall come into operation on 1st December 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. Premises to which the Act of 1963 applies which are not, for the purposes of the Factories Act 1961 (hereafter in these Regulations referred to as "the Act of 1961"), a factory but which, but for the operation of section 175 (6) of the Act of 1961, would, for the purposes of the Act of 1961, form part of a factory—

(a) shall be excepted from the operation of section 24 (which contains general provisions relating to first aid) of the Act of 1963; and

(b) shall, notwithstanding the said subsection (6), be deemed for the purposes of section 61 (first aid) of the Act of 1961 to form part of the factory of which, but for that subsection, they would, for the purposes of that Act, form part.

3. For the purposes of the application to a factory of subsection (4) of the said section 61 (which, amongst other things, requires that the person under whose charge is placed a first-aid box or cupboard provided in a factory in pursuance of that section must, where more than fifty or other a lower prescribed number of persons are employed, be trained in first-aid treatment), persons employed to work in premises which, by virtue of these Regulations, are deemed, for the purposes of that section, to form part of the factory shall be taken into account to a number less than the full number thereof, that is to say, of the persons employed to work at any one time in any such premises as aforesaid—

(a) of every unit of 3 persons, 1 person shall be taken into account; and

(b) of any fraction of a unit of 3 persons, where the fraction consists of 2 persons 1 person shall be taken into account and where the fraction consists of 1 person that person shall be left out of account.

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26. First aid: office premises erected for the purposes of building operations, &c.—(1) This section applies to office premises (*a*) to which this Act applies, being premises erected—

(a) at, or adjacent to (*b*), a place where there are carried on operations (*c*) to which section 127(1) (building operations and works of engineering construction) of the Factories Act 1961 applies or works (*c*) to which that section applies; and

(b) for the purpose of, or in connection with, the operations or works (*c*).

(2) The Minister (*d*) may by special regulations (*e*) provide that premises to which this section applies, or such premises as aforesaid of a class (*f*) specified in the regulations,—

(a) shall be excepted from the operation of section 24 of this Act; and

(b) shall be deemed, for the purposes of any regulation as to first aid made by virtue of section 127 (2) of the said Act of 1961 which is applicable to the place where there are carried on the operations or works for the purpose of which, or in connection with which, the premises were erected, to form part of that place.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st December 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 2) Order 1964 (S.I. 1964 No. 1045)).

(*a*) ***Office premises.*** See s. 1 (2), (5).

(*b*) ***Adjacent to.*** This expression has in ordinary usage no precise and uniform meaning, but is not confined to places adjoining and includes places close to or near; see *Wellington Corporation* v. *Lower Hutt Corporation.*, [1904] A.C. 773, P.C.; and cf. *Re Ecclesiastical Comrs. for England's Conveyance*, [1936] Ch. 430 at p. 441.

(*c*) ***Operations . . . or works to which s. 127 (1) of the Factories Act 1961 applies.*** Section 127 (1) of the Factories Act 1961 applies to building operations and to works of engineering construction "undertaken by way of trade or business, or for the purpose of any industrial

or commercial undertaking", and by s. 176 (1) of that Act, 'building operation' means the construction, structural alteration, repair or maintenance of a building (including re-pointing, re-decoration and external cleaning of the structure), the demolition of a building, and the preparation for, and laying the foundation of, an intended building, but does not include any operation which is a work of engineering construction within the meaning of this Act"; and, "'work of engineering construction' means the construction of any railway line or siding otherwise than upon an existing railway, and the construction, structural alteration or repair (including re-pointing and re-painting) or the demolition of any dock, harbour, inland navigation, tunnel, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer, sewage works, or gasholder, except where carried on upon a railway or tramway, and includes such other works as may be specified by regulations of the Minister". By the Engineering Construction (Extension of Definition) Regulations 1960 (S.I. 1960 No. 421) the latter definition is extended to include the construction etc. of the following (except where carried on in a factory or upon a railway or tramway)—"any steel or reinforced concrete structure other than a building, any road, airfield, sea defence works or river works, and any other civil or constructional engineering works of a similar nature to any of the foregoing works"; and by the Engineering Construction (Extension of Definition) (No. 2) Regulations 1968 (S.I. 1968 No. 1530) it is extended to include "the construction, structural alteration or repair (including re-painting) or the demolition of any pipe-line for the conveyance of any thing other than water, except where carried on upon a railway or tramway".

Much judicial energy has been expended upon the question whether a particular operation is a building operation, and the following principles have been established:

(i) The term "building" is used in a wide sense (*per* ROMER, L.J., in *Elms* v. *Foster Wheeler*, [1954] 2 All E.R. 714; [1954] 1 W.L.R. 1071). It is quite possible for a structure to be a building notwithstanding that it is not enclosed by walls and a roof, and is not one of the more ordinary forms of buildings; see *McGuire* v. *Power Gas Corp., Ltd.*, [1961] 2 All E.R. 544 n. (catalytic oil plant held to be a building) and *Boyle* v. *Kodak, Ltd.*, [1969] 2 All E.R. 439; [1969] 1 W.L.R. 661, H.L. (oil storage tank 30 feet high a building). See, further, *Wood* v. *Cooper*, [1894] 3 Ch. 671, and *Paddington Corp.* v. *Att.-Gen.*, [1906] A.C. 1. Each case must depend upon its own facts, bearing in mind the object of the Factories Act 1961 (see *Knight* v. *Demolition & Construction Co., Ltd.*, [1953] 2 All E.R. 508; [1953] 1 W.L.R. 981). In that case, PARKER, J., held that a part of the plant in a building might be a "building", notwithstanding that it could also be described as plant, and that gas retort blocks in a retort house were accordingly "buildings". On appeal ([1954] 1 All E.R. 711, n.; [1954] 1 W.L.R. 563) the point was not dealt with. In *McCallum* v. *Butters Bros. & Co., Ltd.*, 1954 S.L.T. 45 n., the Outer House of the Court of Session held that a crane was not a building, and in *Price* v. *Claudgen, Ltd.*, [1967] 1 All E.R. 695; [1967] 1 W.L.R. 575, H.L., it was held, on the particular facts, that a neon sign fixed to the front of a cinema was not part of a building.

(ii) No general answer is possible to the question whether the installa-

tion of plant constitutes the construction of a building. It must depend upon the circumstances of each case whether such an operation attracts the regulations in question or not (*Elms* v. *Foster Wheeler, Ltd.*, [1954] 2 All E.R. 714; [1954] 1 W.L.R. 1071, C.A.). The words "the construction . . . of a building" should be read "the construction of a building or any part thereof" (*ibid.*, *per* ROMER, L.J.). Thus, in *Elms* v. *Foster Wheeler, Ltd.*, *supra*, itself, the defendants were under contract to manufacture, deliver and erect four steam generating plants at a power station. On the evidence, the defendants were contributing to the construction of the power station inasmuch as they were installing the essential apparatus which it was the object of the outer walls and roof to house and which was to be united with the structure. The Court of Appeal held that the defendants were taking part in the construction of a building and that therefore the Building (Safety, Health and Welfare) Regulations 1948, applied. A similar conclusion was reached by ASHWORTH, J., in *Hughes* v. *McGoff and Vickers, Ltd.*, [1955] 2 All E.R. 291; [1955] 1 W.L.R. 416 (installation of electric conduit pipes in building under construction) and by BARRY, J., in *Simmons* v. *Bovis, Ltd.*, [1956] 1 All E.R. 736; [1956] 1 W.L.R. 381 (preparation of lift-shaft in building under construction). In *Hutchinson* v. *Cocksedge & Co., Ltd.*, [1952] 1 All E.R. 696, on the other hand, CROOM-JOHNSON, J., had held that the erection of pulp bagging plant in a sugar beet factory was not a building operation, but was merely the provision of plant for a building; and in *Copeland* v. *R. & H. Green and Silley Weir, Ltd.*, [1954] 2 Lloyd's Rep. 315, FINNEMORE, J., held that the installation of an exhaust funnel in a blacksmith's shop upon the defendant's premises to deal with exhaust fumes from forges was the provision of plant rather than the construction or structural alteration of a building. The scientific complexity of the operation being carried out is inconclusive upon, if not immaterial to, the question, whether that operation is the "construction . . . of a building"; see *Byers* v. *Head Wrightson & Co., Ltd.*, [1961] 2 All E.R. 583; [1961] 1 W.L.R. 961 (work in Sealed Reactor building), in which ELWES, J., followed the decision of SALMON, J., in *McGuire* v. *Power Gas Corp., Ltd.*, [1961] 2 All E.R. 544. In *Baxter* v. *Central Electricity Generating Board*, [1964] 2 All E.R. 815; [1965] 1 W.L.R. 200, ASHWORTH, J., held that the installation of pulverising units and their motors in a power station involved the construction of a building. See also *Vineer* v. *C. Doidge & Sons, Ltd.*, *infra*.

(iii) The words "repair and maintenance" do not include work which is preparatory to an operation of repair or maintenance; *Sumner* v. *Robert L. Priestly, Ltd.*, [1955] 3 All E.R. 455; [1955] 1 W.L.R. 1202, C.A. (operation of making wire profile of gutter for use as a pattern for making new gutter), with which may be compared *Vineer* v. *C. Doidge & Sons, Ltd.*, [1972] 2 All E.R. 794; [1972] 1 W.L.R. 893, C.A. (measuring of windows prior to glazing held to be part of the construction of a building). Cleaning prior to painting is "redecoration" (*O'Brien* v. *U.D.E.C., Ltd.* (1968), 5 K.I.R. 449, C.A.) but ordinary internal domestic cleaning is not, it is submitted, a building operation (and see *ibid. per* SACHS, L.J., at p. 455). Replacement of external lighting forming part of a building is repair or maintenance (*Morter* v. *Electrical Installations, Ltd.* (1969), 6 K.I.R. 130). It is a matter of doubt whether the erection or dismantling of scaffolding used in the repair or maintenance

of a building is itself a building operation (*Sexton* v. *Scaffolding (Great Britain), Ltd.*, [1953] 1 Q.B. 153; [1952] 2 All E.R. 1085, C.A.); in *Smith* v. *Vange Scaffolding and Engineering Co., Ltd.*, [1970] 1 All E.R. 249; [1970] 1 W.L.R. 733, it was held that the erection of a scaffold for construction purposes was itself part of an operation to which the Regulations applied, but a contrary decision was reached in *Ritchie* v. *James H. Russell & Co.*, 1966 S.C. 158 (Ct. of Session). In the definition contained in the Building (Safety, Health and Welfare) Regulations 1948, the phrase "operations . . . for . . . the preparation for . . . an intended building" should be read as including operations for the preparation for necessary but ancillary work in connection with the intended building (*Horsley* v. *Collier and Catley, Ltd.*, [1965] 2 All E.R. 423; [1965] 1 W.L.R. 1359).

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8) and Sch. 2. The Offices at Building Operations etc. (First Aid) Regulations 1964 have been made under this section and are printed below.

(*f*) ***Class of premises.*** See s. 90 (5).

THE OFFICES AT BUILDING OPERATIONS &c. (FIRST AID) REGULATIONS 1964

(S.I. 1964 No. 1322)

Dated 17th August 1964

The Minister of Labour—

(a) by virtue of the powers conferred on him by section 26 of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act of 1963") and of all other powers enabling him in that behalf; and

(b) after publishing, pursuant to Schedule 1 to the Act of 1963, notice of the proposal to make the Regulations and not having received any objection to the draft in regard to which he is required by the said Schedule to direct an inquiry to be held.

hereby makes the following special Regulations:—

1.—(1) These Regulations may be cited as the Offices at Building Operations &c. (First Aid) Regulations 1964 and shall come into operation on 1st December 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. These Regulations shall apply to office premises to which the Act of 1963 applies, being premises erected—

(a) at, or adjacent to, a place where there are carried on operations to which section 127 (1) (building operations and works of engineering construction) of the Factories Act 1961 (hereafter in these Regulations referred to as "the Act of 1961") applies or works to which that section applies; and

(b) for the purpose of, or in connection with, the operations or works.

3. Office premises to which these Regulations apply—

(a) shall be excepted from the operation of section 24 (which contains general provisions relating to first aid) of the Act of 1963; and

(b) shall be deemed, for the purposes of any regulation as to first aid* made by virtue of section 127 (2) of the Act of 1961 which is applicable to the place where there are carried on the operations or works for the purpose of which, or in connection with which, the premises were erected, to form part of that place.

*The regulations as to first aid applicable to building operations are regs. 5 to 10 of the Construction (Health and Welfare) Regulations 1966 (S.I. 1966 No. 95), for which see Redgrave's Factories Acts, 22nd Edn., pp. 711 *et seq.* Reg. 10 thereof applies to office premises erected at or adjacent to a place where building operations or works of engineering construction are carreid on.

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27. Penalisation of dangerous acts and interference with equipment, &c.—(1) A person (*a*) who, in premises to which this Act applies (*b*), wilfully and without reasonable cause does anything likely to endanger the health or safety of persons employed (*c*) to work (*d*) therein shall be guilty of an offence (*e*).

(2) A person (*a*) who, in premises to which this Act applies (*b*), wilfully interferes with, wilfully misuses or without reasonable excuse removes any equipment, appliance, facilities or other thing provided there in pursuance of this Act or regulations thereunder shall be guilty of an offence (*e*).

(3) Nothing in this section shall be taken as limiting the power conferred by section 20 or 21 of this Act (*f*) to make by regulations any such provision as is mentioned in, as the case may be, the one section or the other, including further provision as to matters which are the subject of this section.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

For the cognate provisions of s. 143 of the Factories Act 1961, see Redgrave's Factories Acts, 22nd Edn., p. 401.

A contravention of this section by any person, whether or not employed to work in the premises, is an offence by him but it is not an offence by the occupier; see *Wright* v. *Ford Motor Co., Ltd.*, [1967] 1 Q.B. 230; [1966] 2 All E.R. 518, D.C. (decided upon the provisions of s. 143 (1) of the Factories Act 1961).

The words, "wilfully interferes with, wilfully misuses", in s. 27 (2) require something in the nature of a perverse intermeddling with the

appliance. An intentional touching or misplacement is not sufficient if it does not include this element of perversity (*Charles* v. *S. Smith & Sons, Ltd.*, [1954] 1 All E.R. 499; [1954] 1 W.L.R. 451). In *Charles* v. *S. Smith & Sons, Ltd.*, *supra*, HILBERY, J., also discussed the meaning of the words "wilfully and without reasonable cause" in s. 143 (2) of the Factories Act 1961 (to which s. 27 (1) of the Offices, Shops and Railway Premises Act 1963 corresponds). He held that since the workman in that case did not foresee, and was not negligent in not foreseeing, that his act might endanger him, he had not "wilfully and without reasonable cause" done anything to endanger himself. HILBERY, J., did not state affirmatively, however, that negligent and percipient conduct by a person employed would suffice to constitute wilfulness, and it is submitted that the use of the word "wilfully" in s. 143 (2) connotes the same perversity of conduct as does its use in sub-s. (1). It has been said that a person employed acts in contravention of sub-s. (2) when he takes a wilful risk, knowing that he is acting in breach of instructions and regulations (*Ginty* v. *Belmont Building Supplies, Ltd.*, [1959] 1 All E.R. 414), although knowledge that he is acting unlawfully is not, it would seem, an essential ingredient of his liability (*Norris* v. *Syndic Manufacturing Co., Ltd.*, *supra*, *per* DENNING, L.J.).

(ii) *The effect of breach of the duty.* Where a person employed has, by his own carelessness, caused or contributed to his injury, the occupier may, in an action by the person employed based upon breach of statutory duty, set up the defence of contributory negligence in extinction or reduction of the damages: *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.*, [1940] A.C. 152; [1939] 3 All E.R. 722, H.L. For a discussion of the general principles relating to such a defence reference may be made to 28 Halsbury's Laws, 3rd Edn., pp. 87 *et seq.* The application of these principles to actions between master and servant is referred to in *op. cit.*, Vol. 25, pp. 515, 516. The present note is limited to the interrelation between the defence of contributory negligence and the provisions of s. 27. It is submitted that those parts of s. 27 which require wilfulness are more limited in application than is the defence of contributory negligence. Mere negligence is not wilfulness (see the discussion of *Charles* v. *S. Smith & Sons, Ltd.*, *supra*), although conduct which is wilful may none the less be relied upon in support of a plea of contributory negligence.

In *Ginty* v. *Belmont Building Supplies, Ltd.*, [1959] 1 All E.R. 414, the plaintiff, an asbestos sheeter, had to work upon a roof. His employers provided crawling boards as required by reg. 31 (3) (a) of the Building (Safety, Health and Welfare) Regulations 1948, but the plaintiff deliberately chose not to use them. PEARSON, J., held that in so acting the plaintiff contravened s. 119 (1) and (2) of the Factories Act 1937 (now s. 143 (1) and (2) of the 1961 Act) and that he was in breach of reg. 4 of the Regulations in that he had failed to comply with a regulation (reg. 31 (3) (a)) which related to the performance of an act by him (reg. 4). PEARSON, J., held further that the plaintiff's breach of reg. 4 involved his employers in a vicarious breach of the same regulation, since crawling boards were not in fact used. The actual wrongful act was the plaintiff's wrongful act, but in one aspect it constituted a breach by himself and in another aspect it constituted a breach by his employer. In considering the legal consequences of this situation

PEARSON, J., held (at p. 424) that the question was not whether the employer had delegated his statutory duty to the plaintiff, but simply, whose fault was it? The fact that the immediate and direct cause of the accident was some wrongful act of the employee was not decisive. There must be an enquiry whether the fault of the employer under the statutory regulations consists of, and is co-extensive with, the wrongful act of the employee. If there is some fault on the part of the employer which goes beyond or is independent of the wrongful act of the employee, and was the cause of the accident, the employer has some liability. PEARSON, J. (at pp. 424, 425) mentioned three bases of this rule: (i) the common law principle that a person cannot derive any advantage from his own wrong; (ii) the common law principle, not affected by the Law Reform (Contributory Negligence) Act 1945, that, the plaintiff being wholly at fault, he is disentitled to recover and (iii) the need to avoid circuity of action. PEARSON, J., rejected as a basis of the rule the theory of the delegation of the performance of the employer's statutory duty (see the General Introduction), and, possibly, the principle *ex turpi causa non oritur actio*. The statement of principle in *Ginty* v. *Belmont Building Supplies, Ltd.*, *supra*, was approved by the Court of Appeal in *McMath* v. *Rimmer Bros. (Liverpool), Ltd.*, [1961] 3 All E.R. 1154; [1962] 1 W.L.R. 1, but in *Ross* v. *Associated Portland Cement Manufacturers, Ltd.*, [1964] 2 All E.R. 452; [1964] 1 W.L.R. 768, H.L., LORD REID said (at pp. 777; 455) that the question really was, not whose fault it was, but whose conduct caused the accident, because it is now well established that a breach of statutory duty does not give rise to civil liability unless there is proved a causal connection between the breach and the plaintiff's injury; see also *Leach* v. *Standard Telephones and Cables, Ltd.*, [1966] 2 All E.R. 523.

However deliberate, wilful and percipient may be the conduct of the person employed it cannot, in an action by him against his employers or the occupiers for breach of their statutory duty, be relied upon by the defendant as constituting a voluntary assumption of the risk (*Wheeler* v. *New Merton Board Mills, Ltd.*, [1933] 2 K.B. 669, C.A.). The defence of *volenti non fit injuria* is, however, available where the employer is not himself in breach of statutory duty and is not vicariously in breach of any statutory duty through the neglect of some person of superior rank to the plaintiff and whose commands the plaintiff is bound to obey and where the plaintiff himself assented to and took part in the breaking of the statutory duty in question; *Imperial Chemical Industries, Ltd.* v. *Shatwell*, [1965] A.C. 656; [1964] 2 All E.R. 999, H.L., *per* Lord PEARCE, at pp. 687; 1013.

(*a*) ***A person.*** Note that any person, whether or not employed or working on the premises, may contravene this section.

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Employed.*** For definition, see s. 90 (1), (4).

(*d*) ***Work.*** See note (*a*) to s. 3.

(*e*) ***Offence.*** For offences, see ss. 63 *et seq.* 70, 86 (1).

(*f*) ***Power conferred by s. 20 or 21.*** That is to say, the power to make special regulations for securing health and safety and for controlling noise and vibrations.

Fire Precautions

28. Provision of means of escape in case of fire.—(1) All premises to which this Act applies (*a*) shall be provided with such means of escape in case of fire for the persons employed (*b*) to work (*c*) therein as may reasonably be required in the circumstances of the case.

(2) In determining, for the purposes of this section, what means of escape may reasonably be required in the case of any premises, regard shall be had (amongst other things) not only to the number of persons who may be expected to be working (*c*) in the premises at any time but also to the number of persons (other than those employed (*b*) to work (*c*) therein) who may reasonably be expected to be resorting to the premises at that time.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open or, where they are partly in the open, to such parts as are in the open; see s. 40.

The fire precautions provisions of the Factories Act 1961 are ss. 40 to 52 (see Redgrave's Factories Acts, 22nd Edn., pp. 175 *et seq.*).

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work; Working.*** See note (*a*) to s. 3.

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29. Certification of premises by appropriate authority.—(1) Subject to the provisions of subsection (8) of this section and of regulations made under subsection (9) thereof and to the following provisions of this Act (*a*), it shall not be lawful—

(a) for more than twenty persons to be employed (*b*) to work (*c*) at any one time in any premises to which this Act applies (*d*);

(b) for more than ten persons to be so employed (*b*) elsewhere than on the ground floor of any such premises; or

(*c*) for any person to be employed (*b*) to work (*c*) in any such premises in or underneath which explosive or highly

flammable materials of a kind prescribed by regulations (*e*) made by the Minister (*f*) are used or are stored in a quantity not less than such as may be so prescribed;

unless there is in force with respect to the premises a certificate (hereafter in this Act referred to as a "fire certificate") issued under the following provisions of this section by the appropriate authority (*g*) (as hereafter in this Act defined) that the premises are provided with such means of escape in case of fire for the persons employed (*b*) to work (*c*) therein, or proposed to be so employed (*b*), as may reasonably be required in the circumstances of the case (*h*), nor, where a building contains two sets or more of premises to which this Act applies, shall the employment (*b*) of a person to work (*c*) in either (or any) of them be lawful without a fire certificate's being in force with respect to the set in which he is so employed (*b*) if—

(i) the aggregate of persons employed (*b*) to work (*c*) at any one time in both (or all) of the sets of premises exceeds twenty; or

(ii) more than ten persons are employed (*b*) at any one time to work (*c*) in one of them elsewhere than on the ground floor of the building, or, of the aggregate of the persons employed (*b*) to work (*c*) at any one time in both (or all) of them, more than ten are employed (*b*) to work (*c*) at that time elsewhere than as aforesaid.

(2) An application for the issue of a fire certificate with respect to any premises must be made to the appropriate authority (*g*) in such form as may be prescribed by order (*i*) made by the Minister (*f*) and state the greatest number of persons employed (*b*) to work (*c*) at any one time in the premises or proposed to be so employed (*b*) and such other (if any) particulars as may be so prescribed, and, if regulations (*e*) made by the Minister (*f*) so require, must be accompanied by such plans of the premises as may be specified in the regulations (*e*).

(3) Where such an application is duly made with respect to any premises, and (if that is required by virtue of the last foregoing subsection) is accompanied by the specified plans, it shall be the duty (*k*) of the appropriate authority (*g*) to cause an

inspection to be carried out of the premises and the means of escape therefrom in case of fire for the persons employed (*b*) to work (*c*) therein, or proposed to be so employed (*b*), with which the premises are provided and, if satisfied that the means with which the premises are provided are such as may reasonably be required in the circumstances of the case (*h*), to issue a certificate to that effect.

(4) Where the appropriate authority (*g*), after causing, in pursuance of the last foregoing subsection, an inspection to be carried out of any premises, inform the applicant that they will not issue a fire certificate with respect to the premises unless specified alterations (*l*) are made thereto, they shall specify the time within which the alterations are to be carried out and, if the certificate is not issued, it shall be deemed to have been refused (*m*) at the expiration of the time so specified or such further time as the authority may have allowed.

(5) A fire certificate issued with respect to any premises shall—

(a) specify the greatest number of persons who, in the opinion of the appropriate authority, can safely be employed (*b*) to work (*c*) at any one time in the premises;

(b) specify precisely and in detail the means of escape provided and state which of them are to be treated as relevant for the purposes of the following provisions of this Act relating to the marking of exits (*n*) affording or giving access to means of escape;

(c) if the appropriate authority be of opinion that there inhere in the premises special risks of the outbreak or spread of fire, state that the authority are of that opinion and specify those risks;

and shall be sent (*o*) to the occupier (*p*) of the premises.

(6) A fire certificate issued with respect to any premises shall be kept there so long as it is in force.

(7) If any persons are employed (*b*) to work (*c*) in any premises in contravention (*q*) of subsection (1) of this section, the occupier (*p*) of the premises shall be guilty of an offence (*r*) and liable to a fine not exceeding two hundred pounds or, on a second or subsequent conviction (*s*), not exceeding five hundred pounds.

(8) Subsection (1) of this section shall not render unlawful the employment (*b*) of persons to work (*c*) in any premises during the period beginning with the day on which an application (accompanied, if that is required by virtue of subsection (2) of this section, by the specified plans of the premises) for the issue of a fire certificate with respect to the premises is duly made to the appropriate authority (*g*) and ending with the day on which, as the case may be, a fire certificate is issued pursuant to that application or the issue of a fire certificate pursuant thereto is refused (*m*).

(9) The Minister may by special regulations (*t*) so modify subsection (1) of this section that it renders unlawful the employment (*b*) of persons to work (*c*) in premises of a class specified in the regulations whose employment (*b*) to work (*c*) there would not otherwise be unlawful by virtue of that subsection or so modify that subsection that it ceases to render unlawful the employment (*b*) of persons to work (*c*) in premises of a class so specified whose employment to work there would otherwise be unlawful by virtue of that subsection.

(9A) In the case of premises consisting of or comprised in a building to which building regulations (within the meaning of section 4 of the Public Health Act 1961) imposing requirements as to means of escape in case of fire apply, the appropriate authority shall not for the purpose of this or the next following section specify any structural alterations in respect of those premises beyond such as may be necessary to bring the premises into compliance with the regulations in respect of those requirements.

(10) In the case of premises consisting of or comprised in a building to which building standards regulations (within the meaning of the Building (Scotland) Act 1959) imposing requirements as to means of escape in case of fire apply, the appropriate authority shall not for the purposes of this or the next following section specify any structural alterations in respect of these premises to a standard higher than that of the said regulations.

(11) Subsection (2) of the last foregoing section shall have effect for the purposes of this section as it has effect for the purposes of that.

(12) References in sub-section 9A above to building regulations shall, in any particular case in relation to which there is in force a direction under section 6 of the Public Health Act 1961 dispensing with or relaxing any requirement in such regulations, be construed as references to building regulations as they apply in that case.

General note. This section is printed as amended by the Fire Precautions Act 1971, s. 33 (1), and, except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), it came into operation as follows:

sub-s. (2) on 1st May 1964;

sub-ss. (1), (3)–(11) on 1st August 1964

(Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Following provisions.*** See, in particular, s. 31 (2) which permits the employment of persons pending the determination of an appeal against the refusal or cancellation of a fire certificate.

(*b*) ***Employed.*** For definition, see s. 90 (1), (4).

(*c*) ***Work.*** See note (*a*) to s. 3.

(*d*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*e*) ***Regulations.*** For the making of regulations, see s. 80. No regulations under this section have yet been made.

(*f*) ***The Minister.*** For definition, see s. 90 (1).

(*g*) ***Appropriate authority.*** See s. 39.

(*h*) ***As may reasonably be required. . . .*** By sub-s. (11), *supra*, the provisions of s. 28 (2) are to be applied in defining this question.

(*i*) ***Order.*** For the making of orders, see s. 80. The Offices, Shops and Railway Premises Forms Order 1964 has been made under this and other sections, and is printed below.

(*k*) ***It shall be the duty. . . .*** See note (*a*) to s. 52.

(*l*) ***Alterations.*** See s. 41 as to consultation in certain cases.

(*m*) ***Refusal of certificate.*** For provisions as to appeals against refusal, see s. 31.

(*n*) ***Marking of exits.*** See s. 33 (3).

(*o*) ***Shall be sent.*** See s. 81.

(*p*) ***Occupier.*** See note (*h*) to s. 22.

(*q*) ***Contravention.*** For definition, see s. 90 (1).

(*r*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

(*s*) ***Second or subsequent conviction.*** A second or subsequent offence is an offence committed after the first conviction; see *R.* v. *South Shields Licensing Justices*, [1911] 2 K.B. 1. See, however, as to offences for which an order is made under the Criminal Justice Act 1948, placing the offender on probation or discharging him absolutely or

conditionally, s. 12 (1) of that Act (28 Halsbury's Statutes (2nd Edn.) 363); and *R.* v. *Perfect*, [1957] 1 Q.B. 107; [1957] 2 All E.R. 250.

(*t*) ***Special regulations.*** For the making of special regulations, see s. 80 (8), Sch. 1. The Offices, Shops and Railway Premises Act 1963 (Modification of Section 29) Regulations 1964 have been made under this sub-section and are printed below.

THE OFFICES, SHOPS AND RAILWAY PREMISES FORMS ORDER 1964

(S.I. 1964 No. 605)

Dated 23rd April 1964

The Minister of Labour by virtue of the powers conferred on him by sections 29 (2), 46 (5), and 48 of the Offices, Shops and Railway Premises Act 1963 (hereafter in this Order referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Order:—

1.—(1) This Order may be cited as the Offices, Shops and Railway Premises Forms Order 1964 and shall come into operation on 1st May 1964, except Article 5 and Schedule 4 which shall come into operation on 1st August 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. An application for the issue of a fire certificate under section 29 (2) of the Act—

(a) with respect to any railway premises and any office and shop premises, being office and shop premises owned or occupied by railway undertakers and situate in the immediate vicinity of the permanent way, shall be in the form set out in Part I of Schedule 1 to this Order and shall contain the particulars therein specified; and

(b) with respect to any office and shop premises, other than the office and shop premises specified in paragraph (a) of this Article, shall be in the form set out in Part II of Schedule 1 to this Order and shall contain the particulars therein specified.

3. An application for an exemption of, or of a room in, any office, shop or railway premises from a requirement imposed by a provision of the Act under section 46 (5) of the Act shall be in the form set out in Schedule 2 to this Order.

4. A certificate required under section 46 (5) of the Act to accompany an application such as is mentioned in the last foregoing Article of this Order shall be in the form set out in Schedule 3 to this Order.

5. A notice of an accident in any premises to which the Act applies required to be given under section 48 (1) of the Act, shall be in the form set out in Schedule 4 to this Order and shall contain the particulars therein specified.

OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963
APPLICATION FOR CERTIFICATE AS TO MEANS OF ESCAPE IN CASE OF FIRE

Form prescribed by the Minister of Labour for the purpose of section 29 (2) of the Offices, Shops and Railway Premises Act 1963

To the *Clerk of the Fire Authority**
*H.M. Inspector of Factories**

Dear Sir,

I hereby apply for a certificate as to means of escape in case of fire in respect of premises, details of which are given below.

Yours faithfully,

Name of railway undertaking..... Signature of person authorised to sign on behalf of the undertaking.....

Address.....

Telephone No..... Date.....

To be completed by applicant:—

1. Postal address of building containing premises covered by this application: .....
.....

2. Details of premises covered by Act:

Name(s) of occupiers (including trading name, if different)	*Location (where appropriate)*	*Greatest number of persons employed (or proposed to be employed) at any one time*	*If more than twenty persons (other than those employed) are expected to resort to the premises at one time, please estimate their maximum number*
(*a*)	.....	.....	.....
(*b*)	.....	.....	.....
(*c*)	.....	.....	.....
(*d*)	.....	.....	.....
(*e*)	.....	.....	.....
(*f*)	.....	.....	.....

SCHEDULE 1 (*continued*)

3. If there is a factory in the building (or part covered by this application), what is the greatest number of persons employed there at any one time? .....

4. Are any persons in the premises mentioned at 2 above regularly employed
   (*a*) higher than the first floor of the building—YES/NO
   (*b*) below the ground floor —YES/NO

5. Nature and approximate quantity of any explosive or highly flammable† materials which are used or stored in or underneath any of the premises covered by this application:

* Delete whichever is inapplicable.

† The term "highly flammable", should be interpreted for the purpose of this form as including any material which may greatly increase the speed at which a fire will spread in a building and hence affect the means of escape from that building. The answer should not be restricted to such materials as the Minister may prescribe by regulations under s. 29 (1) of the Act.

PART II **Form OSR.3**

OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

APPLICATION FOR CERTIFICATE AS TO MEANS OF ESCAPE IN CASE OF FIRE

Form prescribed by the Minister of Labour for the purpose of section 29 (2) *of the Offices, Shops and Railway Premises Act* 1963

To the *Clerk of the Fire Authority**
*or H.M. Inspector of Factories**

Dear Sir,

I hereby apply for a certificate as to means of escape in case of fire in respect of premises, details of which are given below.

Yours faithfully,

Signature of *Occupier:** .....
or
*Owner:** .....

Address.....

Telephone No..... Date.....

To be completed by applicant:—

1. Postal address of building containing premises covered by this application: .....

2. Details of premises covered by Act:

Name(s) of occupiers (including trading name, if different)	*Floor No. (e.g. basement, ground, 1st, etc.)*	*Apartment or room Nos. (where appropriate)*	*Greatest number of persons employed (or proposed to be employed) at any one time*	*Greatest number of other persons**
(*a*)	.....	.....	.....	.....
(*b*)	.....	.....	.....	.....
(*c*)	.....	.....	.....	.....
(*d*)	.....	.....	.....	.....
(*e*)	.....	.....	.....	.....
(*f*)	.....	.....	.....	.....

(*Please continue on separate sheet if necessary*)

3. If there is a factory in the building (or part covered by this application):
   (*a*) name of occupier: .....
   (*b*) greatest number of persons employed in factory at any one time: .....

4. Please state whether any of the persons in the premises mentioned at 2 are regularly employed:
   (*a*) higher than the first floor of the building—YES/NO†
   (*b*) below the ground floor —YES/NO†

5. Please state whether different parts of the building are *owned* by different persons—YES/NO†

6. Nature and approximate quantity of any explosive or highly flammable‡ materials which are used or stored in or underneath any of the premises covered by this application:

* If more than twenty persons (other than those employed) are expected to resort to the premises at any one time, please give an approximate estimate of their maximum number.

† Delete whichever is inapplicable.

‡ The term "highly flammable", should be interpreted for the purpose of this form as including any material which may greatly increase the speed at which a fire will spread in a building and hence affect the means of escape from that building. The answer should not be restricted to such materials as the Minister may prescribe by regulations under s. 29 (1) of the Act.

SCHEDULE 2

Article 3

Form OSR.5

OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

APPLICATION FOR THE GRANT OR EXTENSION OF AN EXEMPTION

Form prescribed by the Minister of Labour for the purpose of section 46 of the Offices, Shops and Railway Premises Act 1963

Part I This Part to be completed in all cases

1. (*a*) Name in full of the occupier or owner by whom, or on whose behalf this application is made.....

.....

(*b*) Interest in the porperty Owner/Occupier (*Delete if inapplicable*)

(*c*) (i) Address to which communications should be sent .....

.....

.....

(ii) Telephone number .....

2. Postal address of the building containing the premises in respect of which you are seeking exemption

.....

.....

.....

3. State here all premises in the building in respect of which you are seeking exemption in this application:—

Name(s) of Occupiers (including trading name, if different)	*Floor No. (e.g. basement, ground, 1st, etc.)*	*Apartment or Room Nos. (if any)*	*Nature of Business Carried on by Occupier)*
(*a*)	.....	.....	.....
(*b*)	.....	.....	.....
(*c*)	.....	.....	.....
(*d*)	.....	.....	.....
(*e*)	.....	.....	.....
(*f*)	.....	.....	.....

4. Are you seeking exemption from the requirements of:

section 5 (2) (Minimum space standard)	Yes/No
section 6 (Maintenance of a reasonable temperature)	Yes/No
section 9 (Provision of sanitary conveniences)	Yes/No
section 10 (1) (Provision of running water for washing)	Yes/No

5. Have you previously been granted any certificate under section 46 in respect of any premises to which this application relates? Yes/No

6. If the answer to question 5 is YES, give particulars of all certificates, stating in each case (*a*) the premises exempted and the requirement or requirements from which exemption was granted, (*b*) whether the exemption was in respect of the whole premises or a room or rooms only, and (*c*) the period for which exemption was granted.

Part II This Part to be completed only where exemption is sought from a requirement of section 5 (2) (*Minimum space standard*)

7. Are you seeking exemption in respect of all rooms on the premises where employees affected by the Act usually work? Yes/No

8. If the answer to Question 7 is NO, state for what rooms exemption is sought, identifying them and giving their description (e.g. general office, typing room).

9. Explain fully why it is not at present reasonably practicable to comply with the space standard, and what steps you are taking so as to comply in the future.

10. For what period are you seeking exemption?

SCHEDULE 2 (*continued*)

Part III This Part to be completed only where exemption is sought from a requirement of section 6 (*Temperature*)

11. Are you seeking exemption in respect of all rooms on the premises where employees affected by the Act usually work? Yes/No

12. If the answer to Question 11 is NO, state for what rooms exemption is sought, identifying them and giving a brief description (e.g. general office, typing room).

13. From which requirement or requirements of section 6 are you seeking exemption?

14. Explain fully why it is not at present reasonably practicable to comply with the temperature standard and what steps you are taking to comply with it in the future.

15. For what period are you seeking exemption?

Part IV This Part to be completed only where exemption is sought from a requirement of section 9 (*Saintary conveniences*)

16. From which requirement or requirements of section 9 are you seeking exemption?

17. Explain fully why it is not at present reasonably practicable to comply with the standard either by making your own provision or by making arrangements for employees to use conveniences provided for others.

18. For what period are you seeking exemption?

Part V This Part to be completed only where exemption is sought from a requirement of section 10 (1) concerning running water

19. Describe the washing facilities provided or to be provided (or washing facilities provided for the use of others which are to be made available) for persons employed at the premises in respect of which exemption is sought.

20. Explain fully why it is not at present reasonably practicable to supply running water (either hot or cold, or warm) for use with the above mentioned washing facilities, and what steps, if any, you are taking to secure a supply in the future.

21. For what period are you seeking exemption?

Part VI To be completed in all cases

22. Are you submitting an application for exemption to another enforcing authority for any premises in the building? Yes/No

23. If the answer to Question 22 is YES, state the authority concerned.

I hereby apply as/on* behalf of, the occupier/owner* of the premises with which this application is concerned, for the grant/extension* of an exemption under section 46 of the Offices, Shops and Railway Premises Act 1963, in respect of those premises, from the provisions of the Act specified in this application, and hereby declare that, to the best of my knowledge and belief, the information set out therein is true and complete.

* Delete as appropriate

Signature.....

Date.....

Position.....

SCHEDULE 3

Article 4

Offices, Shops and Railway Premises Act 1963

Certificate in Form Prescribed by the Minister of Labour that a Notice has been Posted Concerning an Exemption Application under Section 46 of the Act

I hereby certify that

1. A notice concerning the accompanying application was on the.....day of .....19 , posted
*in the premises to which it relates.
*in a common part of the building in which are situated the premises to which it relates.

2. The notice has been placed in such a position, and is in such characters, that it can easily be seen and read by the persons employed to work in the premises.

3. The notice contains the following information:
   (i) A statement that the application is being made.
   (ii) A statement of the requirement or requirements of the Offices, Shops and Railway Premises Act 1963 from which exemption is sought in the accompanying application.
   (iii) The period for which exemption is sought.
   (iv) The name and address of the authority to which application is being made.
   (v) A statement that written representations with respect to the application may be made to that authority, by any person employed to work in premises to which the application relates, within a period of fourteen days following the day on which the notice was posted.

Signature.....

Date.....

Position.....

* Delete as appropriate

SCHEDULE 4 *Article 5*

Form OSR.2

OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963

NOTICE OF ACCIDENT

Form prescribed by the Minister of Labour for the purpose of section 48 of the Offices, Shops and Railway Premises Act 1963

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1. OCCUPIER OF PREMISES
   (*a*) Name .....
   Address.....
   .....
   Nature of business .....
   (*b*) Actual employer of injured person if other than above — Name .....
   Address.....
2. INJURED PERSON
   (*a*) Full Name (Surname first) — Mr. / Mrs. / Miss .....
   (*b*) Age..... Occupation .....
   (*c*) Address.....
3. PLACE WHERE ACCIDENT HAPPENED
   (*a*) Address (if different from 1(*a*) above).....
   .....
   (*b*) Exact location (e.g. staircase to office; canteen storeroom; shop counter) .....
4. ACCIDENT
   (*a*) Date..... Time.....
   (*b*) Full details of how the accident happened and what injured person was doing. If a fall of person or materials, plant, etc., state height of fall (if necessary continue overleaf).
   .....
   .....
   .....
   .....
   .....
   .....
   .....
   .....
   (*c*) If due to machinery, state:—
   (i) Name and type of machine.....
   (ii) What part of the machine caused the accident?.....
   (iii) Was the machine in motion by mechanical power at the time?
   .....
5. INJURIES AND DISABLEMENT
   (*a*) Whether fatal or non-fatal .....
   (*b*) Nature and extent of injury (e.g. fracture of leg, laceration of arm, scalded foot, scratch on hand followed by sepsis).....
   .....

Signature of Occupier or Agent .....

Date.....

THE OFFICES, SHOPS AND RAILWAY PREMISES ACT 1963 (MODIFICATION OF SECTION 29) REGULATIONS 1964

(S.I. 1964 No. 761)

Dated 26th May 1964

The Minister of Labour—

(a) by virtue of the powers conferred on him by section 29 (9) of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act") and of all other powers enabling him in that behalf; and

(b) after publishing, pursuant to Schedule 1 to the Act, notice of the proposal to make the Regulations and not having received any objection to the draft in regard to which he is required by the said Schedule to direct an inquiry to be held,

hereby makes the following special Regulations:—

1.—(1) These Regulations may be cited as the Offices, Shops and Railway Premises Act 1963 (Modification of Section 29) Regulations 1964 and shall come into operation on 1st August 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. The provisions of section 29 (1) of the Act shall, in the case of any set of premises to which the Act applies comprised in a building in which is also comprised any factory within the meaning of the Factories Act 1961 (c) (hereafter in these Regulations referred to as a "factory") or any part of a factory, be modified to the extent and in the manner specified in Regulations 3 and 4.

3. The employment of a person to work in any set of premises to which the Act applies of the kind specified in Regulation 2 shall not be lawful unless there is a fire certificate in force with respect to the premises if—

(a) an aggregate of more than 20 persons at any one time is, in the building in which the said set of premises is situate, employed to work in premises to which the Act applies and in any factory or any part of a factory (as the case may be); or

(b) an aggregate of more than 10 persons at any one time is, in the building in which the said set of premises is situate, employed to work elsewhere than on the ground floor in premises to which the Act applies and in any factory or any part of a factory (as the case may be).

4. Nothing in that part of section 29 (1) of the Act which provides for the case where a building contains two sets or more of premises to which the Act applies shall apply in the case of any premises to which the Act applies of the kind specified in Regulation 2.

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30. Maintenance of means of escape in case of fire, and inspection by appropriate authority.—(1) All means of

escape specified in a fire certificate (*a*) shall be properly maintained (*b*) and kept free from obstruction.

(2) So long as a fire certificate (*a*) is in force with respect to any premises, the appropriate authority (*c*) may at any time cause the premises to be inspected for the purpose of ascertaining whether there has been a change of conditions by reason of which the existing means of escape in case of fire have become insufficient.

(3) If, while a fire certificate (*a*) is in force with respect to any premises, it is proposed to make a material extension to, or material structural alteration of, the premises, to increase the number of persons employed (*d*) to work (*e*) therein at any one time above that stated in the certificate, to begin to use therein materials of a kind prescribed by virtue of section 29 (1) (c) of this Act or to begin to store therein such materials in a quantity not less than that so prescribed, the occupier (*f*) shall, before effect is begun to be given to the proposals, give to the appropriate authority (*c*) notice (*g*) of the proposals.

(4) If—

(a) the appropriate authority (*c*) are satisfied, with respect to any premises with respect to which a fire certificate (*a*) is in force (whether as a result of an inspection caused by them to be carried out under subsection (2) of this section or otherwise), that the existing means of escape from the premises in case of fire have, in consequence of a change of conditions, become insufficient; or

(b) the appropriate authority (*c*) are satisfied, with respect to any premises with respect to which a notice under the last foregoing subsection has been given to them, that the giving of effect to the proposals notified will result in the means of escape from the premises in case of fire becoming insufficient;

they may, in a case falling within paragraph (a) above, by notice (*g*) served on the occupier (*f*) of the premises, require him to make to the premises, within such period as may be specified in the notice, such alterations (*h*) as may be so specified, or, in a case falling within paragraph (b) above, by notice (*g*) so served prohibit effect's being given to the proposals till the occupier (*f*) shall have made to the premises such

alterations (*h*) as may be so specified, and, in either case, they shall, upon the alterations (*h*) being made, amend the certificate or issue a new one.

(5) In the event of a contravention (*i*) of a requirement or prohibition imposed by a notice (*g*) served under the last foregoing subsection with respect to any premises, the occupier (*f*) of the premises shall be guilty of an offence (*k*), and upon his conviction thereof the appropriate authority (*c*) shall cancel the fire certificate (*a*) issued with respect to the premises; and the appropriate authority (*c*) may cancel the fire certificate (*a*) issued with respect to any premises if they are satisfied that there has been such a contravention (*c*) as aforesaid with respect to the premises (whether or not proceedings are brought in respect of the contravention (*i*)).

(6) Where the appropriate authority (*c*) are satisfied, with respect to any premises with respect to which a notice (*g*) under subsection (3) of this section has been given to them, that the giving of effect to the proposals notified will not result in the means of escape from the premises in case of fire becoming insufficient, they shall, upon production of the fire certificate (*a*) in force with respect to the premises, cause to be written on the certificate a statement that they are so satisfied.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Fire certificate.*** See s. 29 (1).
(*b*) ***Properly maintained.*** See note (*h*) to s. 8.
(*c*) ***Appropriate authority.*** See s. 39.
(*d*) ***Employed.*** For definition, see s. 90 (1), (4).
(*e*) ***Work.*** See note (*a*) to s. 3.
(*f*) ***Occupier.*** See note (*h*) to s. 22.
(*g*) ***Notice.*** For the service of notices, see s. 81.
(*h*) ***Alterations.*** See s. 41 as to consultation in certain cases.
(*i*) ***Contravention.*** For definition, see s. 90 (1).
(*k*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

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31. Right of appeal against matters arising out of sections 29 and 30.—(1) A person who is aggrieved (*a*)—

(a) by the refusal (*b*) of the appropriate authority (*c*) to issue a fire certificate (*d*) with respect to any premises;

(b) by the refusal (*b*) of the appropriate authority (*c*) to amend a fire certificate (*d*) issued with respect to any premises;

(c) by being required under the last foregoing section by the appropriate authority (*c*) to make any alterations to any premises or by the period within which he is so required to make any such alterations;

(d) by the prohibition under the last foregoing section by the appropriate authority (*c*) of effect's being given to proposals till alterations shall have been made to any premises; or

(*e*) by the cancellation, in pursuance of subsection (5) of the last foregoing section, of a fire certificate (*d*) issued with respect to any premises;

may, within twenty-one days (*e*) of the refusal (*b*) notice of requirement or prohibition or cancellation, appeal, (*f*) if the premises are situate in England or Wales, to a magistrates' court (*g*) acting for the petty sessions area (*h*) in which they are situate or, if they are situate in Scotland, to the sheriff within whose jurisdiction they are situate, and on any such appeal (*f*) the court may make such order (*i*) as it, or, as the case may be, the sheriff may make such order as he, thinks fit, and an order so made shall be binding on the appropriate authority (*c*).

(2) Where an appeal (*f*) is brought under this section against the refusal (*b*) of the appropriate authority (*c*) to issue a fire certificate (*d*) with respect to any premises or the cancellation in pursuance of subsection (5) of the last foregoing section of a fire certificate (*d*) issued with respect to any premises, section 29 (1) of this Act shall not render unlawful the employment (*k*) of persons to work (*l*) in the premises until the appeal (*f*) is finally determined.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Person . . . aggrieved.*** The interpretation of this phrase involves a consideration of what is meant, in the context in which the phrase is used, both by the word "person" and by the word "aggrieved". Where, as in the present context, no contrary intention appears, the word "person" includes any body of persons corporate or unincorporate; Interpretation Act 1889, s. 19. As to the meaning of the word "aggrieved", see note (*o*) to s. 3 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

(*b*) ***Refusal.*** The time runs from the date of the refusal, not from the date when the aggrieved person has notice of the refusal. As to the time of refusal when the authority require alterations under s. 29 (4), see that subsection.

(*c*) ***Appropriate authority.*** See s. 39.

(*d*) ***Fire certificate.*** See s. 29 (1).

(*e*) ***Within 21 days.*** It is a rule of general application that where a period of time from or after a specified event or date is prescribed by a statute or any instrument for the performance of any act, the day so specified is to be excluded from the computation of the period of time. Thus, in the present context, if a fire certificate was, for example, refused on the 10th July, an appeal entered on the 31st would be in time (*Pugh* v. *Duke of Leeds* (1777), 2 Cowp. 714).

(*f*) ***Appeal.*** The appeal is by way of complaint for an order; see the Magistrates' Courts Rules 1968 (S.I. 1968 No. 1920), rule 30. See also note (*c*) to s. 22.

The dismissal of a complaint by justices is an order from which s. 72 provides an appeal to the Crown Court (*R.* v. *Recorder of Oxford, Ex parte Brasenose College*, [1970] 1 Q.B. 109; [1969] 3 All E.R. 428, D.C.). See also, as to suspension or rescission of the order on further complaint, the Magistrates' Courts Act 1952, s. 54 (2).

(*g*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*h*) ***Petty sessions area.*** For definition, see s. 90 (1).

(*i*) ***Order.*** *Quaere* whether disobedience to the order may be punished under the Magistrates' Courts Act 1952, s. 54 (3). Cf. also the note "It shall be the duty, etc." to s. 52.

(*k*) ***Employment.*** For definition, see s. 90 (1).

(*l*) ***Work.*** See note (*a*) to s. 3.

---

32. Power of magistrates' courts and sheriffs to make orders for putting down dangerous conditions in regard to means of escape in case of fire.—If the appropriate authority (*a*) are satisfied that the conditions in regard to escape in the case of fire in the case of any premises to which this Act applies (*b*) are so dangerous that, until steps have been taken to remedy the danger, persons ought not (according to the circumstances of the case)—

(a) to be employed (*c*) to work (*d*) in the premises or in a particular part thereof, or

(b) to be employed (*c*) to work (*d*) in connection with the carrying on in the premises or in a particular part thereof of some particular process, or

(c) to be employed (*c*) to do in the premises or in a particular part thereof some particular work;

the authority may, if the premises are situate in England or Wales, make a complaint (*e*) to a magistrates' court (*f*) acting for the petty sessions area (*g*) in which the premises are situate or, if they are situate in Scotland, make a summary application to the sheriff within whose jurisdiction they are situate, and the court or, as the case may be, the sheriff, on being similarly satisfied, may by order (*h*) prohibit, to the extent appropriate in the said circumstances, the employment (*c*) of persons to work (*d*) in the premises until such steps shall have been taken as, in the opinion of the court or, as the case may be, the sheriff, are necessary to remedy the danger.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Appropriate authority.*** See s. 39.

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Employed.*** For definition, see s. 90 (1), (4).

(*d*) ***Work.*** See note (*a*) to s. 3.

(*e*) ***Complaint.*** For provisions as to jurisdiction and procedure, see the Magistrates' Courts Act 1952, ss. 43 *et seq.*

Although this section does not say so, it seems clear that the defendant to the complaint is to be the occupier of the premises, as to whom, see note (*h*) to s. 22.

An appeal to the Crown Court lies from the decision on the complaint under s. 72. See also, as to suspension or rescission of the order on further complaint, the Magistrates' Courts Act 1952, s. 54 (2).

(*f*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*g*) ***Petty sessions area.*** For definition, see s. 90 (1).

(*h*) ***Order . . . prohibit.*** Disobedience to such an order is punishable under s. 54 (3) of the Magistrates' Courts Act 1952.

---

33. Safety provisions in case of fire.—(1) While a person employed (*a*) to work (*b*) in premises to which this Act

applies (*c*) is in the premises for the purpose of doing his work (*b*) or eating a meal, the doors of any doorways through which he might have to pass so as to get out of the premises shall not be so locked or fastened that they cannot be immediately opened by him on his way out.

(2) The contents of any room in premises to which this Act applies (*c*), being a room wherein work (*b*) is done by any of the persons employed (*a*) to work (*b*) in the premises, shall be so arranged or disposed as to afford, to the persons who work (*b*) in the room, free passage-way to a means of escape in case of fire.

(3) So long as a fire certificate (*d*) with respect to any premises is in force, all exits affording, or giving access to, means of escape stated in the certificate to be relevant as mentioned in section 29 (5) (b) of this Act (other than exits in ordinary use) shall be distinctively and conspicuously marked by notices printed in letters of adequate size.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Employed.*** For definition, see s. 90 (1), (4).

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Fire certificate.*** See s. 29 (1).

---

34. Fire alarms.—(1) All premises to which this section applies (*a*) shall be provided with effective means, capable of being operated without exposing any person to undue risk, of giving warning in case of fire.

(2) All means of giving warning in case of fire with which any premises are provided in pursuance of this section shall be tested or examined at least once in every period of three months and whenever so required by the appropriate authority (*b*).

(3) The Minister (*c*) may by regulations (*d*) prescribe the nature of the test or examination to be carried out in pursuance of the last foregoing subsection.

(4) This section applies to any premises with respect to which a fire certificate (*e*) is in force and any premises in the case of which persons are for the time being employed (*f*) to work therein (*g*), being persons whose employment (*f*) so to work (*g*) would, apart from section 29 (8) or 31 (2) of this Act, be unlawful by virtue of section 29 (1) thereof.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Premises to which this section applies.*** See sub-s. (4).

(*b*) ***Appropriate authority.*** See s. 39.

(*c*) ***The Minister.*** For definition, see s. 90 (1).

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*e*) ***Fire certificate.*** See s. 29 (1).

(*f*) ***Employed.*** For definition, see s. 90 (1), (4).

(*g*) ***Work.*** See note (*a*) to s. 3.

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35. Power of Minister to make regulations with respect to means of escape in case of fire.—(1) The Minister (*a*) may make, as respects premises to which this Act applies (*b*), or any specified class of such premises (*c*), regulations (*d*) as to the means of escape in case of fire to be provided therein, but nothing in regulations under this subsection shall be construed as being in derogation of the general obligation imposed by section 28 of this Act.

(2) If any premises with respect to which a fire certificate (*e*) is in force are not in conformity with regulations (*d*) under this section applicable to the premises, the appropriate authority (*f*) shall serve on the occupier (*g*) of the premises notice (*h*) requiring him to make to the premises, within such period as may be specified in the notice, such alterations (*i*) as they consider necessary to bring the premises into conformity with the regulations (*d*), and, upon the alterations' being made, they shall amend the certificate or issue a new one.

Sections 30 (5) and 31 of this Act shall have effect in a case in which a notice is issued under this subsection with respect to any premises as they have effect in a case in which a notice (*h*)

is issued under section 30 (4) of this Act requiring alterations (*i*) to be made to premises.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Class of premises.*** See s. 90 (5).

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*e*) ***Fire Certificate.*** See s. 29 (1).

(*f*) ***Appropriate authority.*** See s. 39.

(*g*) ***Occupier.*** See note (*h*) to s. 22.

(*h*) ***Notice.*** As to the service of notices, see s. 81.

(*i*) ***Alterations.*** See s. 41 as to consultation in certain cases.

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36. Employees to be made familiar with means of escape in case of fire.—(1) Effective steps shall be taken to ensure that all persons employed (*a*) to work (*b*) in any such premises as are mentioned in section 34 (4) of this Act are familiar with the means of escape from the premises in case of fire and their use and with the routine to be followed in case of fire.

(2) The Minister (*c*) may make regulations (*d*) as to the steps to be taken for the purposes of the foregoing subsection in premises to which that subsection applies or in any class of such premises (*e*).

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Employed.*** For definition, see s. 90 (1), (4).

(*b*) ***Work.*** See note (*a*) to s. 3.

(*c*) ***The Minister.*** For definition, see s. 90 (1).

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*e*) ***Class of premises.*** See s. 90 (5).

37. Fire prevention.—(1) The Minister (*a*) may make, as respects premises to which this Act applies (*b*), or any specified class of such premises (*c*), special regulations (*d*) as to the measures to be taken to reduce the risk of the outbreak of fire therein or of the spread of any fire that breaks out therein or the smoke therefrom.

(2) Regulations under the foregoing subsection may, amongst other things, prescribe requirements as to the internal construction of premises to which the regulations apply, and the materials used in that construction, and provide, as regards any of the provisions of the regulations, that some other person or persons shall be responsible for a contravention (*e*) thereof instead of, or as well as, the occupier (*f*).

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Class of premises.*** See s. 90 (5).

(*d*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8), Sch. 1. No such regulations have yet been made.

(*e*) ***Contravention.*** For definition, see s. 90 (1).

(*f*) ***Occupier.*** See note (*h*) to s. 22.

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38. Provision of fire-fighting equipment.—(1) In all premises to which this Act applies (*a*) there shall be provided and maintained appropriate means for fighting fire, which shall be so placed as to be readily available for use.

(2) The Minister (*b*) may, as respects any class of premises (*c*) to which this Act applies, make special regulations (*d*) prescribing means for fighting fire, and any such regulations may provide for the testing or examination of the means so specified and provide, as regards any of the provisions of the regulations, that some other person or persons shall be responsible for a contravention (*e*) thereof instead of, or as well as, the occupier (*f*).

(3) Any requirement imposed by regulations under the last foregoing subsection may, so far as regards premises of the

class (*c*) to which the regulations apply, be imposed either in substitution for, or without prejudice to, the general requirements of subsection (1) of this section.

General note. Except in relation to shop premises which are in a covered market, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*b*) ***The Minister.*** For definition, see s. 90 (1).

(*c*) ***Class of premises.*** See s. 90 (5).

(*d*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8), Sch. 1. No special regulations under this section have yet been made.

(*e*) ***Contravention.*** For definition, see s. 90 (1).

(*f*) ***Occupier.*** See note (*h*) to s. 22.

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39. Appropriate authority for purposes of sections 28 to 38.—(1) Subject to subsection (2) of this section, for the purposes of sections 28 to 38 of this Act the appropriate authority shall, as respects any premises, be the authority discharging in the area in which the premises are situate the functions of fire authority (*a*) under the Fire Services Act 1947, except that,—

(a) for the purposes of the application of section 34 to premises with respect to which the enforcement of provisions of this Act is provided for by section 52 (4) of this Act, it shall be a factory inspector (*b*) or a person authorised under section 52 (3) of this Act by the Minister (*c*); and

(b) for the purposes of the application of section 34 to premises with respect to which the enforcement of provisions of this Act is provided for by section 52 (6) of this Act, it shall be a mine and quarry inspector (*d*) or a person authorised under that subsection by the Minister of Power (*e*).

(2) In the case of premises with respect to which the enforcement of provisions of this Act by factory inspectors (*b*) and such persons (other than factory inspectors (*b*)) as the

Minister (*c*) may authorise in that behalf is provided for by section 52 (3) of this Act,—

(a) for the purposes of the provisions of sections 28 to 38 of this Act (except sections 29 (2) and (8) and 30 (3)) the appropriate authority shall be a factory inspector (*b*) or a person authorised under the said section 52 (3) by the Minister (*c*);

(b) for the purposes of the said excepted provisions, the appropriate authority shall be the factory inspector (*b*) in charge of the district in which the premises are situate (and accordingly, section 30 (4) (b) and (6) of this Act shall, in the case of such premises, have effect with the substitution, for the word "them", of the words "the factory inspector (*b*) in charge of the district in which the premises are situate").

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Fire authority.*** Except where a combined fire authority has been constituted by a combination scheme, the fire authority is the county or county borough council; see ss. 4, 38 (1) of the Fire Services Act 1947.

(*b*) ***Factory inspector.*** For definition, see s. 90 (1).

(*c*) ***The Minister.*** For definition, see s. 90 (1).

(*d*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

(*e*) ***Minister of Power.*** Now the Secretary of State for Trade and Industry (S.I. 1970 No. 1537).

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40. Exclusion of application of sections 28 to 38 to certain fuel storage premises and modification thereof in relation to others.—Nothing in sections 28 to 38 of this Act or in regulations under any of those sections shall apply to fuel storage premises (*a*) which are wholly in the open, and, in the case of such premises which are partly in the open, so much of them as is in the open shall, for the purposes of those sections and of such regulations, be treated as not forming part of the premises.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Fuel storage premises.*** See s. 1 (3) (a) (i).

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41. Duty of appropriate authority, if not concerned with construction of buildings, to consult authority so concerned before requiring alterations to be made.—

(1) Before the appropriate authority (*a*)—

(a) inform the applicant for the issue of a fire certificate (*b*) with respect to any premises situate elsewhere in England and Wales than in the administrative county of London (*c*) that they will not issue the certificate unless specified alterations are made to the premises; or

(b) serve, under section 30 (4) or 35 (2) of this Act, a notice on the occupier (*d*) of any premises so situate;

they shall, if not themselves the local authority (*e*) (within the meaning of the Public Health Act 1936) for the area in which the premises are situate, consult (*f*) that authority.

(2) Before the appropriate authority (*a*)—

(a) inform the applicant for the issue of a fire certificate with respect to any premises situate in Scotland that they will not issue the certificate unless specified alterations are made to the premises; or

(b) serve, under section 30 (4) or 35 (2) of this Act, a notice on the occupier of any premises so situate;

they shall, if not themselves the local authority (within the meaning of the Building (Scotland) Act 1959) for the area in which the premises are situate, consult (*f*) that authority.

(3) Before the appropriate authority (*a*)—

(a) inform the applicant for the issue of a fire certificate (*b*) with respect to any premises situate in the administrative county of London (*c*) that they will not issue the certificate unless specified alterations are made to the premises; or

(b) serve, under section 30 (4) or 35 (2) of this Act, a notice on the occupier of any premises so situate;

they shall, if not themselves the London County Council (*g*) consult that Council.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Appropriate authority.*** See s. 39.

(*b*) ***Fire certificate.*** See s. 29 (1).

(*c*) ***Administrative County of London.*** This comprises the combined areas of the City of London, the metropolitan boroughs and the Inner and Middle Temples; see the London Government Act 1939, s. 1 (1). As from 1st April 1965, in sub-s. (1) for the words "administrative county of London" are substituted the words "inner London boroughs, the City of London, the Inner Temple and the Middle Temple", and in sub-s. (3) for the words "administrative county of London" are substituted the words "inner London boroughs, the City of London, the Inner Temple or the Middle Temple" (London Government Act 1963, s. 51 (2)), and by s. 51 (1) of that Act in sub-s. (3) for the words "London County Council" are substituted the words "Greater London Council".

(*d*) ***Occupier.*** See note (*h*) to s. 22.

(*e*) ***Local authority.*** The councils of boroughs, urban districts and rural districts are the local authorities for the purposes of the Public Health Act 1936 (see s. 1 (2) of that Act).

(*f*) ***Consult.*** On what constitutes consultation, see, in particular, *Rollo* v. *Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A., and *Re Union of Whippingham and East Cowes Benefices, Derham* v. *Church Comrs. of England*, [1954] A.C. 245; [1954] 2 All E.R. 22, P.C.

(*g*) ***London County Council.*** See note (*c*), *supra*.

Special Provisions with respect to Buildings whereof Parts are Office, &c., Premises and with respect to certain contiguous Fuel Storage Premises

42. Provisions with respect to buildings in single ownership.—(1) A building (*a*) to which this section applies is one all parts of which are in the same ownership (*b*) and a part of which consists of premises to which this Act applies (*c*), being premises held under a lease or an agreement for a lease or under a licence; and in this section a reference to a common part of a building to which this section applies shall be taken to refer to a part of the building that is used for the purposes of, but is not comprised in, a part of the building that consists of premises to which this Act applies.

(2) The following provisions shall have effect for securing the cleanliness (*d*) of common parts (*e*) of buildings to which this section applies, that is to say:—

(a) every common part of a building to which this section applies, and all furniture, furnishings and fittings in such a part, shall be kept in a clean state;

(b) the Minister (*f*) may by regulations (*ff*) made as respects common parts of buildings to which this section applies, or any class of such common parts, require such steps as may be prescribed to be taken for securing the cleanliness of the parts to which the regulations apply, but nothing in regulations under this paragraph shall be construed as being in derogation of the general obligation imposed by the foregoing paragraph.

(3) The following provisions shall have effect for securing the illumination (*g*) of common parts (*e*) of buildings to which this section applies, that is to say:—

(a) effective provision shall be made for securing and maintaining, in every such part of a common part of a building to which this section applies as the following, namely, a part in which persons are working or passing, suitable and sufficient lighting, whether natural or artificial;

(b) the Minister (*f*) may by regulations (*ff*) made as respects common parts of buildings to which this section applies, or any class of such common parts, prescribe a standard of lighting conformity to which shall be obligatory and a sufficient compliance with the foregoing paragraph;

(c) all glazed windows and skylights used for the lighting of a part of a common part of a building to which this section applies in which the securing of lighting is required by this subsection to be provided for shall, so far as reasonably practicable (*h*), be kept clean on both the inner and outer surfaces and free from obstruction;

(d) all apparatus installed in a common part of a building to which this section applies for producing artificial lighting in a part of that part in which the securing of lighting is required by this subsection to be provided for shall be properly maintained (*i*);

but paragraph (c) above shall not affect the whitewashing or

shading of windows or skylights for the purpose of mitigating heat or glare.

(4) Section 16 (1) of this Act shall apply to floors, stairs, steps, passages and gangways comprised in, or constituting, a common part (*e*) of a building to which this section applies as it applies to floors, stairs, steps, passages and gangways in premises to which this Act applies, section 16 (2) of this Act shall apply to a staircase comprised in, or constituting, a common part of such a building as it applies to such a staircase as is mentioned in that subsection, and section 16 (3) of this Act shall apply to an open side of such a staircase as is first mentioned in this subsection as it applies to an open side of such a staircase as is mentioned in the said subsection (2).

(5) In the event of a contravention (*j*), in relation to a common part (*e*) of a building to which this section applies, of subsection (2) or (3) of this section or of regulations under either of those subsections, and in the event of a contravention, in relation to any thing constituting, or comprised in, any such common part, of section 16 of this Act as applied by the last foregoing subsection, the owner (*b*) of the building shall be guilty of an offence (*k*).

(6) For a contravention (*j*), in relation to premises comprised in a building to which this section applies, of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in the premises and by other persons), the owner (*b*) of the building shall be responsible instead of the occupier of the premises.

(7) For a contravention (*j*), in relation to premises comprised in a building to which this section applies, of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning or drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in the premises and by other persons) the owner (*b*) of the building shall be responsible instead of the occupier of the premises.

(8) Section 22 of this Act (except so far as relating to operations or processes) shall, with the substitution, for references to the occupier of the premises, of references to the owner

of the building, have effect in relation to a common part (*e*) of a building to which this section applies, and to machinery, plant, equipment and appliances used in such a part, as it has effect in relation to premises to which this Act applies, and to machinery, plant, equipment and appliances used in such premises.

(9) Where the occupier of premises comprised in a building in England or Wales to which this section applies is the defendant to a complaint made under section 22 of this Act with respect to the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the summons issued in consequence of the making of the complaint together with a notice stating that he will be entitled to appear at the hearing of the complaint shall be served on the owner of the building in like manner (*l*) as a summons falling to be served on him is required to be served and he shall, if he appears at the hearing, be deemed to be a defendant to the complaint; and the powers of the court under section 55 (1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of either or both of the others.

(10) Where the occupier of premises comprised in a building in Scotland to which this section applies is a defender in a summary application made under section 22 of this Act in respect of the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the application together with notice of the place, date and time fixed for the hearing of it shall be served on the owner of the building and he shall thereafter be a party to the proceedings.

(11) In the application, to premises comprised in a building to which this section applies, of the provisions of this Act with respect to fire precautions (*m*), references to the premises shall be construed as including references to a part of the building that is used for the purposes of, but is not comprised in, the premises, and references to the owner of the building shall be substituted for references to the occupier of the premises.

(12) A copy of any fire certificate issued with respect to any premises which, at the time of the issue of the certificate, are comprised in a building to which this section applies, shall be sent (*n*) to the occupier of the premises by the authority who

issued it and section 29 (6) of this Act shall apply to the copy instead of to the certificate.

(13) For a contravention (*j*), in relation to premises comprised in a building to which this section applies, of section 28 of this Act, for a contravention, in relation to such premises, of section 30 (1) of this Act (other than a contravention consisting in a failure to keep means of escape free from obstruction, being a contravention caused by the use of the premises), and for a contravention, in relation to such premises, of section 33 (3) of this Act or of regulations under section 35 (1) thereof, the owner (*b*) of the building shall be responsible instead of the occupier of the premises.

(14) Section 34 (1) of this Act shall, in its application to premises comprised in a building to which this section applies, have effect as if it required the warning referred to therein to be perceptible in every part of the building used for the purposes of, but not comprised in, the premises, in every other set of premises comprised in the building which are premises to which this Act applies, and in every part of the building used for the purposes of, but not comprised in, any other such set of premises as aforesaid; and for a contravention, in relation to premises comprised in such a building, of that section, the owner (*b*) of the building shall be responsible instead of the occupier of the premises.

(15) If, on a complaint (or, in Scotland, a summary application) made by the owner (*b*) of a building to which this section applies to an appropriate court, the court is satisfied that the occupier of any part of the building prevents the owner from making, to premises to which this Act applies which are comprised in the building, any alterations the making of which is requisite in order to permit of a fire certificate's being issued with respect to the premises or any alterations specified in a notice served on him under section 30 (4) or 35 (2) of this Act, or prevents the carrying out, in pursuance of, or of a requirement imposed under, section 34 (2) of this Act, of a test or examination of means of giving warning in case of fire, the court may order that occupier to permit the making of the alterations or, as the case may be, the carrying out of the test or examination.

In this subsection "appropriate court" means, as regards a building in England or Wales, a magistrates' court (*o*) acting

for the petty sessions area (*p*) in which the building is situate and, as regards a building in Scotland, the sheriff within whose jurisdiction it is situate.

(16) The occupier of any premises to which this Act applies which are comprised in a building to which this section applies shall furnish to the owner (*b*) of the building any information in the possession of the occupier the possession of which by the owner is requisite to enable him to comply, in the case of the premises, with section 30 (3) of this Act, and if the occupier fails so to do he shall be guilty of an offence (*k*).

General note. Different parts of this section came into operation on different dates. Sub-ss. (1) and (11), except in relation to premises which are in a covered market place to which s. 51 applies, came into operation on 1st May 1964. The remainder of the section, except in relation to premises which are in a covered market place to which s. 51 applies, came into operation on 1st August 1964 (see the Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This and the following section of the Act are of great importance in regulating the incidence of liability to comply with the provisions of the Act in cases where part of a building in single ownership is let off, or where a building is in plural ownership. Section 42 only applies when all parts of the building in question are "in the same ownership" (see s. 42 (1)); s. 43 only applies when the building is one of which "different parts are owned by different persons" (see s. 43 (1)). The two sections are, thus, mutually exclusive, and their application depends, *inter alia*, upon an investigation of who "owns" the building, in whole or in part. "Owner" is defined in s. 90 (1), and its meaning is discussed in note (*h*) to that section.

(*a*) ***Building.*** See note (*f*) to s. 1.

(*b*) ***Ownership.*** For definition, see s. 90 (1).

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Cleanliness.*** Compare s. 4.

(*e*) ***Common part.*** For definition, see sub-s. (1).

(*f*) ***The Minister.*** For definition, see s. 90 (1).

(*ff*) ***Regulations.*** As to the making of regulations, see s. 80. No such regulations have yet been made.

(*g*) ***Illumination.*** Compare s. 8.

(*h*) ***Reasonably practicable.*** See note (*f*) to s. 6.

(*i*) ***Properly maintained.*** See note (*h*) to s. 8.

(*j*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 90 (1)).

(*k*) ***Offence.*** See ss. 63 *et seq.*

(*l*) ***Shall be served . . . in like manner.*** See the Magistrates' Courts Rules 1968 (S.I. 1968 No. 1920), rule 55 and the Companies Act, 1948, s. 437.

(*m*) ***Provisions . . . with respect to fire precautions.*** See ss. 28 to 41.

(*n*) ***Sent.*** As to the sending of documents, see s. 81.
(*o*) ***Magistrates' Court.*** For definition, see s. 90 (1).
(*p*) ***Petty sessions area.*** For definition, see s. 90 (1).

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43. Provisions with respect to buildings plurally owned.—(1) A building (*a*) to which this section applies is one of which different parts are owned (*b*) by different persons and of which a part consists of premises to which this Act applies (*c*); and in this section a reference to a common part of a building to which this section applies shall be taken to refer to a part of the building that is used for the purposes of, but is not comprised in, a part of the building that consists of premises to which this Act applies.

(2) Subsections (2) and (3) of the last foregoing section shall, with the substitution, for references to buildings to which that section applies and to common parts (*d*) thereof, of references respectively to buildings to which this section applies and to common parts thereof, have effect for securing the cleanliness and illumination of common parts of buildings to which this section applies as they have effect for securing the cleanliness and illumination of common parts of buildings to which that section applies; and in the event of a contravention (*e*), in relation to a common part (*d*) of a building to which this section applies, of either of those subsections or of regulations under either of them, the owner (*b*) of the part (or, if there are more owners than one of the part, each of them) shall be guilty of an offence (*f*).

(3) Section 16 (1) of this Act shall apply to floors, stairs, steps, passages and gangways comprised in, or constituting, a common part (*d*) of a building to which this section applies as it applies to floor, stairs, steps, passages and gangways in premises to which this Act applies, section 16 (2) of this Act shall apply to a staircase comprised in, or constituting, a common part of such a building as it applies to such a staircase as is mentioned in that subsection, and section 16 (3) of this Act shall apply to an open side of such a staircase as is first-mentioned in this subsection as it applies to an open side of such a staircase as is mentioned in the said subsection (2); and in the event of a contravention (*e*), in relation to any thing constituting, or comprised in, any such common part, of section 16 of this Act as applied by this subsection, the owner (*b*)

of the part (or if there are more owners than one of the part, each of them) shall be guilty of an offence (*f*).

(4) For a contravention (*e*), in relation to premises consisting of part of any such part of a building to which this section applies as is owned (*b*) by one of the persons who between them own the building (being premises held under a lease or an agreement for a lease or under a licence), of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in the premises and by other persons), the first-mentioned person shall be responsible instead of the occupier of the premises.

(5) For a contravention (*e*), in relation to premises consisting of part of any such part of a building to which this section applies as is owned (*b*) by one of the persons who between them own the building (being premises held under a lease or an agreement for a lease or under a licence), of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning or drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in the premises and by other persons) the first-mentioned person shall be responsible instead of the occupier of the premises.

(6) Section 22 of this Act (except so far as relating to operations or processes) shall, with the substitution, for references to the occupier of the premises, of references to the persons who between them own the building, have effect in relation to a common part (*d*) of a building to which this section applies, and to machinery, plant, equipment and appliances used in such a part, as it has effect in relation to premises to which this Act applies, and to machinery, plant, equipment and appliances used in such premises.

(7) Where the occupier of premises comprised in a building in England or Wales to which this section applies is the defendant to a complaint made under section 22 of this Act with respect to the premises on the ground specified in subsection (1) (a) or (b) of that section a copy of the summons issued in consequence of the making of the complaint together with a notice stating that he will be entitled to appear at the hearing

of the complaint shall be served on each of the persons who between them own (*b*) the building in like manner (*g*) as a summons falling to be served on him is required to be served and he shall, if he appears at the hearing, be deemed to be a defendant to the complaint; and the powers of the court under section 55 (1) of the Magistrates' Courts Act 1952 shall be deemed to include power, whatever adjudication the court makes on the complaint, to order any of the parties to pay the whole or part of the costs of all or any of the others.

(8) Where the occupier of premises comprised in a building in Scotland to which this section applies is a defender in a summary application made under section 22 of this Act in respect of the premises on the ground specified in subsection (1) (a) or (b) of that section, a copy of the application together with notice of the place, date and time fixed for the hearing of it shall be served on each of the persons who between them own the building and they shall thereafter be parties to the proceedings.

(9) In the application, to premises comprised in a building to which this section applies, of the provisions of this Act with respect to fire precautions—

(a) references to the premises shall be construed as including references to any part of the building used for the purposes of, but not comprised in, the premises;

(b) for references to the occupier of the premises (except the reference in section 29 (5)) there shall be substituted references to the persons who between them own the building; and

(c) for the reference in the said section 29 (5) to the occupier of the premises there shall be substituted a reference to the person who owns the part of the building of which the premises consist.

(10) A copy of any fire certificate issued with respect to any premises which, at the time of the issue of the certificate, are comprised in a building to which this section applies, shall be sent (*i*) to the occupier of the premises by the authority who issued it, and section 29 (6) of this Act shall apply to the copy instead of to the certificate.

(11) For a contravention (*e*), in relation to premises comprised in a building to which this section applies; of section 28

of this Act, for a contravention, in relation to such premises, of section 30 (1) of this Act (other than a contravention consisting in a failure to keep means of escape free from obstruction, being a failure caused by the use of the premises), and for a contravention, in relation to such premises, of section 33 (3) of this Act or of regulations under section 35 (1) thereof, each of the persons who between them own (*b*) the building shall be responsible instead of the occupier of the premises.

(12) Section 34 (1) of this Act shall, in its application to premises comprised in a building to which this section applies, have effect as if it required the warning referred to therein to be perceptible in every part of the building used for the purposes of, but not comprised in, the premises, in every other set of premises comprised in the building which are premises to which this Act applies, and in every part of the building used for the purposes of, but not comprised in, any other such set of premises as aforesaid; and for a contravention (*e*), in relation to premises comprised in such a building, of that section, each of the persons who between them own (*b*) the building shall be responsible instead of the occupier of the premises.

(13) If, on a complaint (or, in Scotland, a summary application) made to an appropriate court by one of the persons who, between them, own a building to which this section applies, the court is satisfied that another of those persons or any other person having an estate or interest in the building prevents the making, to premises to which this Act applies which are comprised in the building, of any alterations the making of which is requisite in order to permit of a fire certificate's being issued with respect to the premises or of any alterations specified in a notice served on those persons under section 30 (4) or 35 (2) of this Act, or prevents the carrying out in pursuance of, or of a requirement imposed under, section 34 (2) of this Act, of a test or examination of means of giving warning in case of fire, the court may order that other person to permit the making of the alterations or, as the case may be, the carrying out of the test or examination.

In this subsection "appropriate court" means, as regards a building in England or Wales, a magistrates' court (*j*) acting for the petty sessions area (*k*) in which the building is situate and, as regards a building in Scotland, the sheriff within whose jurisdiction it is situate.

(14) The occupier of any premises to which this Act applies which are comprised in a building to which this section applies shall furnish to each of the persons who between them own the building any information in the possession of the occupier the possession of which by the persons aforesaid is requisite to enable them to comply, in the case of the premises, with section 30 (3) of this Act, and if the occupier fails so to do he shall be guilty of an offence (*f*).

General note. Different parts of this section came into operation on different dates. Sub-sections (1) and 9 (a), except in relation to premises which are in a covered market place to which s. 51 applies, came into operation on 1st May 1964. The remainder of the section, except in relation to premises which are in a covered market place to which s. 51 applies, came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

See also the General Note to s. 42.

(*a*) ***Building.*** See note (*f*) to s. 1.

(*b*) ***Owner.*** For definition, see s. 90 (1).

(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*d*) ***Common part.*** For definition, see sub-s. (1).

(*e*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 90 (1)).

(*f*) ***Offence.*** See ss. 63 *et seq.*

(*g*) ***Shall be served . . . in like manner.*** See note (*l*) to s. 42.

(*h*) ***Provisions . . . with respect to fire precautions.*** See ss. 28 to 41.

(*i*) ***Sent.*** As to the sending of documents, see s. 81.

(*j*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*k*) ***Petty sessions area.*** For definition, see s. 90 (1).

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44. Provisions with respect to contiguous fuel storage premises in single ownership.—Where two sets or more of fuel storage premises (*a*) any of which is held under a lease or an agreement for a lease or under a licence are established on a parcel of land all parts of which are in the same ownership (*b*), then—

(a) for a contravention (*c*), in relation to any of those sets of premises, of section 9 of this Act (other than a contravention consisting in a failure to keep clean conveniences provided in pursuance of that section, not being conveniences provided for use jointly by the persons employed to work in that set of premises and by other persons); and

(b) for a contravention (*c*), in relation to any of those sets of premises, of section 10 of this Act (other than a contravention consisting in a failure to provide means of cleaning and drying or a failure to keep clean and in orderly condition the place where facilities are provided in pursuance of that section, not being facilities provided for use jointly by the persons employed to work in that set of premises and by other persons);

the owner (*b*) of that set of premises shall be responsible instead of the occupier thereof.

General note. This section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Fuel storage premises.*** For definition, see s. 90 (1).

(*b*) ***Ownership.*** For definition, see s. 90 (1).

(*c*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 90 (1)).

Exemptions

45. Power of the Minister to grant exemptions from certain requirements of Act.—(1) The Minister (*a*) may by order (*b*) exempt—

(a) from all or any of the requirements imposed by sections 5 (2) and 6 of this Act, premises of any class or rooms of any class (*c*);

(b) from all or any of the requirements imposed by sections 9 and 10 of this Act, premises of any class (*c*);

in cases where, in his opinion (*d*), it would, by reason of special circumstances, be unreasonable to require compliance with the requirements or requirement from which exemption is granted.

(2) An exemption under this section may be granted unconditionally or subject to conditions and without limit of time or for a specified period.

(3) The grant of an exemption under this section for a specified period shall not preclude the grant of the like exemption for further periods by further orders (*b*).

(4) The Minister shall not make an order (*b*) under this section except after consultations (*e*) with an organisation which appears (*f*) to him to be representative of workers concerned and an organisation which appears (*f*) to him to be

representative of employers concerned and an organisation which appears (*f*) to him to be representative of any other persons who appear (*f*) to him to be concerned.

(5) In this section "organisation" includes—

(a) in relation to workers, an association of trade unions; and

(b) in relation to employers, an association of organisations of employers and also any body established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking;

and "trade union" includes an association of trade unions.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Order.*** As to the making of orders, see s. 80. The Offices, Shops and Railway Premises Act 1963 (Exemption No. 1) Order 1964 (S.I. 1964 No. 964), the Offices, Shops and Railway Premises Act 1963 (Exemption No. 7) Order 1968 and the Offices, Shops and Railway Premises Act 1963 (Exemption No. 10) Order 1972 have been made under this section and are printed at pp. 22, 33, and 41 respectively.

(*c*) ***Class of premises; rooms.*** See s. 90 (5).

(*d*) ***Opinion.*** See note (*m*) to s. 6.

(*e*) ***Consultation.*** See note (*f*) to s. 41.

(*f*) ***Appears.*** See note (*h*) to s. 20.

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46. Power of authorities who enforce Act to grant exemptions from certain requirements thereof.—(1) The authority having power to enforce (*a*), with respect to any premises, the following provisions of this Act, namely, section 5 (2) and sections 6 and 9, may—

(a) exempt the premises or any room therein from all or any of the requirements imposed by the said sections 5 (2) and 6;

(b) exempt the premises from all or any of the requirements imposed by the said section 9;

if satisfied that, in the circumstances affecting the subject of

the exemption, compliance with the requirements or requirement from which exemption is granted is not reasonably practicable (*b*).

(2) The authority having power to enforce (*a*) section 10 (1) of this Act with respect to any premises may, if satisfied that it is not reasonably practicable (*b*) for running water to be supplied there or for running water so supplied to be heated, exempt the premises from so much of that subsection as requires the water supplied to be running water.

(3) An exemption under subsection (1) of this section of, or of a room in, any premises from a requirement of a provision of this Act may be granted for a period not exceeding two years, but may from time to time be extended for a further such period beyond the expiration of the period at the expiration of which it would otherwise expire if the authority having power to enforce (*a*) that provision with respect to the premises are satisfied as mentioned in subsection (1) of this section and are further satisfied that the person who, if the exemption were not in force, would be responsible (*c*) for a contravention (*d*) in relation to the premises of that provision (being a contravention (*d*) consisting in a failure to comply with that requirement) has not failed to do anything the doing of which might have rendered compliance with that requirement reasonably practicable (*b*).

(4) An exemption under subsection (2) of this section may be granted without limit of time or for a specified period; but the grant of such an exemption for a specified period shall not preclude the grant of the like exemption for further periods.

(5) An exemption of, or of a room in, any premises from a requirement imposed by a provision of this Act shall not be granted or extended under this section—

(a) except upon application made to the appropriate authority, in such form as may be prescribed by order (*e*) made by the Minister (*f*)—

(i) in a case where the grant of an exemption is sought, by the person who would be responsible (*c*) for a contravention (*d*) in relation to the premises of that provision (being a contravention (*d*) consisting in a failure to comply with that requirement);

(ii) in a case where the extension of an exemption is sought, by the person who, if the exemption were not in force, would be responsible (*c*) as aforesaid;

(b) unless the application is accompanied by a certificate in such form as may be so prescribed, that the obligation to which the applicant is subject by virtue of subsection (6) (a) below has been complied with; and

(c) until the expiration of the period of fourteen days beginning (*g*) with the day next following that on which the application is made.

(6) In relation to an application for the grant or extension of an exemption under this section of, or of a room in, any premises, compliance by the applicant with the following requirements shall be requisite, namely,—

(a) he must, immediately before the application is made, post in the premises, in such a position, and in such characters, as to be easily seen and read by the persons employed (*h*) to work (*i*) in the premises, a notice—

(i) stating that such an application is being made;

(ii) specifying the requirement from which exemption or, as the case may be, further exemption, is being sought;

(iii) specifying the period for which the grant or, as the case may be, the extension, is being sought (or if, where a grant of exemption is being sought under subsection (2) of this section, it be the case that the grant thereof without limit of time is being sought, specifying that fact);

(iv) specifying the name and address of the authority to whom the application is being made and notifying the persons aforesaid that written representations with respect to the application may be made by any of them to that authority before the expiration of the period of fourteen days beginning (*g*) with the day next following that on which the notice is posted in compliance with this paragraph;

(b) he must keep the said notice posted as aforesaid throughout the last-mentioned period;

and a person making an application under this section who fails

to comply with an obligation to which he is, in relation to the application, subject by virtue of this subsection shall be guilty of an offence (*k*) and liable to a fine not exceeding twenty pounds.

(7) An exemption under this section of, or of a room in, any premises from a requirement imposed by a provision of this Act may, if the authority having power to enforce (*a*) that provision with respect to the premises cease to be satisfied with respect to the matters with respect to which they were satisfied when the exemption was granted or, if the exemption has been extended under subsection (3) of this section, when it was extended, be withdrawn by that authority provided that three months' notice (*l*) of intention to withdraw it has been given (*m*) to the person who, if the exemption were not in force, would be responsible (*c*) for a contravention (*d*) in relation to the premises of that provision (being a contravention (*d*) consisting in a failure to comply with that requirement).

(8) Where an exemption of, or of a room in, any premises from a requirement imposed by a provision of this Act or an extension of such an exemption is granted under this section by an authority, a certificate of the grant or extension shall be sent by the authority to the person who, if the exemption were not in force, would be responsible (*c*) for a contravention (*d*) in relation to the premises of that provision (being a contravention (*d*) consisting in a failure to comply with that requirement).

(9) A certificate such as is mentioned in the last foregoing subsection shall, so long as the exemption whose grant or extension is certified thereby continues in force, be kept posted in the premises to which the exemption relates in such a position as to be easily seen and read by the persons employed (*h*) to work (*i*) in the premises.

(10) Notice of the refusal by an authority to grant or extend an exemption under this section shall be given (*m*) by them to the applicant for the grant or extension and also (if it be the case that representations with respect to the application were duly made by the persons employed (*h*) to work (*i*) in the premises to which the application related or any of those persons), either individually to such of those persons as duly made representations or to a person appearing (*n*) to the authority to be representative of such of those persons as duly

made representations or to each of a number of persons who appear (*n*) to the authority to be representative between them of such of those persons as duly made representations.

(11) A person who is aggrieved (*o*)—

(a) by the refusal of an authority to grant or extend an exemption under this section of, or of a room in, any premises; or

(b) by a notice of intention to withdraw such an exemption;

may, within twenty-one days (*p*) of the refusal or, as the case may be, service of the notice (*m*), appeal (*q*), if the premises are situate in England or Wales, to a magistrates' court (*r*) acting for the petty sessions area (*s*) in which they are situate, or, if they are situate in Scotland, to the sheriff within whose jurisdiction they are situate, and on any such appeal (*q*)—

(i) in a case falling within paragraph (a) above, the court or sheriff, if satisfied with respect to the matters with respect to which the authority would have to have been satisfied as a condition of their granting or extending the exemption, may order (*t*) the authority to grant or extend it, in the case of an exemption under subsection (1) of this section, for such period not exceeding two years as may be specified in the order, and, in the case of an exemption under subsection (2) of this section, either without limit of time or for such period as may be so specified;

(ii) in a case falling within paragraph (b) above, the court or sheriff, if satisfied with respect to the matters with respect to which the authority were satisfied when the exemption was granted or, if it has been extended, when it was extended, may order (*t*) the authority to cancel the notice of intention to withdraw the exemption.

(12) An application for the grant under this section of an exemption of, or of a room in, any premises from a requirement imposed by section 5 (2), 6, 9 or 10 (1) of this Act may be made, and such an exemption may be granted, despite the fact that the provision imposing the requirement is not in force in relation to the premises, but such an application shall not be entertained unless an order has been made under the following provisions of this Act appointing (*u*) either in relation to all

premises to which this Act applies or in relation to premises of a class (*v*) within which fall the premises in question, a day for the coming into operation of that provision; and for the purposes of the application of the foregoing provisions of this section to an application made by virtue of this subsection—

(a) references to the authority having power to enforce (*a*) with respect to the premises the provision imposing the requirement from which exemption is sought shall be construed as referring to the authority who would have power so to enforce that provision if it were in force; and

(b) the reference in subsection (5) (a) (i) to the person who would be responsible (*c*) for such a contravention (*d*) in relation to the premises of that provision as is therein mentioned shall be construed as referring to the person who, if that provision were in force, would be responsible (*c*) for such a contravention (*d*) as is so mentioned and the reference in subsection (8) to the person who, if the exemption were not in force, would be responsible (*c*) as aforesaid shall, if the exemption is granted and the provision in question is not in force at the time of the grant, be similarly construed.

(13) In relation to an application made under this section with respect to, or to a room in, premises which form part of a building to which section 42 or 43 of this Act applies, subsection (6) above shall have effect with the substitution, for the words in paragraph (a) "post in the premises", of the words "post in the premises or in a part of the building which for the purposes of the said section 42 or the said section 43 (as the case may be) is referred to as a common part of the building".

(14) For the purposes of subsection (5) of this section, "appropriate authority", in relation to an application for the grant or extension of an exemption of, or of a room in, any premises from a requirement imposed by section 5 (2), 6, 9 or 10 (1) of this Act,—

(a) where the authority who, by virtue of section 52 of this Act, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made by virtue of subsection (12) above, the authority who, by virtue of that section, would

have power so to enforce that provision if it were in force) is other than a factory inspector (*w*), a mine and quarry inspector (*x*) or a person authorised under subsection (3) or (6) of the said section 52, means that authority;

(b) where the authority who, by virtue of the said section 52, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made as aforesaid, the authority who, by virtue of that section, would have power so to enforce that provision if it were in force) is a factory inspector (*w*) or a person authorised under section 52 (3) of this Act, means the factory inspector (*w*) in charge of the district in which the premises are situate;

(c) where the authority who, by virtue of the said section 52, have power to enforce with respect to the premises the provision imposing the requirement (or, where the application is made as aforesaid, the authority who, by virtue of that section, would have power so to enforce that provision if it were in force) is a mine and quarry inspector (*x*) or a person authorised under section 52 (6) of this Act, means the mine and quarry inspector (*x*) in charge of the district in which the premises are situate.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Authority having power to enforce.*** See s. 52.

(*b*) ***Reasonably practicable.*** See note (*f*) to s. 6, where the effect of these words on civil liability is discussed. Although the exempting authority would clearly not be bound by the cases there cited, it is submitted that those cases would become relevant on an appeal under sub-s. (11), *infra*.

(*c*) ***Person who would be responsible.*** The person responsible for a contravention of s. 5 (2) or s. 6 would be the occupier of the premises, and the person responsible for a contravention of s. 9 or s. 10 would be the occupier of the premises or, in certain cases, the owner of the building or one of the persons who between them own the building; see s. 63, in conjunction with ss. 46 (2), (7), 43 (4), (5).

(*d*) ***Contravention.*** For definition, see s. 90 (1).

(*e*) ***Order.*** For the making of orders, see s. 80. The Offices, Shops and Railway Premises Forms Order 1964 (S.I. 1964 No. 605) has been made under this and other sections and is printed at pp. 102 *et seq.*

(*f*) ***The Minister.*** For definition, see s. 90 (1).

(*g*) ***Beginning.*** In calculating the period the day from which it runs must be included; see *Hare* v. *Gocher*, [1962] 2 Q.B. 641; [1962] 2 All E.R. 763.

(*h*) ***Employed.*** For definition, see s. 90 (1), (4).

(*i*) ***Work.*** See note (*a*) to s. 3.

(*k*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

(*l*) ***Three months' notice.*** The period of three months is to be calculated exclusive of the day on which the notice was given and the day on which the exemption is withdrawn; see, in particular, *R.* v. *Turner*, [1910] 1 K.B. 346; *Re Hector Whaling, Ltd.*, [1936] Ch. 208; and *Thompson* v. *Stimpson*, [1961] 1 Q.B. 195; [1960] 3 All E.R. 500; C.A.

(*m*) ***Notice given; served.*** See s. 81 for provisions as to the service or giving of notices.

(*n*) ***Appearing; appears.*** See note (*h*) to s. 20.

(*o*) ***Person aggrieved.*** See note (*a*) to s. 31.

(*p*) ***Within 21 days.*** See note (*e*) to s. 31.

(*q*) ***Appeal.*** See note (*f*) to s. 31.

(*r*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*s*) ***Petty sessions area.*** For definition, see s. 90 (1).

(*t*) ***Order.*** See note (*i*) to s. 31.

(*u*) ***Provisions . . . appointing.*** See s. 91 (2).

(*v*) ***Class of premises.*** See s. 90 (5).

(*w*) ***Factory inspector.*** For definition, see s. 90 (1).

(*x*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

Prohibition of Levying of Charges on Employees for Things done in Compliance with Act

47. Prohibition of levying of charges on employees for things done in compliance with Act.—If the owner (*a*) or the occupier (*b*) of premises to which this Act applies (*c*) or a person who employs (*d*) persons to work (*e*) therein levies, or suffers to be levied, upon a person so employed (*d*) any charge in respect of anything done or provided in pursuance of this Act or regulations thereunder, he shall be guilty of an offence (*f*).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Owner.*** For definition, see s. 90 (1).

(*b*) ***Occupier.*** See note (*h*) to s. 22.
(*c*) ***Premises to which this Act applies.*** See ss. 1 to 3.
(*d*) ***Employs; employed.*** For definition, see s. 90 (1).
(*e*) ***Work.*** See note (*a*) to s. 3.
(*f*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

Notification of Accidents

48. Notification of accidents.—(1) Where an accident (*a*) in any premises to which this Act applies (*b*)—

(a) causes loss of life to a person employed (*c*) to work (*d*) in the premises; or
(b) disables any such person for more than three days from doing his usual work;

notice of the accident, in such form as may be prescribed by order (*e*) made by the Minister (*f*) and accompanied by such particulars as may be so prescribed, shall forthwith be sent by the occupier (*g*) of the premises to the appropriate authority (*h*) unless notice of the accident is required to be given under or by virtue of any other enactment (*g*).

(2) Where an accident (*a*) causing disablement is notified under this section, and after notification thereof results in the death of the person disabled, notice of the death shall, as soon as it comes to the knowledge of the occupier (*g*) of the premises in which the accident (*a*) occurred, be sent by him to the appropriate authority (*h*).

(3) Where an accident (*a*) to which this section applies occurs to a person employed (*c*) to work (*d*) in any premises to which this Act applies (*b*) and the occupier (*g*) of the premises is not the actual employer of the person killed or disabled, the actual employer shall, if he fails to report the accident (*a*) to the occupier (*g*) immediately, be guilty of an offence (*o*) and liable to a fine not exceeding ten pounds.

(4) The Minister (*f*) may by regulations (*k*) made as respects premises to which this Act applies (*b*), or any class of such premises (*l*), give either or both of the following directions, namely,—

(a) a direction that, as respects accidents (*a*) of such class as may be specified in the regulations (*k*), subsection (1)

of this section shall have effect as if paragraph (b) had been omitted;

(b) a direction that, as respects accidents (*a*) of such class as may be so specified, that subsection shall have effect as if, in the said paragraph (b), for the reference to three days there had been substituted a reference to such other period (whether longer or shorter) as may be so specified.

(5) In this section "appropriate authority", in relation to any premises,—

(a) where the authority having, by virtue of section 52 of this Act, power to enforce sections 4 to 27 of this Act with respect to the premises is other than a factory inspector (*m*) a mine and quarry inspector (*n*) or a person authorised under subsection (3) or (6) of that section, means that authority;

(b) where the authority having, by virtue of the said section 52, power to enforce sections 4 to 27 of this Act with respect to the premises is a factory inspector (*m*) or a person authorised under section 52 (3) of this Act, means the factory inspector (*m*) in charge of the district in which the premises are situate;

(c) where the authority having, by virtue of the said section 52, power to enforce sections 4 to 27 of this Act with respect to the premises is a mine and quarry inspector (*n*) or a person authorised under section 52 (6) of this Act, means the mine and quarry inspector (*n*) in charge of the district in which the premises are situate.

General Note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open, or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***Accident.*** The word "accident" must be given its ordinary meaning (see *Fenton* v. *Thorley & Co., Ltd.*, [1903] A.C. 443, decided under the Workmen's Compensation Act 1897).

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Employed.*** For definition, see s. 90 (1), (4).

(*d*) ***Work.*** See note (*a*) to s. 3.

(*e*) ***Order.*** For the making of orders, see s. 80. The Offices, Shops and Railway Premises Forms Order 1964 (S.I. 1964 No. 605) has been

made under this and other sections and is printed (together with the forms thereby prescribed) at pp. 102 *et seq*. The prescribed form for the notification of accidents is Form OSR 2.

(*f*) ***The Minister.*** For definition, see s. 90 (1).

(*g*) ***Occupier.*** See note (*h*) to s. 22.

(*h*) ***Appropriate authority.*** See sub-s. (5).

(*i*) ***Any other enactment.*** Accidents arising from the explosion of a boiler are notifiable under the Boiler Explosions Act 1882; accidents arising from fire or explosion involving petroleum spirit are notifiable under the Petroleum (Consolidation) Act 1928; accidents arising from explosions or fire in premises subject to the Explosives Act 1875 are notifiable under that Act.

(*k*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*l*) ***Class of premises.*** See s. 90 (5).

(*m*) ***Factory inspector.*** For definition, see s. 90 (1).

(*n*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

(*o*) ***Offence.*** See ss. 63 *et seq*.

Information

49. Notification of fact of employment of persons.—(1) Before a person first begins, after the coming into operation of this subsection with respect to any office (*a*), shop (*b*) or railway premises (*c*), to employ (*d*) persons to work (*e*) therein, he shall serve (*f*) on the appropriate authority (*g*) two copies of a notice stating that persons will be employed (*d*) by him so to work (*e*) and containing such other (if any) information as may be prescribed by order (*h*) of the Minister (*i*), being a notice in such form and of such size as may be so prescribed.

(2) Where, at the date of coming into force of this section with respect to any office (*a*), shop (*b*) or railway premises (*c*), a person is employing (*d*) persons to work (*e*) therein he shall, before the expiration of such period beginning with that date as may be prescribed by order (*h*) made by the Minister (*i*), serve (*f*) on the appropriate authority (*g*) two copies of a notice stating that fact and containing such other (if any) information as may be so prescribed, being a notice in such form and of such size as may be so prescribed.

(3) A person who fails to comply with an obligation to which he is subject by virtue of either of the foregoing subsections shall be guilty of an offence (*k*) and liable to a fine not exceeding twenty pounds.

(4) Proceedings for an offence under this section may be

commenced at any time within twelve months (*l*) from the time when the offence was committed.

(5) In this section "appropriate authority" has the same meaning as in the last foregoing section.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Office premises.*** See s. 1 (2), (5).

(*b*) ***Shop premises.*** See s. 1 (3), (5).

(*c*) ***Railway premises.*** See s. 1 (4), (5).

(*d*) ***Employ; employing; employed.*** See s. 90 (1).

(*e*) ***Work.*** See note (*a*) to s. 3.

(*f*) ***Serve . . . notice.*** See s. 80.

(*g*) ***Appropriate authority.*** By sub-s. 5, this has the same meaning as in s. 48 (5).

(*h*) ***Order.*** As to the making of orders, see s. 80. The Notification of Employment of Persons Order 1964 has been made under this section and is printed below.

(*i*) ***The Minister.*** For definition, see s. 90 (1).

(*k*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

(*l*) ***Within 12 months.*** See note (*r*) to s. 20.

THE NOTIFICATION OF EMPLOYMENT OF PERSONS ORDER 1964

(S.I. 1964 No. 533)

Dated 6th April 1964

The Minister of Labour by virtue of the powers conferred on him by section 49 of the Offices, Shops and Railway Premises Act 1963 (hereafter in this Order referred to as "the Act") and of all other powers enabling him in that behalf, hereby makes the following Order:—

1.—(1) This Order may be cited as the Notification of Employment of Persons Order 1964 and shall come into operation on 1st May 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. In the case of railway premises and office premises, being office premises occupied by railway undertakers for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way (not being office premises comprised in hotels)—

(a) the notice required by section 49 (1) of the Act to be served on the appropriate authority by a person before first beginning after the coming into operation of that subsection to employ persons to work in any such premises shall be in the form set out in Parts I, III and IV of Schedule 1 to this Order and contain the information therein specified; and

(b) the notice required by section 49 (2) of the Act to be served on the appropriate authority by a person who at the date of coming into force of that section with respect to any such premises is employing persons to work therein shall be in the form set out in Parts II, III and IV of the said Schedule 1 and contain the information therein specified.

3. In the case of office premises, other than office premises to which Article 2 of this Order applies, and in the case of shop premises—

(a) the notice required by section 49 (1) of the Act to be served on the appropriate authority by a person before first beginning after the coming into operation of that subsection to employ persons to work in any such premises shall be in the form set out in Parts I and III of Schedule 2 to this Order and contain the information therein specified; and

(b) the notice required by section 49 (2) of the Act to be served on the appropriate authority by a person who at the date of coming into force of that section with respect to any such premises is employing persons to work therein shall be in the form set out in Parts II and III of the said Schedule 2 and contain the information therein specified.

4. Any notice of a kind referred to in Article 3 of this Order shall be on paper having a length of 13 inches and a width of 8 inches.

5. The period before the expiration of which a notice under section 49 (2) of the Act is required by the said subsection to be served on the appropriate authority shall be the period of 3 months beginning with 1st May 1964.

SCHEDULE 1

Article 2

OSR. 7

NOTICE IN FORM PRESCRIBED BY THE MINISTER OF LABOUR, OF EMPLOYMENT OF PERSONS IN RAILWAY PREMISES OR CERTAIN OFFICE PREMISES OCCUPIED BY RAILWAY UNDERTAKINGS.

PART I

Notice is hereby given that on the.....(*insert date*), the railway undertaking specified in Part III of this notice will begin to employ persons to work in the premises contained in the establishments shown in Part IV of this notice.

PART II

Notice is hereby given that the railway undertaking specified in Part III of this notice is employing persons to work in the premises contained in the establishments shown in Part IV of this notice.

PART III

Name of railway undertaking .....
Signature of person authorised to sign on behalf of the undertaking .....
Date .....

PART IV

Name of establishment containing premises to be registered on this schedule (e.g., station, depot)	Postal address or location on line	Details of persons responsible for liaison with (*a*) H.M. Factory Inspectorate (*b*) the Fire Authority			Number of persons employed	Number of these (if any) working in		Greatest number of persons employed at any one time	Number of females in total figure in col. (6)
		Official position	Address (if different from (2))	Telephone number		Offices	Canteens		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)

SCHEDULE 2

Article 3

OSR. 1

NOTICE IN FORM PRESCRIBED BY THE MINISTER OF LABOUR, OF EMPLOYMENT OF PERSONS IN OFFICE OR SHOP PREMISES

PART I

Notice is hereby given that on the.....(*insert date*), the employer specified in Part III of this notice, will begin to employ persons to work in the premises described therein.

PART II

Notice is hereby given that the employer specified in Part III of this notice is employing persons to work in the premises described therein.

PART III

1. (*a*) Name of the employer .....
   (*b*) Trading name, if any .....
2. (*a*) Postal address of the premises .....
   .....
   (*b*) Telephone No. .....
3. Nature of business .....
4. How many persons are or will be employed by the employer in office or shop premises at the above address in the following types of workplace?

(*a*) Office	.....
(*b*) Shop (retail)	.....
(*c*) Wholesale department or warehouse	.....
(*d*) Catering establishment open to the public	.....
(*e*) Staff canteen	.....
(*f*) Fuel storage depot	.....
TOTAL	
Of the TOTAL, how many are females?	.....

5. How many of the total are or will be employed on floors *other* than the ground floor? .. ..
6. Of the total stated in reply to question 4, are any (or will any be) housed in separate buildings? .. .. (*Answer Yes or No*).....
7. Is the employer the owner of the building(s) (or part of the building(s)) containing the premises? .. .. (*Answer Yes or No*).....

8. If not, state the name and address of the owner(s) or person(s) to whom rent is paid .. .. { .....
.....

Signature of employer or person authorised to sign on his behalf .....Date.....

For official use

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50. Information for employees.—(1) The Minister (*a*) may by regulations (*b*) require the taking of such steps as may be prescribed by the regulations (*b*) for the purpose of securing that persons employed (*c*) to work (*d*) in premises to which this Act applies (*e*), or in any class of such premises (*f*) as may be specified in the regulations (*b*), are informed of the effect of this Act and the regulations thereunder or, as the case may be, of the effect of so much of this Act and the regulations thereunder as has effect in relation to premises of that class (*f*).

(2) Without prejudice to the generality of the foregoing subsection, the steps that may be required by virtue thereof to be taken may include the posting in premises of such abstracts of, or of parts of, this Act and the regulations thereunder as may be prescribed by the regulations (*b*) and the giving to persons employed (*c*) to work (*d*) in premises of books or leaflets explanatory of, or of parts of, this Act and the regulations thereunder, being books or leaflets prepared under the auspices of the Minister (*a*).

(3) Different provision may be made by regulations under this section in relation to premises of different classes (*f*).

(4) A person who contravenes (*g*) a provision of regulations under this section shall be guilty of an offence (*h*).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

This section does not apply to fuel storage premises which are wholly in the open or, where they are partly in the open, to such parts as are in the open; see s. 40.

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Regulations.*** As to the making of regulations, see s. 80. The Information for Employees Regulations 1965 (S.I. 1965 No. 307) have been made under this section and (save for the Schedule thereto) are printed below.

(*c*) ***Employed.*** For definition, see s. 90 (1), (4).
(*d*) ***Work.*** See note (*a*) to s. 3.
(*e*) ***Premises to which this Act applies.*** See ss. 1 to 3
(*f*) ***Class of premises.*** See s. 90 (5).
(*g*) ***Contravenes.*** For definition, see s. 90 (1).
(*h*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

THE INFORMATION FOR EMPLOYEES REGULATIONS 1965

(S.I. 1965 No. 307)

Dated 25th February 1965, *made by the Minister of Labour under section* 50 *of the Offices, Shops and Railway Premises Act* 1963 *and all other enabling powers.*

1.—(1) These Regulations may be cited as the Information for Employees Regulations 1965 and shall come into operation on 1st June 1965.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. These Regulations shall apply to all office premises, shop premises and railway premises to which the Act applies except premises which are in a covered market place, being a covered market place to which section 51 (power to adapt Act in relation to covered markets) of the Act relates and in the following Regulations the expression "premises" shall be construed as meaning premises to which these Regulations apply.

3. The employer of persons employed to work in premises shall either—

(a) at all times at which persons are employed by him to work in the premises, keep posted therein in accordance with these Regulations a copy or copies of the abstract of the Act and the regulations thereunder (hereafter in these Regulations referred to as "the abstract"), being the abstract set out in the Schedule to these Regulations; or

(b) give, in accordance with these Regulations, a copy of the book (hereafter in these Regulations referred to as "the explanatory book") entitled "Explanatory Book for Employees" (OSR.9A), dated August 1964, prepared under the auspices of the Minister of Labour, to persons employed by him for more than four weeks on any occasion to work in the premises:

Provided that where, by reason of the circumstances of his work or of the position or positions in which the copy or copies of the abstract provided by his employer in accordance with these Regulations are kept posted in premises, any person employed for more than four weeks on any occasion to work in the premises cannot easily see and read a copy

of the abstract, his employer shall give to him, in accordance with these Regulations, a copy of the explanatory book.

4. Copies of the abstract kept posted in premises in accordance with the last foregoing Regulation—

(a) shall be posted in such numbers and characters and in such positions as to be easily seen and read by all the persons employed to work in the premises whose employment therein on any occasion has lasted for more than four weeks except persons so employed who, in accordance with these Regulations, have been given copies of the explanatory book; and

(b) where posted in the open, shall be protected from the weather.

5. Where an employer relies for compliance, either in whole or in part, with Regulation 3 upon the giving to persons employed to work in premises (or certain of those persons) of copies of the explanatory book, it shall be the duty of the employer—

(a) to give (unless, in accordance with these Regulations, he has done so within the immediately preceding period of twelve months) to every such person a copy of that book not later than four weeks after any occasion on which, after the date on which these Regulations come into operation, he begins to be employed by that employer to work in premises;

(b) to give a copy of that book to every such person who at the date on which these Regulations come into operation is employed by that employer to work in premises and whose employment therein has then lasted, or thereafter lasts, for more than four weeks.

SCHEDULE

[*The Schedule prescribes the abstract of the Act and Regulations, obtainable as Forms* 9, 9A or 9B.]

Power to adapt Act in relation to covered Markets

51. Power to adapt Act in relation to covered markets. —(1) The Minister (*a*) may by special regulations (*b*) direct, in the case of premises consisting of a covered market place wherein shop premises (*c*) are aggregated,—

(a) that such of the foregoing provisions of this Act as may be specified in the regulations shall not apply to the premises aggregated in the market place;

(b) that such of the said provisions as may be so specified shall in their application to the premises so aggregated have effect subject to such modifications as may be so specified;

(c) that such of the said provisions as may be so specified shall not apply to the premises so aggregated but shall (subject to such, if any, modifications as may be so specified) apply to the market place and that, in the event of a contravention (*d*), of a provision applied by virtue of this paragraph, such person as may be so specified shall be guilty of an offence (*e*).

(2) In this section the expression "covered market place" shall be construed generally (*f*) and not as limited to a place where a market is held by virtue of a grant from the Crown or of prescription or under statutory authority.

General Note. No day for the coming into operation of this section has yet been appointed under s. 91 (2).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8), Sch. 1. No special regulations under this section have yet been made.

(*c*) ***Shop premises.*** See s. 1 (3), (5).

(*d*) ***Contravention.*** For definition, see s. 90 (1).

(*e*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

(*f*) ***Construed generally.*** The words "covered market place" are to be given their ordinary meaning without reference to the legal definition of a market.

Enforcement

52. Authorities who are to enforce Act.—(1) It shall be the duty (*a*) of every local authority (*b*) to enforce within their area (and for that purpose to appoint inspectors (*c*)) the foregoing provisions of this Act and regulations thereunder—

(a) except sections 28 to 38 (*d*) and regulations under any of them; and

(b) except, as regards any other section or regulations, in a case for which provision for the enforcement of that section or those regulations is made by the following provisions of this section.

(2) It shall be the duty of the authority discharging in any area the functions of fire authority (*e*) under the Fire Services Act 1947 to enforce within that area (and for that purpose to appoint inspectors (*c*)) sections 28 to 38 (*d*) of this Act and regulations under any of those sections, subject, however, to the following qualifications:—

(a) they shall not have the duty to enforce those sections and regulations with respect to premises falling within subsection (3) of this section;

(b) they shall not have the duty to enforce, with respect to premises falling within subsection (4) or (6) of this section, sections 33, 34 or 36, regulations under section 37, section 38 (1) or regulations under section 38 (2).

(3) The foregoing provisions of this Act and regulations thereunder shall, as regards,—

(a) premises occupied by the council of a county;

(b) premises occupied by a local authority (*b*);

(c) premises provided and maintained by the council of a county for purposes connected with the administration of justice or provided and maintained by a local authority (*b*) for such purposes;

(d) premises comprised in premises used for the purposes of a school which, within the meaning of the Education Act 1944, is maintained by a local education authority;

(e) premises occupied by a probation committee constituted under the Criminal Justice Act 1948 or the Criminal Justice (Scotland) Act 1949;

(f) premises occupied by a fire authority (*e*) constituted by a combination scheme made under the Fire Services Act 1947;

(g) premises occupied by a police authority (*f*) or the receiver for the metropolitan police district; and

(h) premises occupied by the United Kingdom Atomic Energy Authority (*ff*);

be enforceable by factory inspectors (*g*) and such persons (other than factory inspectors) as the Minister (*h*) may authorise in that behalf.

(4) The foregoing provisions of this Act and regulations thereunder (except sections 28, 29 and 30 and regulations under section 35) shall, as regards—

(a) premises which are not, for the purposes of the Factories Act 1961, a factory but which, but for the operation of section 175 (6) of that Act, would, for the purposes of that Act, form part of a factory (*i*), not being premises contained in office (*k*) or shop premises (*l*);

(b) premises to which section 26 of this Act applies (*m*);

(c) premises which, but for the following provisions of this Act (*n*), would, for the purposes of section 123 (1), 124 (1) or 125 (1) of the Factories Act 1961, form part of premises to which, as the case may be, the said section 123 (1) (*o*), the said section 124 (1) (*p*) or the said section 125 (1) applies (*q*), but not including such a building or part of a building as, by virtue of those provisions (*n*), is excluded from the said section 125 (1);

(d) railway premises (*r*);

(e) office premises (*k*) occupied by railway undertakers (*s*) for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way (not being office premises (*k*) comprised in hotels); and

(f) fuel storage premises (*t*) owned by railway undertakers (*s*);

not being, in any of those cases, premises falling within subsection (3) of this section, be enforceable by factory inspectors (*g*) and persons authorised under that subsection.

(5) It shall be the duty of the London County Council, as regards office (*k*) or shop premises (*l*) forming part of a place of public entertainment (*u*) within the administrative county of London other than such a place occupied by them, to enforce (and for that purpose to appoint inspectors (*c*)) the foregoing provisions of this Act and regulations thereunder, other than provisions or regulations which it is their duty to enforce in their capacity of a fire authority (*e*) under the Fire Services Act 1947.

(6) The foregoing provisions of this Act and regulations thereunder (except sections 28, 29 and 30 and regulations under section 35) shall, as regards office (*k*) or shop premises (*l*) which, for the purposes of the Mines and Quarries Act 1954, form part of a mine or quarry (*v*), be enforceable by mine and quarry inspectors (*w*) and such persons (other than mine and quarry inspectors (*w*)) as the Minister of Power (*x*) may authorise in that behalf.

(7) Nothing in the provisions of this section charging any authority in Scotland with the enforcement of this Act or

regulations thereunder shall be construed as authorising that authority to institute proceedings for any offence.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

As from 1st April 1965, in sub-s. (3) (a) after the word "county" are inserted the words "or Greater London Council" and in sub-s. (5) for the words "administrative county of London" are substituted the words "Greater London" by the London Government Act 1963, s. 51 (2); and by *ibid*, s. 51 (1) in sub-s. (5) for the words "London County Council" are substituted the words "Greater London Council".

(*a*) ***It shall be the duty.*** The Public Health Act 1936, ss. 322–325 (26 Halsbury's Statutes (3rd Edn.) 368 *et seq.*) (which relate to default powers), and the Local Government Act 1933, s. 290 (2)–(5) (19 Halsbury's Statutes (3rd Edn.) 565) (which relate to inquiries), are, subject to modifications, deemed to be incorporated or are applied, so far as England and Wales are concerned, by s. 61. As s. 322 (1) of the Act of 1936, as so incorporated and modified, provides for a complaint to the Minister, no *mandamus* will issue at the instance of a private person to compel an authority to fulfil their duties under the present section; cf. *Pasmore* v. *Oswaldtwistle Urban District Council*, [1898] A.C. 387 and *Southwark London Borough* v. *Williams*, [1971] Ch. 734; [1971] 2 All E.R. 175, C.A. Yet, where the authority do not comply with an order under s. 322 (2) of the Act of 1936, as so incorporated and modified, *mandamus* will certainly lie at the instance of the Minister; see s. 322 (3) of that Act, as so incorporated and modified. Moreover, there is authority for saying that *mandamus* will be granted at the instance of the Minister in every case where the authority are in default; see *R.* v. *Leicester Union*, [1899] 2 Q.B. 632.

(*b*) ***Local authority.*** For definition, see s. 90 (1).

(*c*) ***Inspectors.*** For the powers of inspectors, see s. 53; see also s. 55.

(*d*) ***Sections 28 to 38.*** That is to say, the sections relating to fire precautions.

(*e*) ***Fire authority.*** See note (*a*) to s. 39.

(*f*) ***Police authority.*** For definition, see s. 90 (1).

(*ff*) ***Atomic Energy Authority.*** The United Kingdom Atomic Energy Authority was established by the Atomic Energy Authority Act 1954; see also the Atomic Energy Authority Act 1971, s. 18 (1) (b), which provides for the application of the Offices, Shops and Railway Premises Act 1963 to premises on a site in respect of which a permit has been granted to a body corporate under s. 2 of the Nuclear Installations Act 1965.

(*g*) ***Factory inspector.*** For definition, see s. 90 (1). As regards premises occupied by the National Radiological Protection Board, ss. 1 to 51 of the Offices, Shops and Railway Premises Act 1963 are also enforceable by the factory inspectorate and by such other persons as the Secretary of State for Employment may authorise (Radiological Protection Act 1970, s. 2 (6)).

(*h*) ***The Minister.*** For definition, see s. 90 (1).

(*i*) ***Premises which . . . would form part of a factory.*** See the general note to s. 25.

(*k*) ***Office premises.*** See s. 1 (2), (5).

(*l*) ***Shop premises.*** See s. 1 (3), (5).

(*m*) ***Premises to which s. 26 applies.*** That is to say, office premises erected for purposes of building operations, etc.

(*n*) ***Following provisions.*** See ss. 74, 75.

(*o*) ***Premises which . . . would . . . form part of premises to which s. 123 (1) . . . applies.*** But for the provisions of s. 74 (1), office premises comprised in an electrical station would form part of that electrical station for the purposes of s. 123 (1) of the Factories Act, 1961.

(*p*) ***Premises which . . . would . . . form part of premises to which . . . s. 124 (1) . . . applies.*** But for the provisions of s. 74 (1), (4), office premises comprised in an institution would form part of that institution for the purposes of s. 124 (1) of the Factories Act 1961.

(*q*) ***Premises which . . . would . . . form part of premises to which . . . s. 125 (1) . . . applies, but not including, etc.*** But for the provisions of s. 75 (1) office premises comprised in any dock, wharf or quay (including any warehouse belonging to the owners, trustees or conservators of the dock, wharf or quay) or any other warehouse in or for the purposes of which mechanical power is used, would form part of such dock, wharf, quay or warehouse for the purposes of s. 125 (1) of the Factories Act 1961. By s. 75 (3) the reference to a warehouse in or for the purposes of which mechanical power is used in s. 125 (1) of the Factories Act 1961 is to be construed as not including a building or part of a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale. The latter is a shop within the meaning of s. 1 (3) (a) (iii) of this Act and is excluded from the provisions of sub-s. (4) of this section.

(*r*) ***Railway premises.*** See s. 1 (4), (5).

(*s*) ***Railway undertakers.*** For definition, see s. 90 (1).

(*t*) ***Fuel storage premises.*** See s. 1 (3) (a) (v).

(*u*) ***Place of public entertainment.*** For definition, see s. 90 (1).

(*v*) ***Premises which . . . form part of a mine etc.*** By s. 180 (3) (a) of the Mines and Quarries Act 1954, buildings on the surface surrounding or adjacent to the shafts or outlets, occupied together with the mine for the purpose of, or in connection with, the working of the mine or the disposal of its products or its refuse are deemed to from part of the mine. By s. 180 (3) (b) of that Act, buildings surrounding or adjacent to the quarry, occupied together with the quarry for the purpose of, or in connection with the working of the quarry or the disposal of its products or its refuse are deemed to form part of the quarry.

(*w*) ***Mine and quarry inspectors.*** For definition, see s. 90 (1).

(*x*) ***Minister of Power.*** Now the Secretary of State for Trade and Industry (S.I. 1970 No. 1537).

53. Powers of local authorities' and Minister's inspectors.—(1) Any such person as follows (hereafter in this section referred to as an "inspector"), namely, an inspector appointed under subsection (1), (2) or (5) of the last foregoing section, a factory inspector (*a*) and a person authorised by the Minister (*b*) under subsection (3) of that section, shall, for the purpose of the execution of this Act, have power to do all or any of the following things, namely,—

(a) at any reasonable time to enter (*c*) any such premises as the following, and to inspect the whole or any part thereof and anything therein, that is to say:—

(i) any premises to which this Act applies (*d*);

(ii) any premises (other than as aforesaid) in which any conveniences, facilities or other thing are or is provided in pursuance of this Act or regulations thereunder;

(iii) any premises which, for the purposes of section 42 or 43 of this Act constitute a common part of a building to which the said section 42 or, as the case may be, the said section 43, applies;

(iv) any premises falling within section 51 of this Act (*e*);

(v) any premises which he has reasonable cause to believe (*f*) to be premises falling within any of the foregoing sub-paragraphs; and

(vi) any premises with respect to which he has reasonable cause to believe (*f*) that materials of a kind (*g*) prescribed by virtue of section 29 (1) (c) of this Act are therein used or are therein stored in a quantity not less than that so prescribed, being premises situate underneath premises to which this Act applies (*d*);

(b) to make such examination and inquiry as may be necessary—

(i) to ascertain whether, so far as regards any such premises as aforesaid or conveniences, facilities or other things therein provided, the provisions of this Act and regulations thereunder are complied with; or

(ii) to verify any belief that he has formed that any premises fall within sub-paragraph (i), (ii), (iii) or (iv) of paragraph (a) above or that, in premises situate as mentioned in sub-paragraph (vi) of that paragraph, materials of a kind (*g*) therein mentioned are used or are stored as so mentioned; or

(iii) to identify the owner (*h*) or occupier (*i*) of any premises falling within sub-paragraph (i), (ii), (iii) or (iv) of paragraph (a) above;

(c) on entering any premises to take with him a constable if he has reasonable cause to apprehend (*k*) any serious obstruction in the exercise of the powers conferred on him by this subsection;

(d) for the purpose of any examination or inquiry under the foregoing provisions of this subsection to require any person whom he finds in any such premises as are mentioned in paragraph (a) above or whom he has reasonable cause to believe (*f*) to be, or to have within the preceding two months been, employed (*l*) to work (*m*) in any such premises, to answer (in the absence of persons other than any whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers, so, however, that no answer given by a person in pursuance of a requirement imposed under this paragraph shall be admissible in evidence [against that person or the husband or wife of that person] in any proceedings;

(e) to require the production of, and to inspect, any fire certificate (*n*) in force with respect to any premises to which this Act applies (*d*);

(f) to require any person having responsibilities in relation to any such premises as are mentioned in paragraph (a) above (whether or not the owner (*h*) or occupier (*i*) of the premises or a person employed (*l*) to work (*m*) therein) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extends as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred on him by this subsection;

(g) to exercise such other powers as may be necessary for carrying this Act into effect.

(2) A person who—

(a) fails to comply with any requirement imposed by an inspector under the foregoing subsection; or

(b) prevents, or attempts (*p*) to prevent, any other person from appearing before an inspector or from answering any question to which an inspector may, by virtue of the foregoing subsection, require an answer; or

(c) obstructs an inspector in the exercise or performance of his powers or duties (*q*),

shall be guilty of an offence (*r*) and liable to a fine not exceeding twenty pounds.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The words in square brackets in sub-section (1) (d) were substituted by the Civil Evidence Act 1968, s. 17 and Schedule.

(*a*) ***Factory inspector.*** For definition, see s. 90 (1).

(*b*) ***The Minister.*** For definition, see s. 90 (1).

(*c*) ***To enter . . . premises.*** *Prima facie*, a statutory power of entry is a power, if necessary, of forcible entry (*Grove* v. *Eastern Gas Board*, [1952] 1 K.B. 77; [1951] 2 All E.R. 1051).

(*d*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*e*) ***Premises within s. 51.*** That is to say, a covered market place.

(*f*) ***Reasonable cause to believe.*** The meaning of these words in any enactment is a matter of construction in each case but "however read, they must be intended to serve in some sense as a condition limiting the exercise of an otherwise arbitrary power" (*Nakkuda Ali* v. *Jayaratne* (*M. F. de S.*), [1951] A.C. 66, P.C.). In the present context no doubt there must be both a belief and facts known to the inspector upon which that belief is reasonably founded; see *R.* v. *Banks*, [1916] 2 K.B. 621, C.C.A.; *Nakkuda Ali* v. *Jayaratne* (*M. F. de S.*), *supra*. The question whether the facts proved amount to reasonable cause for the belief is a matter of law (*Lister* v. *Perryman* (1870), L.R. 4 H.L. 521).

(*g*) ***Materials . . . prescribed by virtue of s. 29 (1) (c).*** I.e., explosive or highly flammable materials of a kind prescribed by regulations made under that subsection.

(*h*) ***Owner.*** For definition, see s. 90 (1).

(*i*) ***Occupier.*** See note (*h*) to s. 22.

(*k*) ***Reasonable cause to apprehend.*** See note (*f*), *supra*.

(*l*) ***Employed.*** For definition, see s. 90 (1), (4).

(*m*) ***Work.*** See note (*a*) to s. 3.

(*n*) ***Fire certificate.*** See s. 29 (1).

(*p*) ***Attempts.*** On what constitutes an attempt, see Halsbury's Laws of England, 3rd Edn., Vol. 10, pp. 306 *et seq.*

(*q*) ***Exercise or performance of powers or duties.*** The inspector must be exercising or performing the powers or duties which the Act in fact confers on him; the exercise or performance of purported powers or duties is not sufficient, even if honestly believed in; cf. *Davis* v. *Lisle*, [1936] 2 K.B. 434; [1936] 2 All E.R. 213; but see s. 58 (1).

(*r*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

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54. Powers of Minister of Power's inspectors.—(1) Section 145 of the Mines and Quarries Act 1954 (*a*) shall have effect as if references therein to that Act included references to the foregoing provisions of this Act.

(2) A person authorised under section 52 (6) of this Act by the Minister of Power (*b*) shall, for the purpose of the enforcement, with respect to such office (*c*) or shop premises (*d*) as are mentioned in that subsection, of this Act and regulations thereunder have the like powers as are conferred on mine and quarry inspectors (*e*) by the provisions of section 145 (1) of the Mines and Quarries Act 1954 as extended by the foregoing subsection (other than the provisions of sub-paragraphs (b) (ii) and (d) (ii) and (iii) and paragraph (f)); and section 145 (2) of that Act (obstruction, &c., of inspectors) shall, with requisite modifications, apply accordingly.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Section 145 of the Mines and Quarries Act 1954.*** This section confers powers of entry, examination and inquiry upon mine and quarry inspectors.

(*b*) ***Minister of Power*** Now the Secretary of State for Trade and Industry (S.I. 1970 No. 1537).

(*c*) ***Office premises.*** See s. 1 (2), (5).

(*d*) ***Shop premises.*** See s. 1 (3), (5).

(*e*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

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55. Production by local authorities' and Minister's inspectors of evidence of authority.—A person who is an

inspector within the meaning of section 53 of this Act shall, if so required (*a*) when visiting any premises in exercise of powers conferred by that section, produce to the occupier (*b*) of the premises—

(a) if he is a factory inspector (*c*), the certificate of appointment issued to him under section 150 of the Factories Act 1961;

(b) if he is a person appointed under section 52 (1), (2) or (5) of this Act, some duly authenticated document showing that he is so appointed;

(c) if he is a person authorised under section 52 (3) of this Act by the Minister (*d*), some duly authenticated document showing that he is so authorised.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***If so required.*** The right of entry may be exercised even though there is nobody on the premises to whom the document can be produced; cf. *Grove* v. *Eastern Gas Board*, [1952] 1 K.B. 77; [1951] 2 All E.R. 1051, C.A.

(*b*) ***Occupier.*** See note (*h*) to s. 22.

(*c*) ***Factory inspector.*** For definition, see s. 90 (1).

(*d*) ***The Minister.*** For definition, see s. 90 (1).

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56. Exercise, on behalf of factory and mine and quarry inspectors, of their powers by officers of fire brigades.—(1) The like powers as are conferred by section 53 of this Act on a factory inspector (*a*) shall be exercisable, in relation to any premises, by an officer of the appropriate fire brigade (*b*) when authorised in writing by such an inspector for the purpose of reporting to the inspector on any such matter falling within the inspector's duties under this Act with respect to the premises as relates to fire; and subsection (2) of that section shall, with requisite modifications, apply accordingly.

(2) The like powers as are conferred by section 54 (2) of this Act on a person authorised under section 52 (6) thereof shall be exercisable, in relation to any premises, by such an officer as aforesaid when authorised in writing by a mine and quarry inspector (*c*) for the purpose of reporting to the inspector on any such matter falling within the inspector's duties under this

Act with respect to the premises as relates to fire; and section 145 (2) of the Mines and Quarries Act 1954 shall, with requisite modifications, apply accordingly.

(3) An officer exercising any power conferred by this section shall, if asked so to do, produce his authority.

(4) Neither a factory inspector (*a*) nor a mine and quarry inspector (*c*) shall authorise an officer of a fire brigade to enter and inspect any premises except with the consent of the authority maintaining the brigade.

(5) In this section "appropriate fire brigade" means, in relation to any premises, the fire brigade maintained by the authority discharging in the area in which the premises are situate the functions of fire authority under the Fire Services Act 1947.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Factory inspector.*** For definition, see s. 90 (1).
(*b*) ***Appropriate fire brigade.*** See sub-s. (5), *infra*.
(*c*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

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57. Provisions for securing discharge of local authorities' duties in uniform manner.—(1) For the purpose of securing that the duties under this Act of local authorities (*a*) and the [Greater London Council] with respect to the enforcement of the foregoing provisions of this Act and regulations thereunder (except sections 28 to 38 (*b*) and regulations under any of them) are discharged in uniform manner, the Minister (*c*)—

(a) may make regulations (*d*) with respect to the manner of the discharge of those duties and of the exercise of the powers conferred by this Act on inspectors appointed by local authorities (*a*) and the [Greater London Council] respectively;

(b) may, with the approval of the Treasury as to numbers and salaries, appoint officers to be charged with the duty of securing that he is at all material times in possession of all information requisite to enable him to determine whether those duties are being so discharged

and of advising local authorities (*a*) and the [Greater London Council] on matters concerning the discharge by them of those duties.

(2) An officer appointed under this section may inquire into the manner in which the duties aforesaid are for the time being discharged by a local authority (*a*) or the [Greater London Council] and, for that purpose, may—

(a) examine any records kept in connection with the discharge of those duties by the authority or Council;

(b) require the authority or Council or an inspector appointed by them in pursuance of this Act to give such assistance and information as the officer may reasonably specify; and

(c) make inquiries of any person who appears to the officer likely to be able to give him information with respect to the manner in which the duties aforesaid are for the time being discharged by the authority or Council.

(3) The results of an inquiry under the last foregoing subsection shall, if the Minister (*c*) so directs, be reported to him in writing by the officer by whom it was carried out; and where that is done, the Minister (*c*) shall send a copy of the report to the local authority (*a*) in question (or to the [Greater London Council], in a case where the subject of the inquiry was the manner in which their duties were for the time being discharged) and may, if he thinks fit, publish it in whole or in part.

(4) The like powers as, by section 53 of this Act, are conferred on an inspector within the meaning of that section shall be exercisable by an officer appointed under this section; and subsection (2) of that section shall, with requisite modifications, apply accordingly.

(5) An officer appointed under this section shall, if so required when visiting any premises in exercise of powers conferred by the foregoing subsections, produce to the occupier (*e*) of the premises some duly authenticated document showing that he is so appointed.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation as follows:

sub-s. (1) on 18th February 1964;
remainder of section on 1st May 1964.

In relation to shop premises which are in such a covered market place the whole section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The words in square brackets were substituted by the London Government Act 1963, s. 51 (1).

(*a*) ***Local authority.*** For definition, see s. 90 (1).

(*b*) ***Sections 28 to 38.*** That is to say, the sections relating to fire precautions.

(*c*) ***The Minister.*** For definition, see s. 90 (1).

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. No regulations under this section have yet been made.

(*e*) ***Occupier.*** See note (*h*) to s. 22.

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58. Power of local authorities to indemnify their inspectors.—Where an action has been brought against an inspector appointed under section 52 (1) or (5) of this Act in respect of an act done (*a*) by him in the execution or purported execution of this Act and the circumstances are such that he is not legally entitled to require the authority by whom he was appointed to indemnify him, the authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of had been within the scope of his employment and that his duty under this Act required or entitled him to do it.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Act done.*** There is ample authority for saying that this covers an omission; see, in particular, *Wilson* v. *Halifax Corpn.* (1868), L.R. 3 Exch. 114; *Jolliffe* v. *Wallasey Local Board* (1873), L.R. 9 C.P. 62; and *Holland* v. *Northwich Highway Board* (1876), 34 L.T. 137. See also *Graigola Merthyr Co.* v. *Swansea Corpn.*, [1929] A.C. 344, H.L. (*aquia timet* action).

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59. Restriction of disclosure of information.—If a person discloses (otherwise than in the performance of his duty or for the purposes of any legal proceedings, including arbitrations, or for the purposes of a report of any such proceedings

as aforesaid) any information obtained by him in any premises entered by him in exercise of powers conferred by or by virtue of this Act, he shall be guilty of an offence (*a*) and liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Offence.*** For offences, see ss. 63 *et seq.*, 70, 86 (1).

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60. Annual reports to Minister by local and fire authorities.—(1) A local authority (*a*), an authority discharging in any area the functions of fire authority (*b*) under the Fire Services Act 1947 and the [Greater London Council] shall, as soon as practicable after the 31st December in the year in which this section comes into operation (*c*) (and, in any event, not later than the end of March following), make to the Minister (*d*) a report of their proceedings under this Act during the period beginning with the day on which this section comes into operation (*e*) and ending with the said 31st December, being a report containing particulars with respect to such matters arising thereunder as he may by order (*f*) prescribe, and shall, as soon as practicable after each anniversary of the last-mentioned day (*e*) (and, in any event, not later than the end of March following) make to the Minister (*d*) a report of their proceedings under this Act during the twelve months ending with that anniversary, being a report containing the like particulars.

(2) A copy of every report made in pursuance of the foregoing subsection by an authority shall be kept at the authority's offices, shall be open to inspection by any person at all reasonable hours free of charge and shall be supplied to any person on payment of a reasonable charge therefor.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The words in square brackets were substituted by the London Government Act 1963, s. 51 (1).

(*a*) ***Local authority.*** For definition, see s. 90 (1).

(*b*) ***Fire authority.*** See note (*a*) to s. 39.

(*c*) ***Year . . . operation.*** That is to say, 1964.

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Day . . . operation.*** That is to say, 1st May 1964.

(*f*) ***Order.*** As to the making of orders, see s. 80. The particulars are prescribed by the Offices, Shops and Railway Premises Annual Reports Order 1967 (S.I. 1967 No. 1668).

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61. Transfer of powers and duties of English or Welsh local authorities in default.—(1) Sections 322 to 325 (transfer of powers and duties of authorities in default) of the Public Health Act 1936 shall, subject to the modifications mentioned in the next following subsection, be deemed to be incorporated in this Act.

(2) The modifications referred to in the foregoing subsection are the following:—

(a) references to the Minister shall be construed as referring to the Minister of Labour;

(b) for the words "council, port health authority or joint board" (wherever occurring) and the words "council, authority or board" (wherever occurring) there shall be substituted the words "local authority" (*a*);

(c) in section 322 (3) (i), for the words from "the council of a county district" to "one county" (where secondly occurring) there shall be substituted the words "a local authority other than the council of a county borough";

(d) in section 323, for the words "the council of a county district, a port health authority or a joint board", there shall be substituted the words "a local authority" (*a*), and in paragraph (a) of that section for the word "grant" there shall be substituted the word "contribution";

(e) in section 324 (2) the words "port health authority or joint board" and the words "or board" shall be omitted.

(3) Subsections (2) to (5) of section 290 of the Local Government Act 1933 (which provides for the holding of inquiries for the purposes of that Act) shall, with the substitution, for references to a department, of references to the Minister (*b*), apply to an inquiry held under the said section 322 by virtue of subsection (1) of this section as they apply to an inquiry held under the said section 290.

(4) This section extends to England and Wales only.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Local authority.*** For definition, see s. 90 (1).

(*b*) ***The Minister.*** For definition, see s. 90 (1).

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62. Exercise and performance by Minister of powers of Scottish local authorities in default.—(1) If the Minister (*a*) is of opinion that an investigation should be made as to whether a local authority (*b*) have failed to discharge any of their functions under this Act, he may cause a local inquiry to be held, and if, after the inquiry has been held, he is satisfied that there has been such a failure on the part of the local authority, he may by order empower an officer of his department to discharge or procure the discharge of any such function.

(2) The amount (as certified by the Minister (*a*)) of any expenses incurred in pursuance of the foregoing subsection shall, on demand, be paid to him by the local authority (*b*) and shall be recoverable by him from them as a debt due to the Crown, and the authority shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them as a local authority (*b*).

(3) In relation to a local inquiry held under subsection (1) above, the provisions of subsection (3) to (9) of section 355 of the Local Government (Scotland) Act 1947 (which relate to local inquiries) shall apply as they apply in relation to local inquiries under that section.

(4) Nothing in this section shall affect any other power exercisable by the Minister (*a*) with respect to defaults of local authorities (*b*).

(5) This section extends to Scotland only.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Local authority.*** For definition, see s. 90 (1).

Offences, Penalties and legal Proceedings

63. Offences.—(1) In the event of a contravention (*a*), in relation to any premises to which this Act applies (*b*), of any such provisions of this Act as are mentioned in subsection (2) of this section or of regulations made under any such provisions, then—

(a) except in a case falling within either of the two following paragraphs, the occupier (*c*) of the premises shall be guilty of an offence;

(b) in a case where the contravention (*a*) is one for which, by or by virtue of this Act, some other person or persons is or are made responsible as well as (*d*) the occupier (*c*) of the premises, that other person or those other persons and the occupier (*c*) shall each be guilty of an offence;

(c) in a case where the contravention is one for which, by or by virtue of this Act, some other person or persons is or are made responsible instead of (*e*) the occupier (*c*) of the premises, that other person or each of those other persons shall be guilty of an offence.

(2) The provisions of this Act referred to in the foregoing subsection are sections 4, 5, 6 (1) to (5), 7 to 12, 13 (1), 14 to 19, 23, 24, 28, 29 (6), 30 (1), 33 to 38, 46 (9) and 48 (1) and (2).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Contravention.*** For definition, see s. 90 (1).

(*b*) ***Premises to which this Act applies.*** See ss. 1 to 3.

(*c*) ***Occupier.*** See note (*h*) to s. 22.

(*d*) ***Other person responsible as well as the occupier.*** The provisions which may impose responsibility on other persons as well as the occupier are regulations under ss. 37 (2), 38 (2).

(*e*) ***Other person responsible instead of the occupier.*** The provisions which impose responsibility on other persons instead of the occupier are s. 42 (6), (7), (13), (14); s. 43 (4), (5), (11), (12); s. 44. Regulations under ss. 37 (2), 38 (2), may do so.

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64. Penalty for offences for which no express penalty is provided.—(1) A person guilty of an offence under this Act for which no express penalty is provided shall be liable to a fine not exceeding sixty pounds and, if the contravention (*a*) constituting the offence of which he is guilty is continued after his conviction of the offence, he shall be guilty of a further offence (*b*) and liable, in respect thereof, to a fine not exceeding fifteen pounds for each day on which the contravention (*a*) is so continued.

(2) The foregoing subsection shall, in a case where the court by which a person is convicted of any such offence as aforesaid is satisfied that the contravention (*a*) constituting the offence was likely to cause the death of, or serious bodily injury (*c*) to, any person, have effect as if, for the reference to sixty pounds, there were substituted a reference to three hundred pounds.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Contravention.*** For definition, see s. 90 (1).

(*b*) ***Further offence.*** All offences order this Act are triable summarily (s. 70 (1)) so that, in the case of a continuing offence, no fine may be imposed in respect of the day earlier than six months before the date on which the information was laid; see *R.* v. *Chertsey Justices, Ex parte Franks*, [1961] 2 Q.B. 152; [1961] 1 All E.R. 825.

(*c*) ***Bodily injury.*** Since this Act distinguishes between "bodily injury" and "injury to health" (see ss. 20 (1), 21 (1), 22 (1) (a)), it appears that the heavier penalty cannot be imposed where the contravention was likely to cause serious injury to health unless it was also likely to cause death.

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65. Offences by bodies corporate.—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent (*a*) or connivance (*b*) of, or to be attributable to any neglect on the part

of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In the foregoing subsection, the expression "director", in relation to any body corporate which is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that body.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Consent.*** In this context "consent" would seem to mean true consent with knowledge (see *Lamb* v. *Wright & Co.*, [1924] 1 K.B. 857; [1924] All E.R. Rep. 220—"a man cannot consent to what he does not know").

(*b*) ***Connivance.*** See note (*f*) to s. 4 of the Agriculture (Poisonous Substances) Act 1952.

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66. Penalty on persons actually committing offences for which others are liable.—Where a contravention (*a*) of a provision of this Act or of regulations thereunder for which a person is, by virtue of the foregoing provisions of this Act, liable on conviction to a penalty was due to an act or default (*b*) of another person, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with, and convicted of, the offence constituted by the contravention (*a*) and shall, on conviction, be liable to the same punishment as that to which the first-mentioned person is, on conviction, liable.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Contravention.*** For definition, see s. 90 (1).

(*b*) ***Act or default.*** This means wrongful act or default; see *Noss Farm Products, Ltd.* v. *Lilico*, [1945] 2 All E. R. 609 and *Lamb* v. *Sunderland and District Creamery, Ltd.*, [1951] 1 All E.R. 923. Accordingly, the fact that the act or default subsequently became unlawful is

not sufficient to bring the section into operation; see *Noss Farm Products, Ltd.* v. *Lilico, supra.* *Mens rea* or negligence need not be proved if the original offence is constituted without proof of *mens rea* or negligence, as the case may be; see *Lindley* v. *George W. Horner & Co., Ltd.*, [1950] 1 All E.R. 234; *Lamb* v. *Sunderland and District Creamery, Ltd., supra;* and *Lester* v. *Balfour Williamson Merchant Shippers, Ltd.*, [1953] 1 All E.R. 1146; also *Fisher* v. *Barrett and Pomeroy (Bakers), Ltd.*, [1954] 1 All E.R. 249.

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67. Defence available to persons charged with offences. —It shall be a defence (*a*) for a person charged with a contravention (*b*) of a provision of this Act or of regulations thereunder to prove that he used all due diligence (*c*) to secure compliance with that provision.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The wording of this section makes it clear that it is only concerned with criminal liability and does not provide a defence to a civil action; cf. *Yelland* v. *Powell Duffryn Associated Collieries, Ltd.*, [1941] 1 K.B. 154; [1941] 1 All E.R. 278, C.A.; *Potts (or Riddell)* v. *Reid*, [1943] A.C. 1; [1942] 2 All E.R. 161; and *Gallagher* v. *Dorman, Long & Co., Ltd.*, [1947] 2 All E.R. 38, C.A.

(*a*) ***Defence.*** The burden of proof laid on the defendant is less onerous than that resting on the prosecutor as regards proving the offence, and may be discharged by satisfying the court of the probability of what the defendant is called on to prove; see *R.* v. *Carr-Briant*, [1943] K.B. 607; [1943] 2 All E.R. 156, C.C.A., and *R.* v. *Dunbar*, [1958] 1 Q.B. 1; [1957] 2 All E.R. 737, C.C.A.

(*b*) ***Contravention.*** For definition, see s. 90 (1).

(*c*) ***All due diligence.*** Whether the defendant has or has not used all due diligence is a question of fact; but in a case stated the High Court will interfere if there was no evidence to support a finding on this point; see *R. C. Hammett, Ltd.* v. *Crabb* (1931), 145 L.T. 638. See also *Rogers* v. *Barlow & Son* (1906), 94 L.T. 519; *R. C. Hammett, Ltd.* v. *London County Council* (1933), 97 J.P. 105; *Pearce* v. *Cullen* (1952), 96 Sol. Jo. 132 and *Tesco Supermarkets* v. *Nattrass*, [1972] A.C. 153; [1971] 2 All E.R. 127, H.L.

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68. Falsification of documents, false statements, &c. —(1) If a person—

(a) with intent to deceive (*a*), forges (*b*)—

(i) a fire certificate (*c*) or a certificate such as is mentioned in section 46 (8) of this Act; or

(ii) an instrument issued under regulations under this Act whereby exemption is granted from any provision of the regulations;

or makes or has in his possession a document so closely resembling any such certificate or instrument as aforesaid as to be calculated (*d*) to deceive; or

(b) for the purpose of procuring the issue of a fire certificate (*c*) or the grant or extension of an exemption under section 46 of this Act or the issue under regulations under this Act of an instrument whereby exemption is granted from any provision of the regulations, makes a statement which he knows to be false (*e*) in a material particular or recklessly (*f*) makes a statement which is so false (*e*), or produces, furnishes, sends or otherwise makes use of a document which he knows to be so false (*e*) or recklessly (*f*) produces, furnishes, sends or otherwise makes use of a document which is so false (*e*); or

(c) wilfully (*g*) makes a false (*e*) entry in any register, book, notice or other document required by or by virtue of this Act to be kept, served or given;

he shall be guilty of an offence and liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months or to both such fine and such imprisonment.

(2) If a person falsely pretends to be an inspector appointed under section 52 (1), (2) or (5) of this Act, a person authorised under subsection (3) of that section by the Minister (*h*), a person authorised under subsection (6) of that section by the Minister of Power or an officer appointed under section 57 of this Act by the Minister (*h*), he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

(3) In this section, the expression "forges" has, in the application thereof to England and Wales, the same meaning as in the Forgery Act 1913 (*i*).

General note. Except in relation to shop premises which are in *a* covered market place, as defined by s. 51 (2), this section came into operation on 1st May 1964.

In relation to shop premises which are in such a covered market place, sub-ss. (1) (c) and (2) alone came into operation on 1st May 1964

(Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Intent to deceive.*** "To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false"; see *Re London and Globe Finance Corpn., Ltd.*, [1903] 1 Ch. 728; *per* BUCKLEY J., at p. 732, as explained and approved in *Welham* v. *D.P.P.*, [1961] A.C. 103, [1960] 1 All E.R. 805, H.L. It is sufficient for the prosecution to prove an intent to deceive generally without proving an intent to deceive a particular person; see *R.* v. *Greenberg*, [1942] 2 All E.R. 344; see also *R.* v. *Clark* (1918), 82 J.P. 295 and *Brend* v. *Wood* (1946), 175 L.T. 306.

(*b*) ***Forges.*** For the meaning of the expression, see sub-s. (3) and note (*i*), *infra*.

(*c*) ***Fire certificate.*** See s. 29 (1).

(*d*) ***Calculated.*** This word is not free from ambiguity, for it may mean either "likely" or "intended"; cf. 82 J.P. Jo. 447 and 103 J.P. Jo. 734. Yet, as intent to deceive is already an essential ingredient of the offence by virtue of the words "with intent to deceive", it seems that "calculated" here means "likely"; cf. also, in particular *Eno* v. *Dunn* (1890), 15 App. Cas. 252, H.L.; *Re McGlennon's Application for Registration of Shamrock* (1908), 25 T.L.R. 23; and *Re Royal Worcester Corset Co.'s Application*, [1909] 1 Ch. 459.

(*e*) ***False.*** A statement, etc., may be false on account of what it omits even though it is literally true; see *R.* v. *Lord Kylsant*, [1932] 1 K.B. 442; and *R.* v. *Bishirgian*, [1936] 1 All E. R. 586.

(*f*) ***Recklessly.*** On the meaning of this expression, see, in particular, *Derry* v. *Peek* (1889), 14 App. Cas. 337; *Williams Brothers Direct Supply Stores, Ltd.* v. *Cloote* (1944), 60 T.L.R. 270; *R.* v. *Bates*, [1952] 2 All E.R. 842; affirmed *sub nom. R.* v. *Russell*, [1953] 1 W.L.R 77; 97 Sol. Jo. 12; *R.* v. *Mackinnon*, [1959] 1 Q.B. 150; [1958] 3 All E.R. 657; and *R.* v. *Grunwald*, [1963] 1 Q.B. 935; [1960] 3 All E.R. 380.

(*g*) ***Wilfully.*** This expression, in the words of Lord RUSSEL OF KILLOWEN, C.J., in *R.* v. *Senior*, [1899] 1 Q.B. 283, at pp. 290, 291; "means that the act is done deliberately and intentionally, not by accident or inadvertence, but so that the mind of the person who does the act goes with it"; see also *R.* v. *Walker* (1934), 24 Cr. App. Rep. 117; *Eaton* v. *Cobb*, [1950] 1 All E.R. 1016 and *Arrowsmith* v. *Jenkins*, [1963] 2 Q.B. 561; [1963] 2 All E.R. 210.

(*h*) ***The Minister.*** For definition, see s. 90 (1).

(*i*) ***Forgery Act 1913.*** The definition of forgery in s. 1 (1) of the Forgery Act 1913 is "forgery is the making of a false document in order that it may be used as genuine . . .", and sub-ss. (2) and (3) of that section define a false document for the purposes of that Act.

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69. Removal or defacement of documents posted in pursuance of Act or regulations under it.—If, without reasonable excuse, a person removes, [*injures or defaces*] a notice or other document which is for the time being posted

or displayed in any premises in pursuance of a provision of this Act or of regulations thereunder, he shall be guilty of an offence and liable to a fine not exceeding ten pounds.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The words in square brackets were repealed by the Criminal Damage Act 1971, s. 11 and Sch. 2. The destruction of or damage to property belonging to another is made an offence by *ibid.*, s. 1.

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70. Prosecution of offences.—(1) All offences under this Act shall be triable summarily (*a*).

(2) A magistrates' court (*b*) or sheriff shall, in any proceedings for an offence under this Act, if required by either party, cause a note of the evidence to be taken and preserved.

(3) A factory inspector (*c*), if authorised in that behalf by the Minister (*a*), may, although not of counsel or a solicitor, prosecute or conduct (*e*) before a magistrates' court (*b*) or before a sheriff proceedings for an offence under this Act.

(4) Notwithstanding any rule of law in Scotland, it shall not be an objection to the competence of a factory inspector to give evidence as a witness in any prosecution for an offence under this Act that the prosecution is brought at his instance or conducted by him.

General note. This section came into operation in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railways Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Triable summarily.*** See the Magistrates' Courts Act 1952, ss. 13–17 and, further, the Magistrates' Courts Act 1957.

(*b*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*c*) ***Factory inspector.*** For definition, see s. 90 (1).

(*d*) ***The Minister.*** For definition, see s. 90 (1).

(*e*) ***Prosecute or conduct.*** Cf. on the question of proof of authority, *Ross* v. *Helm*, [1913] 3 K.B. 462.

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71. Local authorities' inspectors in Scotland to have power to institute proceedings in certain cases.—(1) An inspector appointed under this Act by a local authority (*a*)

may, if duly authorised in that behalf by a general resolution of the authority, make a summary application under section 22 of this Act with respect to any premises with respect to which the authority have power to enforce any of the provisions of sections 4 to 21 of this Act; and for the purposes of this subsection the expression "premises" includes a common part of a building to which section 42 or section 43 of this Act applies.

(2) An inspector appointed under this Act by the authority discharging in any area the functions of fire authority (*b*) under the Fire Services Act 1947 may, if duly authorised as aforesaid by the authority, make a summary application under section 32 of this Act with respect to any premises in that area with respect to which they are the appropriate authority for the purposes of that section (*e*).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Local authority.*** For definition, see s. 90 (1).

(*b*) ***Fire authority.*** See note (*a*) to s. 39.

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72. Appeal from orders made on complaint.—A person aggrieved (*a*) by an order (*b*) made by a magistrates' court (*c*) on determining a complaint under this Act may appeal (*d*) therefrom to a court of quarter sessions (*e*).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Person aggrieved.*** The interpretation of this phrase involves a consideration of what is meant, in the context in which the phrase is used, both by the word "person" and by the word "aggrieved". Where, as in the present context, no contrary intention appears, the word "person" includes any body of persons corporate or incorporate: Interpretation Act 1889, s. 19. As to the meaning of the word "aggrieved", see note (*o*) to s. 3 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

(*b*) ***Order.*** This includes the dismissal of a complaint (*R.* v. *Recorder of Oxford, Ex parte Brasenose College*, [1970] 1 Q.B. 109; [1969] 3 All E.R. 428).

(*c*) ***Magistrates' court.*** For definition, see s. 90 (1).

(*d*) ***Appeal.*** The appeal is governed by the Summary Jurisdiction Act 1879, as amended, and the Magistrates' Courts Act 1952, s. 84, as amended. See also the Magistrates' Courts Rules 1968 (S.I. 1968 No. 1920), rules 62–64.

Following an appeal under this section quarter sessions cannot be compelled by *mandamus* to state a case for the opinion of the High Court; see *R.* v. *Somerset Justices, Ex parte Ernest J. Cole & Partners, Ltd.*, [1950] 1 K.B. 519; [1950] 1 All E.R. 264 and *R.* v. *Northumberland Quarter Sessions Justices, Ex parte Williamson*, [1965] 2 All E.R. 87; [1965] 1 W.L.R. 700, D.C. See also, generally, as to the statement of a case by quarter sessions, 25 Halsbury's Laws (3rd Edn.) 312 *et seq.*

(*e*) ***Court of Quarter Sessions.*** The reference is now to the Crown Court (Courts Act 1971, s. 56 and Sch. 9).

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73. Power of county court and sheriff to modify agreements and apportion expenses.—(1) A person who, by reason of the terms of an agreement or lease relating to any premises, is prevented from therein carrying out or doing any structural or other alterations or other thing whose carrying out or doing is requisite in order to secure compliance with a provision of this Act or of regulations thereunder which is, or will become, applicable to the premises, in order to comply with a requirement imposed by a notice (*a*) served under section 30 (4) (*b*) or 35 (2) (c) of this Act or in order to enable effect to be given to proposals without contravention of a prohibition imposed by a notice served under the said section 30 (4) (*b*), may apply to the county court (*d*) within whose jurisdiction the premises are situate, and the court may make such an order setting aside or modifying any terms of the agreement or lease as the court considers just and equitable in the circumstances of the case (*e*).

(2) Where the carrying out or doing in any premises of any structural or other alterations or other thing whose carrying out or doing is requisite as mentioned in the foregoing subsection involves a person having an interest in the premises in expense or in increased expense, and he alleges that the whole or part of the expense or, as the case may be, the increase ought to be borne by some other person having an interest in the premises, the first-mentioned person may apply to the county court (*d*) within whose jurisdiction the premises are situate, and the court, having regard to the terms of any agreement or lease relating to the premises, may by order give such directions with respect to the persons by whom the expense or increase is to be borne, and in what proportions it is to be borne by them and, if need be, for modification of the terms of any such agreement or lease so far as concerns rent payable in respect of

the premises as the court considers just and equitable in the circumstances of the case (*e*).

(3) In the application of this section to Scotland, for references to a county court there shall be substituted references to the sheriff.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Notice.*** As to the service of notices, see s. 81.

(*b*) ***Notice . . . under s. 30 (4).*** Where the means of escape in case of fire have become insufficient due to changed conditions, or will become so owing to proposed alterations, the appropriate authority may serve a notice on the occupier requiring such alterations as will render the means of escape sufficient.

(*c*) ***Notice . . . under s. 35 (2).*** If, when regulations are made under s. 35 (1), the means of escape in case of fire in any premises for which a fire certificate is in force are not in conformity with the regulations, the appropriate authority may serve a notice on the occupier requiring such alterations as will bring the premises into conformity.

(*d*) ***Apply to the county court.*** The application is by originating application under County Court Rules, Order 6, rule 4. In *Horner* v. *Franklin*, [1905] 1 K.B. 479, C.A., and *Stuckey* v. *Hooke*, [1906] 2 K.B. 20, C.A., it was held that the provisions of the Factory and Workshops Act 1901 similar to those of sub-s. (1) gave exclusive jurisdiction to the county court.

(*e*) ***Just and equitable.*** The terms of the lease or agreement are part of the circumstances of the case and, although not binding on the court, ought to be considered; see *Monk* v. *Arnold*, [1902] 1 K.B. 761; *Horner* v. *Franklin, supra; Stuckey* v. *Hooke, supra.*

Amendments of other Acts

74. Amendment of sections 123 (1) and 124 (1) of Factories Act 1961, and provisions consequential thereon.—(1) For the purposes of section 123 (1) (application of Act to electrical stations) of the Factories Act 1961, office premises (*a*) to which this Act applies which are comprised in premises to which that subsection applies shall, notwithstanding that they are so comprised, be deemed not to form part of the premises.

(2) The Minister (*b*) may by special regulations (*c*) provide that premises which, but for the operation of the foregoing subsection, would, for the purposes of the said section 123 (1), form part of premises to which the said section 123 (1) applies,

or any class of premises (*d*) such as are first-mentioned in this subsection,—

(a) shall be excepted from the operation of section 24 of this Act (*e*); and

(b) shall, notwithstanding the foregoing subsection, be deemed for the purposes of section 61 (first aid) of the said Act of 1961 to form part of the premises of which, but for that subsection, they would, for the purposes of the said section 123 (1), form part.

(3) Regulations under this section may provide that, for the purposes of the application to premises to which the said section 123 (1) applies of subsection (4) of the said section 61, persons employed (*f*) to work (*g*) in premises which, by virtue of the regulations, are deemed for the purposes of the said section 61 to form part of the first-mentioned premises shall (according as may be specified in the regulations) be left out of account or be taken into account to a number (ascertained in accordance with the regulations) less than the full number thereof.

(4) The foregoing provisions of this section shall, with the substitution, for references to the said section 123 (1), of references to section 124 (1) (institutions) of the Factories Act 1961, have effect with respect to office premises (*a*) to which this Act applies which are comprised in premises to which the said section 124 (1) applies, as they have effect with respect to office premises to which this Act applies which are comprised in premises to which the said section 123 (1) applies.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Office premises.*** See s. 1 (2), (5).

(*b*) ***The Minister.*** For definition, see s. 90 (1).

(*c*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8), Sch. 1. The Offices in Electrical Stations (First Aid) Regulations 1964 have been made under this section and are printed below.

(*d*) ***Class of premises.*** See s. 90 (5).

(*e*) ***Section 24.*** This section contains the first aid provisions of the Act.

(*f*) ***Employed.*** For definition, see s. 90 (1).

(*g*) ***Work.*** See note (*a*) to s. 3.

THE OFFICES IN ELECTRICAL STATIONS (FIRST AID) REGULATIONS 1964

(S.I. 1964 No. 1323)

Dated 17th August 1964

The Minister of Labour—

(a) by virtue of the powers conferred on him by section 74 (2) and (3) of the Offices, Shops and Railway Premises Act 1963 (hereafter in these Regulations referred to as "the Act of 1963") and of all other powers enabling him in that behalf; and

(b) after publishing, pursuant to Schedule 1 to the Act of 1963, notice of the proposal to make the Regulations and not having received any objection to the draft in regard to which he is required by the said Schedule to direct an inquiry to be held.

hereby makes the following special Regulations:—

1.—(1) These Regulations may be cited as the Offices in Electrical Stations (First Aid) Regulations 1964 and shall come into operation on 1st December 1964.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. These Regulations shall apply to office premises to which the Act of 1963 applies, being premises which, but for the operation of section 74 (1) (which, for the purposes of section 123 (1) (application of Act to electrical stations) of the Factories Act 1961, excludes from electrical stations office premises comprised therein) of the Act of 1963, would, for the purposes of the said section 123 (1) form part of premises to which the said section 123 (1) applies.

3. Office premises to which these Regulations apply—

(a) shall be excepted from the operation of section 24 (which contains general provisions relating to first aid) of the Act of 1963; and

(b) shall, notwithstanding the said section 74 (1), be deemed for the purposes of section 61 (first aid) of the Factories Act 1961 to form part of the premises of which, but for the said section 74 (1), they would, for the purposes of the said section 123 (1), form part.

4. For the purposes of the application to premises to which the said section 123 (1) applies of subsection (4) of the said section 61 (which, amongst other things, requires that the person under whose charge is placed a first-aid box or cupboard provided in a factory in pursuance of that section must, where more than fifty or other a lower prescribed number of persons are employed, be trained in first-aid treatment), persons employed to work in office premises which, by virtue of these Regulations, are deemed for the purposes of the said section 61 to form part of the first-mentioned premises shall be taken into account to a number less than the full number thereof, that is to say, of the persons employed to work at any one time in any such office premises as aforesaid—

(a) of every unit of 3 persons, 1 person shall be taken into account; and

(b) of any fraction of a unit of 3 persons, where the fraction consists of 2 persons 1 person shall be taken into account and where the fraction consists of 1 person that person shall be left out of account.

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75. Amendment of section 125 (1) of Factories Act 1961, and provisions consequential thereon.—(1) For the purposes of section 125 (1) (docks, etc.) of the Factories Act 1961, office premises (*a*) to which this Act applies which are comprised in premises to which that subsection applies shall, notwithstanding that they are so comprised, be deemed not to form part of the premises.

(2) The Minister (*b*) may by special regulations (*c*) provide that premises which, but for the operation of the foregoing subsection, would, for the purposes of the said section 125 (1), form part of premises to which the said section 125 (1) applies, or any class of premises (*d*) such as are first-mentioned in this subsection,—

(a) shall be excepted from the operation of section 24 of this Act (*e*); and

(b) shall, notwithstanding the foregoing subsection, be deemed for the purposes of any regulation as to first aid made by virtue of section 125 (2) of the said Act which is applicable to the premises of which, but for the foregoing subsection, they would, for the purposes of the said section 125 (1) form part, to form part of those premises.

(3) The reference in the said section 125 (1) to a warehouse in or for the purposes of which mechanical power is used, being a warehouse neither forming part of a factory nor belonging to the owners, trustees or conservators of a dock, wharf or quay, shall be construed as not including a building occupied by a wholesale dealer or merchant where goods are kept for sale wholesale (*f*) or a part of a building so occupied where goods are so kept.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Office premises.*** See s. 1 (2), (5).

(*b*) ***The Minister.*** For definition, see s. 90 (1).

(*c*) ***Special regulations.*** As to the making of special regulations, see s. 80 (8), Sch. 1. No special regulation under this section have yet been made.

(*d*) ***Class of premises.*** See s. 90 (5).

(*e*) ***Section 24.*** This section contains the first-aid provisions of the Act.

(*f*) ***Buildings occupied by a wholesale dealer, etc.*** Such a building or part of a building constitutes "shop premises"; see s. 1 (3) (a) (iii).

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76. Amendment of Public Health Act 1936.—(1) Where plans of a building (*a*) or of an extension of a building (*a*) are, in accordance with building byelaws or building regulations, deposited with a local authority (*b*), and the building (*a*) or, as the case may be, the building (*a*) as extended will be a building (*a*) to which section 59 (exits, entrances, &c., in the case of certain public, and other, buildings) of the Public Health Act 1936 applies and, in the authority's opinion, will be likely to be the subject of an application under section 29 of this Act (*c*), the authority (if not themselves the authority discharging, in the area in which the building (*a*) or the building (*a*) as extended is or will be situate, the functions of fire authority (*d*) under the Fire Services Act 1947) shall, before passing or rejecting the plans, seek consultation thereon with the authority discharging, in that area, those functions.

(2) Neither subsections (2) to (4) of section 59 of the said Act of 1936 nor section 60 (means of escape from fire in the case of certain high buildings) thereof nor any provision of a local Act which has effect in place of the said section 60 shall apply to premises with respect to which a fire certificate (*e*) is for the time being in force.

(3) Section 92 (1) (e) of the said Act of 1936 (which includes, amongst the statutory nuisances that may be dealt with summarily under Part III of that Act, ill-ventilated, dirty, overcrowded or malodorous workplaces) shall not apply to premises to which this Act applies.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation as follows—

sub-s. (1) on 1st May 1964;
sub-ss. (2), (3) on 1st August 1964

(Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Building.*** "Building" includes structure (s. 90 (1)).

(*b*) ***Local authority.*** For definition, see s. 90 (1).

(*c*) ***Application under s. 29.*** That is to say, an application for a fire certificate.

(*d*) ***Fire authority.*** See note (*a*) to s. 39.

(*e*) ***Fire certificate.*** See s. 29 (1).

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77. Exclusion of application of sections 128 and 129 of Public Health (London) Act 1936.—*Sections 128 (nuisances from factories, workshops and workplaces) and 129 (limewashing and washing of factories, workshops and workplaces) of the Public Health (London) Act 1936 shall not apply to premises to which this Act applies.*

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

The section was repealed, as from 1st April 1965, by the London Government Act 1963, s. 93 (1), Sch. 18, Part II.

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78. Provision for securing exercise of local Act powers in conformity with this Act.—A person required by or under a local Act to effect any alterations to, or to any apparatus or fittings in, a building (*a*) shall not be treated as having acted in contravention (*b*) of that enactment by reason of his failure to effect those alterations in so far as the failure is attributable to the fact that remedying it would involve a contravention (*b*) of this Act or regulations thereunder.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Building.*** "Building" includes structure (s. 90 (1)).

(*b*) ***Contravention.*** For definition, see s. 90 (1).

General Provisions

79. Minister to report to Parliament.—The Minister (*a*) shall annually lay before Parliament (*b*) a report of his proceedings under this Act and generally about the operation of this Act.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation on 1st January 1965 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Lay before Parliament.*** For provisions as to laying before Parliament, see the Laying of Documents before Parliament (Interpretation) Act 1948, s. 1 (1).

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80. Regulations and orders.—(1) Any regulations or orders made under this Act by the Minister (*a*) (other than orders made under section 62 of this Act) shall be made by statutory instrument (*b*).

(2) A statutory instrument (*b*) containing regulations under this Act shall be subject to annulment (*c*) in pursuance of a resolution of either House of Parliament.

(3) Any power conferred by this Act to make regulations and any power conferred by or by virtue of this Act to make an order (except the power conferred by section 62 of this Act) shall respectively include power to make different provision in relation to different circumstances.

(4) Any power conferred by this Act to prescribe standards or impose requirements shall include power to do so by reference to the approval of the Minister (*a*).

(5) Regulations under this Act may grant or provide for the granting of exemptions from any of the provisions of the regulations, either unconditionally or subject to conditions.

(6) Regulations under this Act may empower the Minister (*a*) by order to prescribe any particulars required to be furnished to any person in pursuance of the regulations and any form to be used for any purpose of the regulations; and the Statutory Instruments Act 1946 shall apply to an order made by virtue of this subsection as it applies to an order made under this Act.

(7) Any power conferred by or by virtue of this Act to make an order shall include power to vary or revoke the order by a subsequent order.

(8) The provisions of Schedule 1 to this Act shall have effect with respect to regulations referred to in this Act as special regulations.

General note. This section came into operation on 18th February 1964, except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), in relation to which it came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Statutory instrument.*** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946.

(*c*) ***Annulment.*** For provisions as to annulment, see the Statutory Instruments Act 1946, ss. 5 (1) and 7 (1); and see also the Laying of Documents before Parliament (Interpretation) Act 1948.

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81. Mode of service of notices under this Act.—(1) A notice required or authorised by or by virtue of this Act to be served on or given to a factory inspector (*a*) or a mine and quarry inspector (*b*) may be served or given by delivering it to him or by leaving it at, or sending it by post (*c*) to, his office.

(2) Any such notice required or authorised to be served on or given to a person other than a factory inspector (*b*) or a mine and quarry inspector (*b*) may be served or given by delivering it to him, or by leaving it at his proper address, or by post (*c*).

(3) Any such notice required or authorised to be served on or given to a corporation (*d*) or firm shall be duly served or given if it is served on or given to, as the case may be, the secretary or clerk of the corporation (*d*) or a partner of the firm.

(4) For the purposes of this section and of section 26 of the Interpretation Act 1889 in its application to this section the proper address of a person on or to whom any such notice as aforesaid is to be served or given shall, in the case of the secretary or clerk of a corporation (*d*), be that of the registered or principal office (*e*) of the corporation (*d*), in the case of a partner of a firm, be that of the principal office (*e*) of the firm, and, in any other case, be the last known address (*f*) of the person to be served:

Provided that, where the person on or to whom the notice is to be served or given has, in accordance with arrangements agreed, furnished an address for the service or giving of the notice, being an address in the United Kingdom (*g*), his proper address for the purposes aforesaid shall be the address furnished.

(5) If the name or the address of any owner (*h*) or occupier (*i*) of land on or to whom any such notice as aforesaid is to be

served or given cannot after reasonable inquiry be ascertained by the authority or person seeking to serve or give the notice, the notice may be served or given by addressing it to the person on or to whom it is to be served or given by the description of "owner" or "occupier" of the land (describing it) to which the notice relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

(6) The foregoing provisions of this section shall apply to the sending of a document as they apply to the giving of a notice.

General Note. This section came into operation in relation to all premises within the Act on 1st May 1964 (Offices, Shops and Railway Premises) Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Factory inspector.*** For definition, see s. 90 (1).

(*b*) ***Mine and quarry inspector.*** For definition, see s. 90 (1).

(*c*) ***By post.*** See, as to non-delivery, s. 26 of the Interpretation Act 1889 and, in particular, *R.* v. *London Quarter Sessions, Ex parte Rossi*, [1956] 1 Q.B. 682; [1956] 1 All E.R. 670, C.A., and *Beer* v. *Davies*, [1958] 2 Q.B. 187; [1958] 2 All E.R. 255; and contrast *Layton* v. *Shires*, [1960] 2 Q.B. 294; [1959] 3 All E.R. 587, and *Hosier* v. *Goodall*, [1962] 2 Q.B. 401; [1962] 1 All E.R. 30.

(*d*) ***Corporation.*** This term includes local authorities, companies and other corporate bodies. See, as to corporations, Halsbury's Laws of England, 3rd Edn., Vol. 9, pp. 3 *et seq.*

(*e*) ***Principal office.*** This is the place where the business of the corporation or firm is managed and controlled as a whole; see *Garton* v. *Great Western Rail. Co.* (1858), E.B. & E. 837; *Palmer* v. *Caledonian Rail. Co.*, [1892] 1 Q.B. 823, C.A.; and *Clokey* v. *London and North Western Rail. Co.*, [1905] 2 I.R. 251.

(*f*) ***Last known address.*** It appears that service at the last known address is valid even though the person in question is known to have left that address for good; see *Re Follick, Ex parte Trustee* (1907), 97 L.T. 645.

(*g*) ***United Kingdom.*** That is to say, Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2).

(*h*) ***Owner.*** For definition, see s. 90 (1). See also note (1) to s. 42.

(*i*) ***Occupier.*** See note (*h*) to s. 22.

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82. Expenses and receipts.—(1) There shall be defrayed out of moneys provided by Parliament—

(a) any expenses incurred by the Minister (*a*) in carrying this Act into effect;

(b) any increase attributable to this Act in the expenses of the Minister of Power which, by virtue of section 3 (3) of the Ministry of Fuel and Power Act 1945, are defrayed out of moneys so provided;

(c) any increase attributable to this Act in the sums payable by way of General Grant (*b*), Rate Deficiency Grant or Exchequer Equalisation Grant (*c*) under the enactments relating to local government in England and Wales or in Scotland.

(2) Any sums received under this Act by the Minister (*a*) shall be paid into the Exchequer.

General note. This section came into operation on 18th February 1964, except in relation to shop premises which are in a covered market place, in relation to which it came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***General Grant.*** These grants are payable under the Local Government Act 1958, ss. 1 *et seq.*

(*c*) ***Rate Deficiency Grant; Exchequer Equalisation Grant.*** Exchequer Equalisation Grants were payable under the Local Government Act 1948 and, in relation to England and Wales, were modified and re-named Rate Deficiency Grants by s. 4 of the Local Government Act 1958. Such grants are not payable for the year 1967–1968 and subsequent years (Local Government Act 1966, s. 12).

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83. Application to the Crown.—(1) The following provisions of this Act, namely sections 4 to 21, 23, 24, 27, 28, 29 (1) and (11), 33, 34, 35 (1), 36 to 38, 42 and 43 shall, in so far as they impose duties failure to comply with which might give rise to a liability in tort (*a*), be binding upon the Crown, and accordingly, for the purposes of those provisions and regulations under any of them, persons in the service of the Crown shall be taken to be employed (*b*) if, apart from this subsection, they would not be so taken.

(2) Section 24 (7) of this Act shall, in its application to premises occupied (*c*) by the Crown, have effect with the substitution, for the reference to the authority having power to enforce compliance with the foregoing provisions of that section, of a reference to a factory inspector (*d*) or a person authorised under section 52 (3) of this Act.

(3) Section 29 (1) of this Act shall, in its application to premises owned (*e*) or occupied (*c*) by the Crown, have effect with the substitution, for the reference to the appropriate authority, of a reference to a factory inspector (*d*) or a person authorised under section 52 (3) of this Act; and sections 29 (2) to (8) (9a) and (10), 30 (2) to (6), 32 and 35 (2) shall not apply to premises occupied (*c*) by the Crown or to premises which, though not so occupied (*c*), form part of a building owned (*e*) by the Crown, and shall, in their application to premises owned (*c*) by the Crown but not occupied (*c*) by it (not being premises in such a building as aforesaid) have effect as if—

(a) for references to the appropriate authority (except references in sections 29 (2) and (8) and 30 (3), the second reference in section 30 (4) (b) and the second reference in section 30 (6)), there were substituted references to a factory inspector (*d*) or a person authorised under section 52 (3) of this Act;

(b) for references to that authority in the said sections 29 (2) and (8) and 30 (3), for the second reference thereto in section 30 (4) (b) and for the second reference thereto in section 30 (6), there were substituted references to the factory inspector (*d*) in charge of the district in which the premises are situate.

(4) Section 46 of this Act shall, in the case of premises occupied (*c*) by the Crown, have effect as if, for any reference to an authority having power to enforce any provision of this Act, there were substituted a reference to a factory inspector (*d*) or a person authorised under section 52 (3) of this Act and as if the words in subsection (3) from "and are further satisfied" onwards, and subsections (5) to (14), had been omitted; and an exemption of, or of a room in, any such premises from a requirement imposed by a provision of this Act may be granted under the said section 46 despite the fact that the provision imposing the requirement is not in force in relation to the premises.

(5) Sections 52 and 53 of this Act shall not be construed as extending to the enforcement of provisions of this Act or regulations thereunder against the Crown or, in so far as they are enforceable, as regards premises owned (*e*) or occupied (*c*) by the Crown, against any other person, or as authorising the entry of premises occupied (*c*) by the Crown, but any such

provisions and regulations shall, in so far as they are enforceable, as regards premises owned or occupied (*c*) by the Crown, against any other person, be enforceable by factory inspectors (*d*) and persons authorised under section 52 (3) of this Act.

(6) The reference in subsection (1) of this section to a liability in tort shall be construed as not including such a liability towards a member of the armed forces of the Crown, and the reference in that subsection to persons in the service of the Crown shall be construed as not including any such member.

(7) In the application of this section to Scotland any reference to a liability in tort shall be construed as a reference to a liability in reparation arising from any wrongful or negligent act or omission.

General note. Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this section came into operation as follows:

sub-s. (1), except in so far as it relates to s. 24 of the Act, on 1st August 1964;[1]
sub-s. (1), so far as it relates to s. 24 (1), (2), (3), (7) and (9), on 1st December 1964;[2]
sub-s. (1), so far as it relates to s. 24 (4), (5), (6) and (8), on 1st September 1965;[2]
sub-s. (2), on 1st December 1964;[2]
sub-s. (3), so far as it relates to s. 29 (2), on 1st May 1964;[1]
sub-s. (3), except as above, on 1st August 1964;[1]
sub-ss. (4), (5), on 1st May 1964;[1]
sub-ss. (6), (7), on 1st August 1964;[1]

[1] Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191).

[2] Offices, Shops and Railway Premises Act 1963 (Commencement No. 2) Order 1964 (S.I. 1964 No. 1045).

This section is printed as amended by s. 33 (2) of the Fire Precautions Act 1971.

(*a*) ***Liability in tort.*** By sub-s. (6), liability towards a member of the armed forces is excluded. With regard to visiting forces, see s. 84. As to liability in tort generally under this Act, see the General Introduction.

(*b*) ***Employed.*** For definition, see s. 90 (1).

(*c*) ***Occupied.*** See note (*h*) to s. 22.

(*d*) ***Factory inspector.*** For definition, see s. 90 (1).

(*e*) ***Owned.*** For definition, see s. 90 (1).

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84. Exclusion of application to visiting forces.—(1) This Act shall not operate to create, towards a member of the

naval, military or air forces of a country to which this section applies, a liability in tort (*a*) against the Government of that country in respect of anything done or omitted by it or against another member of those forces in respect of anything done or omitted by him in the course of his duty.

(2) This section applies to India, Pakistan, Ghana, the Federation of Malaya, the Republic of Cyprus, Tanganyika, Zambia, Botswana, Lesotho, Singapore, Swaziland, Tonga and any country designated for the purposes of any provision of the Visiting Forces Act 1952 by Order in Council under section 1 (2) of that Act (*b*).

(2A) This Act shall not operate to create towards a member of a headquarters or organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (*c*) who is a member of the naval, military or air forces of any country a liability in tort against the headquarters or organisation in respect of anything done or omitted by it or against another member thereof in respect of anything done or omitted by him in the course of his duty.

(3) In the application of this section to Scotland the reference to a liability in tort shall be construed as a reference to a liability in reparation arising from any wrongful or negligent act or omission.

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st August 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

Sub-section (2) is printed as amended by the Zambia Independence Act 1964, the Botswana Independence Act 1966, the Lesotho Independence Act 1966, the Singapore Act 1966, the Swaziland Independence Act 1968 and the Tonga Act 1970.

Sub-section (2A) was added by the Visiting Forces and International Headquarters (Application of Law) Order 1965 (S.I. 1965 No. 1536), art. 12 (2) and Sch. 3.

(*a*) ***Liability in tort.*** See the General Introduction.

(*b*) ***Countries designated.*** The Orders in force under s. 1 (2) of the Visiting Forces Act 1952 are the Visiting Forces (Designation) Order 1954 (S.I. 1954 No. 634) (designating Belgium, France, the Netherlands, Norway and the United States of America); the Visiting Forces (Designation) Order 1956 (S.I. 1956 No. 2041) (designating Luxembourg, Turkey, Greece, Denmark and Italy); the Visiting Forces (Designation) (Malta) Order 1958 (S.I. 1958 No. 1261) (designating Malta) and the Visiting Forces (Designation) Order 1961 (S.I. 1961 No. 1511) (designating the Federal Republic of Germany).

(*c*) ***Designated.*** See the International Headquarters and Defence Organisations (Designation and Privileges) Order 1965 (S.I. 1965 No. 1535).

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85. Exclusion of application to factories, to certain fish sale-rooms and to parts below ground of mines.—(1) With the exception of section 25 (2) of this Act, nothing in this Act shall apply to any premises which, for the purposes of the Factories Act 1961, form part of a factory (*a*).

(2) With the exception of section 75 (3) of this Act, nothing in this Act shall apply to any premises which, not being office premises (*b*) are used for the sale of fish (*c*) by wholesale and constitute, or are comprised in, premises to which certain provisions of the Factories Act 1961 apply by virtue of section 125 (1) (docks, etc.) of that Act.

(3) Nothing in this Act shall apply to any part below ground of premises which, for the purposes of the Mines and Quarries Act 1954, are a mine (*d*).

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Factory.*** For definition, see s. 175 of the Factories Act 1961.

(*b*) ***Office premises.*** See s. 1 (2), (5).

(*c*) ***Fish.*** For definition, see s. 90 (1).

(*d*) ***Mine.*** For definition, see s. 180 of the Mines and Quarries Act 1954.

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86. Exclusion of application to premises occupied for transitory purposes.—(1) It shall be a defence (*a*) in any legal proceedings to recover damages and in any prosecution, in so far as the proceedings or prosecution are or is based on an allegation of a contravention (*b*) in relation to any premises, of a provision of this Act or regulations thereunder, to prove that at the time of the alleged contravention (*b*) the premises were occupied for a purpose that was accomplished before the expiration of a period beginning (*c*) with the day on which they were occupied for that purpose and of such of the following lengths as is applicable to the circumstances of the case, that is to say, six months if the premises consist of a movable structure, and six weeks (*d*) if not.

(2) The foregoing subsection shall not apply to a prosecution for an offence consisting in a failure to comply with an obligation imposed under section 49 (1) of this Act to notify the appropriate authority (*e*) that persons would be employed (*f*) to work (*g*) in any premises; but in any such prosecution it shall be a defence to prove that the persons in question were employed to work in the premises while they were occupied as mentioned in the foregoing subsection.

General note. This section came into operation, in relation to all premises within the Act, on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Defence.*** See note (*a*) to s. 67.

(*b*) ***Contravention.*** For definition, see s. 90 (1).

(*c*) ***Beginning.*** In calculating the periods of six months or six weeks, the day on which the premises were occupied is to be included; cf. *Hare* v. *Gocher*, [1962] 2 Q.B. 641; [1962] 2 All E.R. 763.

(*d*) ***Six weeks.*** The definition of "week" in s. 90 (1) applies only "unless the context otherwise requires"; here "six weeks" clearly means forty-two days.

(*e*) ***Appropriate authority.*** For definition, see ss. 49 (5), 48 (5).

(*f*) ***Employed.*** For definition, see s. 90 (1).

(*g*) ***Work.*** See note (*a*) to s. 3.

Provisions with respect to Northern Ireland, Isles of Scilly and Inner and Middle Temples

87. Powers of Parliament of Northern Ireland.—The limitations on the power of the Parliament of Northern Ireland to make laws imposed by paragraphs (1), (3) and (4) of section 4 (1) of the Government of Ireland Act 1920 (which specify, amongst the matters in respect of which that Parliament is not to have power to make laws, the Crown and the property of the Crown, naval, military and air forces and treaties and relations with foreign states or any part of Her Majesty's dominions) shall not be construed so as to prevent that Parliament from including, in a law made by it for purposes similar to those of this Act (or any of them), provisions corresponding to all or any of the provisions of sections 83 and 84 of this Act (other than provisions with respect to Scotland).

General note. This section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

Provision is made for securing the health, safety and welfare of employees in shops and offices by the Offices and Shop Premises Act (Northern Ireland) 1966.

88. Application to Isles of Scilly.—This Act shall apply to the Isles of Scilly as if those Isles were a county borough and the Council of those Isles were the council of the borough.

General note. This section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

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89. Application to Inner and Middle Temples.—(1) For the purposes of the application of this Act to the Inner Temple and the Middle Temple the respective overseers thereof shall each be deemed to be a local authority.

(2) Each of the said overseers shall, for the purpose of the enforcement of this Act within his Inn, have the like powers as are by this Act conferred on a factory inspector (*a*), and section 53 (2) of this Act shall, with requisite modifications, apply accordingly.

(3) Section 52 (1) of this Act shall, in its application to each of the said overseers, have effect with the omission of the requirement to appoint inspectors; but each of the said overseers may appoint inspectors to assist him in the enforcement of this Act, and an inspector appointed under this subsection shall, for the purposes of section 53 of this Act, be treated as having been appointed under the said section 52 (1).

General note. Except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), this section came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Factory inspector.*** For definition, see s. 90 (1).

Interpretation

90. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

except in section 1 (4) of this Act, "building" includes structure (*a*);

"contravention" includes, in relation to a provision of this Act or of regulations thereunder, a failure to comply with the provision, and the expression "contravene" shall be construed accordingly;

"employed" means employed under a contract of service or apprenticeship (whether oral or in writing, express or implied) (*b*);

"factory inspector" means an inspector appointed under section 145 of the Factories Act 1961 (*c*);

"fire certificate" means a certificate issued under section 29 (3) of this Act;

"fish" includes molluscs and crustaceans;

"fuel storage premises" has the meaning assigned to it by section 1 (3) (a) (v) of this Act (*d*);

"local authority" means, as respects England and Wales, the council of a county borough or a county district, the council of a metropolitan borough or the Common Council of the City of London and, as respects Scotland, the council of a county or the town council of a burgh (*e*);

"magistrates' court" has the same meaning as in the Magistrates' Courts Act 1952 (*f*);

"mine and quarry inspector" means an inspector appointed under section 144 of the Mines and Quarries Act 1954;

"the Minister" means the Minister of Labour (*ff*);

"notice" means a notice in writing;

"office premises" has the meaning assigned to it by section 1 (2) of this Act (*g*);

"owner"—

(a) as respects England and Wales, means the person for the time being receiving the rackrent of the premises, building or part of a building in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises, building or part were let at a rackrent, and

(b) as respects Scotland, means the person for the time entitled to receive or who would, if the same were let, be entitled to receive, the rents of the premises, building or part of a building in connection with which the word is used and includes a trustee, factor, tutor or curator, and in the case of public

or municipal property, applies to the persons to whom the management thereof is entrusted,

and "owned" and "ownership" shall be construed accordingly (*h*);

"petty sessions area" has the same meaning as in the Magistrates' Courts Act 1952 (*i*);

"place of public entertainment" means—

(a) any premises used mainly for public music and dancing in respect of which there is in force a licence granted under the Disorderly Houses Act 1751;

(b) any premises in respect of which there is in force a licence granted under the Cinematograph Acts 1909 and 1952;

(c) a place of public resort had or kept under the authority of letters patent from Her Majesty, Her heirs or successors, or predecessors, or a licence under the Theatres Act 1843, for the performance of stage plays as defined in that Act;

"police authority" has the same meaning as in the Police Pensions Act 1921 (*j*);

"railway premises" has the meaning assigned to it by section 1 (4) of this Act (*k*);

"railway undertakers" means any persons authorised by an enactment or a provision of an order or scheme made under or confirmed by an Act to construct, work or carry on a railway;

"shop premises" has the meaning assigned to it by section 1 (3) of this Act (*l*);

"week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

(2) References in this Act to machinery, plant, equipment or appliances shall be construed as including references to electrical fittings as defined for the purposes of the Electricity Act 1947 (*m*).

(3) For the purposes of this Act—

(a) persons employed by railway undertakers (*n*) to do work the general control of the doing of which is exercised

at railway premises, or at office premises occupied by the undertakers for the purposes of the railway undertaking carried on by them and situate in the immediate vicinity of the permanent way, shall be deemed to be employed to work in the premises at which the general control of the doing of their work is exercised notwithstanding that their work is in fact done elsewhere;

(b) neither railway premises nor such office premises as aforesaid shall be taken to be premises in the case of which persons are employed to work therein by reason only of the fact that persons employed by the undertakers who occupy the premises resort to the premises for the purpose only of discharging duties whose discharge is incidental to the work that they are primarily employed to do.

(4) For the purposes of this Act, any such person as follows shall be taken to be employed, namely,—

(a) a person appointed under section 6 or 7 of the Registration Service Act 1953 who exercises and performs his powers and duties in premises provided and maintained by the council within whose area his district or subdistrict is situate;

(b) [*Repealed*].

(c) a member of a police force maintained by a police authority.

(5) The definition of a class of premises, rooms or persons for the purposes of any regulations or order under this Act may be framed by reference to any circumstances whatever.

(6) Any reference in this Act to any other enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactment.

General note. Except in relation to covered market places to which s. 51 relates, this section came into operation on 18th February 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***Structure.*** In *Hobday* v. *Nicol*, [1944] 1 All E.R. 302 (where the meaning of "structure" in a bye-law under the Land Drainage Act 1930 was in issue), HUMPHREYS, J. (with whom the other members of the Court agreed) said: "Structure, as I understand it, is anything which is

constructed; and it involves the notion of something which is put together, consisting of a number of different things which are so put together or built, constructed as to make one whole which is then called a structure". See also, in particular, *Mills and Rockleys, Ltd.* v. *Leicester City Council*, [1946] K.B. 315; [1946] 1 All E.R. 424; *Cardiff Rating Authority and Cardiff Assessment Committee* v. *Guest Keen Baldwin's Iron and Steel Co., Ltd.*, [1949] 1 K.B. 385; [1949] 1 All E.R. 27, C.A. and *B.P. Refinery (Kent), Ltd.* v. *Walker (Valuation Officer)*, [1957] 2 Q.B. 305; [1957] 1 All E.R. 700, C.A.

(*b*) ***Employed.*** See also sub-ss. (3) and (4), *infra*. Fiscal considerations have, in recent years, led to the styling as independent contractors of workmen who are, in reality, servants. For the considerations which apply to the correct characterisation of such persons see *Global Plant, Ltd.* v. *Secretary of State for Health and Social Security*, [1972] 1 Q.B. 139; [1971] 3 All E.R. 385, and the authorities there referred to.

(*c*) ***Factories Act 1961, s. 145.*** See Redgrave's Factories Act, 22nd Edn., pp. 405–406.

(*d*) ***Fuel storage premises.*** See also s. 1 (5).

(*e*) ***Local authority.*** By s. 51 (1) (*a*) the London Government Act 1963, as from April 1st 1965, for the words "or a county district, the council of a metropolitan borough" there must be substituted the words "a London borough or a county district".

(*f*) ***Magistrates' Courts Act 1952.*** See *ibid.*, s. 124 (1).

(*ff*) ***Minister of Labour*** Now the Secretary of State for Employment (S.I. 1968 No. 729 and S.I. 1970 No. 1537).

(*g*) ***Office premises.*** See also s. 1 (5).

(*h*) ***Owner.*** This definition, so far as it relates to England and Wales, may be compared with that contained in s. 176 (1) of the Factories Act 1961 (for which see Redgrave's Factories Acts, 22nd Edn., p. 463), in s. 119 (1) of the Town and Country Planning Act 1947 (for which see Halsbury's Laws of England, 3rd Edn., Vol. 37, p. 234 note (*g*)) or in s. 343 (1) of the Public Health Act 1936 (for which see Halsbury's Laws of England, 3rd Edn., Vol. 31, pp. 51, 52).

A "rackrent" is "a rent of the full value of the tenement, or near it" (Blackstone, in Comm. 43), and see *London Corporation* v. *Cusack-Smith*, [1955] A.C. 337; [1955] 1 All E.R. 302, H.L. The date at which the question, whether premises are let at a rackrent, is to be investigated, is the date of the lease, and later changes of circumstance are irrelevant (*ibid.*, and see also *Borthwick-Norton* v. *Collier*, [1950] 2 K.B. 594; [1950] 2 All E.R. 204, C.A.). There is no statutory definition of "rackrent" in the Offices, Shops and Railway Premises Act 1963 (compare the Public Health Act 1936, s. 343 (1)). The question, whether the tenant is paying the full, or nearly the full, economic rent of the premises is thus one of fact and degree in the circumstances of any particular case. If the lease contains covenants restricting the use of the premises, these must be taken into account (*Borthwick-Norton* v. *Collier*, *supra*), and the payment of a premium for the lease is usually conclusive that the rent received is not a rackrent (*Ex parte Connolly to Sheridan and Russell*, [1900] 1 I.R. 1, C.A.). Other factors which tend to indicate that the rent is not a rackrent are, for example, the surrender by the tenant of an

existing lease of the premises at less than the current rent in consideration of the grant of the lease under examination, or the existence of a covenant by the tenant to do extensive repairs immediately upon the grant of the lease.

If premises are let to a tenant at a rackrent, then the landlord is plainly the "owner" within the definition under consideration. If premises are let to a tenant at less than a rackrent, the first limb of the definition does not apply, and the person who "would so receive the rackrent if the premises . . . were let at a rackrent" is the tenant, for he alone is entitled to make a new lease at a rackrent (*London Corporation* v. *Cusack-Smith*, *supra*, per Lord OAKSEY (at p. 348; p. 306), per Lord REID (at p. 358; p. 313), per Lord TUCKER (at p. 366; p. 318) and per Lord KEITH OF AVONHOLM (at p. 367; p. 319)). If premises are both let and sub-let at rackrents, the head-landlord is undoubtedly an "owner", and, according to some of the opinions expressed in *London Corporation* v. *Cusack-Smith*, *supra*, the intermediate tenant may also be an "owner" (see *ibid.*, *per* Lord PORTER (at pp. 353–356; pp. 307–310), *per* Lord REID (at pp. 358–359; pp. 312–313) and *per* Lord TUCKER (at p. 366; p. 318). The opinions thus last expressed turned to some extent upon the presence of the phrase, "any owner", in s. 19 (1) of the Town and Country Planning Act 1947, so that it does not necessarily follow from them that a similar construction would be placed upon the wording of the definition now under examination. If premises are let at a rackrent and sub-let at less than a rackrent the head-landlord is the "owner"; if premises are let at less than a rackrent and sub-let at a rackrent the intermediate tenant is the owner; and if premises are both let and sub-let at less than rackrents the sub-tenant is the "owner".

(*i*) ***Magistrates' Courts Act 1952.*** See *ibid.*, s. 126 (1).

(*j*) ***Police Pensions Act 1921.*** See *ibid.*, s. 30 and Sch. 3, Part 1.

(*k*) ***Railway premises.*** See also s. 1 (5).

(*l*) ***Shop premises.*** See also s. 1 (5).

(*m*) ***Electricity Act 1947.*** See *ibid.*, s. 67.

(*n*) ***Railway undertakers.*** For definition, see sub-s. (1).

Short Title, Commencement, Extent and Repeal

91. Short title, commencement, extent and repeal.—(1) This Act may be cited as the Offices, Shops and Railway Premises Act 1963.

(2) This Act shall come into operation on such day as the Minister (*a*) may by order (*b*) appoint, and different days may be appointed for the coming into operation of different provisions, of a particular provision in relation to premises of different classes (*c*) or of a particular provision for different purposes.

(3) This Act shall not extend to Northern Ireland except in so far as it extends the powers of the Parliament of Northern Ireland.

(4) The enactments specified in columns 1 and 2 of Schedule 2 to this Act are hereby repealed to the extent respectively specified in relation thereto in column 3 of that Schedule.

General note. This section came into operation as follows:

sub-ss. (1), (2) and (3), except in relation to shop premises which are in a covered market place, as defined in s. 51 (2), on 18th February 1964;

sub-s. (1), (2) and (3), in relation to shop premises in such a covered market place, on 1st May 1964;

sub-s. (4) and Sch. 2, on 1st August 1964.

(Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Order.*** As to the making of orders, see s. 80. The Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191) and the Offices, Shops and Railway Premises Act 1963 (Commencement No. 2) Order 1964 (S.I. 1964 No. 1045) have been made under this section and are referred to in the notes to the sections affected by them.

(*c*) ***Class of premises.*** See s. 90 (5).

SCHEDULES

SCHEDULE ONE Section 80

Procedure for making Special Regulations

1. Before the Minister (*a*) makes any special regulations he shall publish in the London and Edinburgh Gazettes, and in such other manner as he may think best adapted for informing persons affected, notice of the proposal to make the regulations, and of the place where copies of the draft regulations may be obtained, and of the time (which shall be not less than twenty-one days) within which any objection made with respect to the draft regulations by or on behalf of persons affected must be sent to him.

2. Every objection must be in writing and state—

(a) the specific grounds of objection; and

(b) the omissions, additions, or modifications asked for.

3. The Minister (*a*) shall consider any objection made by or on behalf of any persons appearing to him (*b*) to be affected which is sent to him within the required time, and he may, if he thinks fit, amend the draft regulations, and, after doing so, he shall, unless an inquiry has been held under this Schedule, cause the amended draft to be dealt with in like manner as an original draft.

4. If after the publication of the notice with respect to any draft regulations (whether an original or amended draft) any general objection (as defined in paragraph 6 of this Schedule) is made within the required time with respect to the draft and not withdrawn, then, unless a previous inquiry under this Schedule has been held with respect to the draft or some previous draft of the regulations, he shall before making the regulations direct an inquiry to be held in the manner hereinafter provided and he may, if he thinks fit, also direct such an inquiry to be held in regard to any objection, notwithstanding that no such general objection has been made or that such a previous inquiry has been held as aforesaid.

5. Where any such inquiry is to be held as to any draft regulations, the following provisions shall have effect with respect to the inquiry—

(a) the Minister (*a*) shall appoint a competent person or competent persons to hold the inquiry, and to report to him thereon;

(b) the inquiry shall be held in public, and the chief factory inspector (*c*), a deputy chief factory inspector, any objector and any other person who, in the opinion of the person holding the inquiry or, if there is more than one such person, of the person presiding over the inquiry, is affected by the draft regulations, may appear at the inquiry either in person or by counsel, solicitor or agent;

(c) the witnesses may, if the person holding or presiding over the inquiry thinks fit, be examined on oath;

(d) subject as aforesaid, the inquiry and all proceedings preliminary and incidental thereto shall be conducted in accordance with regulations (*d*) made by the Minister (*a*) and the regulations may make provision as to the costs of the inquiry and other proceedings, including the remuneration of the person or persons holding the inquiry.

6. In this Schedule the expression "general objection" means, as respects any draft regulations, an objection made—

(a) by or on behalf of the majority of the occupiers (*e*) of the premises affected by the draft regulations or by or on behalf of the occupier (*e*) or occupiers (*e*) employing a majority of the persons employed (*f*) to work (*g*) in those premises, or by any person who satisfies the Minister that he or an association on behalf of which he acts represents a majority of the persons so employed (*f*); or

(b) by or on behalf of the majority of the occupiers (*e*) of any class of premises affected as respects which it appears to the Minister (*a*) that, by reason of special conditions existing in connection therewith, there is reason to believe that any of the requirements of the draft regulations may be unnecessary or inappropriate in the case of premises of that class, or by or on behalf of the occupier (*e*) or occupiers (*e*) employing a majority of the persons employed (*f*) to work (*g*) in any such class of premises as aforesaid or by any person who satisfies the Minister that he or an association on behalf of which he acts represents a majority of the persons so employed (*f*).

Except in relation to shop premises which are in a covered market place, as defined by s. 51 (2), this schedule came into operation on 18th February 1964; in relation to such shop premises it came into operation on 1st May 1964 (Offices, Shops and Railway Premises Act 1963 (Commencement No. 1) Order 1964 (S.I. 1964 No. 191)).

(*a*) ***The Minister.*** For definition, see s. 90 (1).

(*b*) ***Appearing to him.*** See note (*h*) to s. 20.

(*c*) ***Factory inspector.*** For definition, see s. 90 (1). Provision for the appointment of factory inspectors in general, and a chief factory inspector in particular, is made by the Factories Act 1961, s. 145.

(*d*) ***Regulations.*** As to the making of regulations, see s. 80. The Offices, Shops and Railway Premises Act 1963 (Conduct of Inquiries) Regulations 1965 (S.I. No. 1965 No. 1360) have been made under this Schedule.

(*e*) ***Occupier.*** See note (*h*) to s. 22.

(*f*) ***Employed.*** For definition, see s. 90 (1).

(*g*) ***Work.*** See note (*a*) to s. 3.

Section 91

SCHEDULE TWO

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
26 Geo. 5 & 1 Edw. 8 c. 49	The Public Health Act 1936	In section 44 (3), the words "to a shop to which the Shops Act 1934, applies, or". In section 45 (4), the words "to a shop to which the Shops Act 1934, applies, or". Section 46 (4). Section 92 (3).
14 Geo. 6 c. 28	The Shops Act 1950.	Sections 37 to 39. In section 45, the words "or section thirty-seven". In section 69 (1), the words "and section thirty-seven". In section 72, subsections (2) and (3), and in subsection (4), paragraph (b). In section 74 (1), the definitions of "owner", "Public Health Acts" and "sanitary authority". In section 75, the last paragraph.
6 & 7 Eliz. 2 c. xxi.	The London County Council (General Powers) Act 1958.	Section 18.
8 & 9 Eliz. 2 c. 47.	The Offices Act 1960.	The whole Act.

PART II

SHOP HOURS

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INTRODUCTION TO THE SHOPS ACT 1950

Although in 1802 Parliament began to regulate the hours to be worked and the conditions of employment in certain factories, with particular reference to children and young persons, the first Act regulating employment in shops was not passed until 1886. That Act, the Shop Hours Regulation Act 1886, laid down that young persons under the age of 18 should not work more than 74 hours a week. This Act was, however, ineffective and Inspectors were appointed by the Shop Hours Act 1892. A similar attempt to regulate the employment of women was not successful.

By the Shop Hours Act 1904, local authorities were given the powers (long demanded by the Early Closing Association) to make orders enforcing the closing of shops at specified hours. The success of this measure depended, however, partly on the willingness of the local authority to act and partly on the approval of two-thirds of the local shopkeepers.

The Shops Act 1911 laid down that all employees must have a half holiday each week and that all shops (with certain specified exceptions) must have an early closing day. All these Acts were consolidated by the Shops Act 1912.

The Shops Act 1950, which came into operation on 1st October 1950, is a consolidating measure which repeals and re-enacts the provisions of the Shops Acts of 1912, 1913, 1934 and 1936, the Shops (Hours of Closing) Act 1928, the Hairdressers and Barbers' Shops (Sunday Closing) Act 1930, the Retail Meat Dealers' Shops (Sunday Closing) Act 1936 and the Shops (Sunday Trading Restriction) Act 1936. It also repeals the Factories Act 1937, s. 98 (6), the Young Persons (Employment) Act 1938, ss. 8, 11, 12 and 13, that part of the Tenth Schedule of the National Health Service Act 1946 which relates to the amendment of the Shops (Sunday Trading Restriction) Act 1936 and the Defence (General) Regulations 1939, Regulation 60AB.

By virtue of s. 76 (2) of the Shops Act 1950, the Shops Regulations 1912, 1913, 1937 and 1939 and the Shops (Procedure for Jewish Tribunals) Regulations 1937 are continued in force and have effect as if they had been made under that Act.

The main change in the law since the last edition has been the passing of the Shops (Early Closing Days) Act 1965, which gives to the occupier of a shop the right to choose his own early closing day, instead of having to conform to a local pattern. The Criminal Justice Act 1972 increased the penalties for offences relating to Sunday trading.

The Shops Act 1950, the Shops (Airports) Act 1962 and the Shops (Early Closing Days) Act 1965 may be cited together as the Shops Acts 1950 to 1965.

THE SHOPS ACT, 1950
(14 GEO. 6, c. 28)

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PART I

HOURS OF CLOSING

Early Closing Days

1. Closing of shops on early closing day.—(1) Every shop (*a*) shall be closed (*b*) for the serving of customers not later than one o'clock in the afternoon on one week day in every week (*c*).

(2) [*Repealed by the Shops* (*Early Closing Days*) *Act* 1965]

(3) [*Repealed by the Shops* (*Early Closing Days*) *Act* 1965]

(4) Where the local authority (*d*) have reason to believe that a majority of the occupiers of shops (*a*) of any particular class in any area are in favour of being exempted from the provisions of this section, the local authority (*d*), unless they consider that the area in question is unreasonably small, shall take steps to ascertain the wishes of such occupiers.

If the local authority (*d*) are satisfied that a majority of the occupiers of such shops (*a*) are in favour of the exemption, or,

in the case of a vote being taken, that at least one half of the votes recorded by the occupiers of shops (*a*) within the area of the class in question are in favour of the exemption, the local authority (*d*) shall make an order exempting the shops (*a*) of that class within the area from the provisions of this section.

(5) Where a shop (*a*) is closed during the whole day on the occasion of a bank holiday (*i*), and that day is not the day fixed for the early closing day, it shall be lawful for the occupier of the shop to keep the shop open for the serving of customers after the hour at which it is required under this section to be closed either on the half-holiday immediately preceding, or on the half-holiday immediately succeeding, the bank holiday.

(6) This section shall not apply to any shop (*a*) in which the only trade or business carried on is trade or business of any of the classes mentioned in the First Schedule to this Act, but the local authority (*d*) may, by order made and revocable in the manner hereinafter provided with respect to closing orders (*k*), extend the provisions of this section to shops (*a*) of any class exempted under this subsection if satisfied that the occupiers of at least two-thirds of the shops (*a*) of that class approve the order.

(7) Nothing in this section shall prevent the serving of a customer at any time at which the shop (*a*) is required to be closed under this section if it is proved either that the customer was in the shop before (*l*) the time when the shop was required to be closed, or that there was reasonable ground for believing that the article supplied to the customer was required in the case of illness.

(8) Nothing in this section shall prevent customers from being served at a time when the shop (*a*) in which they are served is required to be closed with victuals, stores, or other necessaries for a ship, on her arrival at, or immediately before her departure from, a port.

General note. The Shops (Early Closing Days) Act 1965 (printed at p. 299) alters the whole system of early closing days. Instead of the local authority fixing the day, the shopkeeper himself may do so subject to certain rules in the Act itself. This section is printed as amended by that Act.

(*a*) ***Shop.*** For definition, see s. 74.

(*b*) ***Closing of shop.*** This part of the Act does not apply to shops

at designated airports, see the Shops (Airports) Act 1962. In *Willesden Urban District Council* v. *Morgan*, [1915] 1 K.B. 349, a dairyman locked up his shop at closing time but placed inside it a reservoir of milk connected with an automatic machine outside the shop in such a way that a customer, by putting a coin into the machine, could obtain a supply of milk. It was held (AVORY, J., doubting but not dissenting) that the shop was closed for the serving of customers. This case was followed in *Ilford Corporation* v. *Betterclean (Seven Kings), Ltd.*, [1965] 1 All E.R. 900. Note that shop assistants may be employed after closing time for any purpose except the actual serving of customers. As to carrying on business elsewhere when the shop is closed, see s. 12.

(*c*) ***Week.*** For definition, see s. 74.

(*d*) ***Local authority.*** For definition, see s. 73.

(*e*) ***Order.*** For provisions as to the making and revocation of orders, see ss. 52, 70.

(*f*) ***Different classes of shops.*** In *Fine-Fare, Ltd.* v. *Brighton County Borough Council*, [1959] 1 All E.R. 476, the appellants occupied premises in which they carried on several retail trades. For some of these trades the local authority had fixed Wednesday as early closing day, but the appellants remained open on Wednesday all day, closing instead on Thursday. It was held that they might do this as the order did not apply to mixed shops which could thus choose their own early closing day. The argument that there were a number of different shops (a grocer, a greengrocer, a butcher) under the same roof each having to close on the appropriate day was rejected. A difficulty sometimes arises where a particular article is sold by shops of different classes. Thus in *Schuck* v. *Banks*, [1914] 2 K.B. 491, the half-holiday for butchers was on Monday and for grocers on Thursday. Dripping is sold by both butchers and grocers. It was held that a butcher might lawfully sell dripping on Thursday afternoons provided that he duly closed on Mondays. Since it was a normal incident of a butcher's business to sell dripping the butcher by selling it did not carry on the business of grocer or provision dealer. Had it not been a normal incident of a butcher's business to sell dripping an offence would have been committed. See also s. 13 and the notes thereto.

(*g*) ***Notice.*** No special form of notice is prescribed. As to Jewish shops, see *Miller's Cash Stores, Ltd.* v. *West Ham Corporation*, [1955] 3 All E.R. 282.

(*h*) ***Inquiries by local authority.*** See Regulation 4 of the Shops Regulations 1912, p. 304.

(*i*) ***Bank holiday.*** For definition, see s. 74. If two bank holidays come into the same week it is submitted that no half holiday need be given in either the preceding or the subsequent week (*Todd, Burns & Co., Ltd.* v. *Dublin Corporation*, [1913] 2 I.R. 397).

(*k*) ***Closing order.*** For definition, see s. 8 (1). For provisions as to the making and revocation of closing orders, see ss. 8–11 and the Shops Regulations 1912, pp. 303 *et seq.*

(*l*) ***Customer in shop before closing hour.*** This subsection does not protect a seller who invites customers to come in before closing time in order to make purchases after that time; see *Salford*

Cattle Market Salerooms, Ltd. v. *Osborne* (1923), 92 L.J.K.B. 1018, in which it was held to be illegal for an auctioneer to put up, after closing time, further articles to auction among persons already admitted. See also *Gordon* v. *Somerville*, 1928 S.C.(J) 45; *Moore* v. *Tweedale*, [1935] 2 K.B. 163.

General Closing Hours

2. General closing hours.—(1) Every shop (*a*) shall be closed (*b*) for the serving of customers—

(a) [*Revoked* (*c*)].

(b) *where the foregoing paragraph does not apply* (*c*), not later than nine o'clock in the evening on the late day (*d*) and eight o'clock in the evening on any other day of the week:

(2) [*Revoked* (*c*)].

(3) Nothing in this section shall prevent—

(a) the serving of a customer where it is proved that the customer was in the shop before the closing hour (*e*), or that reasonable grounds existed for believing that the article supplied after the closing hour to a customer was required in the case of illness; or

(b) any transaction mentioned in the Second Schedule to this Act.

(4) [*Revoked* (*c*)].

(*a*) ***Shop.*** For definition, see s. 74.

(*b*) ***Closed.*** This section does not apply to shops at designated airports; see the Shops (Airports) Act 1962. See, also, note (*b*) to s. 1.

(*c*) ***Revocation.*** Sub-s. (1) (a), the proviso to sub-s. (1), sub-s. (2) and sub-s. (4) (which dealt with earlier hours of closing in the winter months) were revoked as from 1st November 1952 by the Shops (Revocation of Winter Closing Provisions) Order 1952 (S.I. 1952 No. 1862); accordingly the general closing hours as set out in s. 2 (1) (b) apply throughout the year.

The words in italics in s. 2 (1) (b) no longer have effect, owing to the revocation of s. 2 (1) (a).

(*d*) ***Late day.*** See s. 3.

(*e*) ***Before the closing hour.*** See note (*k*) to s. 1.

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3. The late day.—The late day referred to in the last foregoing section shall be Saturday unless the local authority (*a*)

by order (*b*) fix some other day as the late day, and any such order may fix the same day for all shops or may fix—

(a) different days for different classes (*c*) of shops;

(b) different days for different parts of their area; or

(c) different days for different periods of the year:

General note. The proviso to this section was repealed by s. 4 (1) (a) of the Shops (Early Closing Days) Act 1965.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Order.*** See note (*e*) to s. 1.

(*c*) ***Different classes of shops.*** See note (*f*) to s. 1.

---

4. Special provision for tobacco and smokers' requisites.—As respects the trade or business of selling tobacco and smokers' requisites—

(a) *paragraph* (a) *of, and the proviso to, subsection* (1) *of section two of this Act and subsection* (2) *of that section shall not apply; and*

(b) a local authority (*a*) may, in their area, or in any part thereof, by order (*b*) substitute for the hours fixed by paragraph (b) of the said subsection (1) later hours, not being later than ten o'clock in the evening on the late day (*c*) or half-past nine o'clock in the evening on any other day, if they are satisfied that such an order is desired by the occupiers of at least two-thirds in number of the shops (*d*) to be affected by the order.

General note. Paragraph (a) of this section no longer has effect owing to the revocation of the provisions of s. 2 to which it referred; see note (*c*) to that section.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Order.*** See note (*e*) to s. 1.

(*c*) ***Late day.*** See s. 3.

(*d*) ***Shop.*** For definition, see s. 74.

---

5. Special provision for newspapers and periodicals.—*As respects the trade or business of selling newspapers and periodicals, paragraph* (a) *of, and the proviso to, subsection* (1) *of section two of this Act and subsection* (2) *of that section shall not apply.*

This section no longer has effect owing to the revocation of the provisions of s. 2 to which it referred; see note (*c*) to that section.

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6. Special provision for confectionery.—As respects the trade or business of selling table waters, sweets, chocolates or other sugar confectionery or ice cream, the following hours shall be substituted for those set out in subsection (1) of section two of this Act, that is to say—

(a) [*Revoked* (*a*)].

(b) *where the foregoing paragraph does not apply* (*a*), ten o'clock in the evening on the late day (*b*) and half-past nine o'clock in the evening of any other day:

Provided that a local authority (*c*) may in their area or any part thereof by order (*d*) substitute for either of the hours mentioned in paragraph (b) of this subsection an earlier hour, not being earlier than eight o'clock in the evening, if they are satisfied that such an order (*d*) is desired by the occupiers of a majority of the shops to be affected by the order (*d*).

(*a*) ***Revocation.*** Paragraph (a) (which dealt with hours of closing in winter months) was revoked as from 1st November 1952 by the Shops (Revocation of Winter Closing Provisions) Order 1952 (S.I. 1952, No. 1862).

The words in italics in para. (b) no longer have effect in consequence of the revocation of para. (a).

(*b*) ***Late day.*** See s. 3.

(*c*) ***Local authority.*** For definition, see s. 73.

(*d*) ***Order.*** See note (*e*) to s. 1.

---

7. Certain provisions as to general closing hours to be temporary [*Revoked by S.I. 1952 No. 1862*].

Closing Orders

8. Closing Orders.—(1) An order (in this Act referred to as "a closing order" (*a*)) made by a local authority (*b*), and confirmed by the Secretary of State in manner provided by this Act, may fix the hours on the several days of the week at which, either throughout the area of the local authority (*b*) or in any specified part thereof, all shops (*c*) or shops of any specified class (*d*) are to be closed (*e*) for serving customers.

(2) The hour fixed by a closing order (*a*) shall not be earlier than seven o'clock in the evening on any day of the week.

(3) The order (*a*) may—

(a) define the shops (*c*) and trades to which the order (*a*) applies; and

(b) authorise sales after the closing hour fixed by the order (*a*) in cases of emergency and in such other circumstances as may be specified or indicated in the order (*a*); and

(c) contain any incidental, supplemental, or consequential provisions which may appear necessary or proper.

(4) Nothing in the foregoing provisions of this Act relating to general closing hours (*f*) shall effect the power of a local authority (*b*) by a closing order (*a*) under this section to fix closing hours earlier than the general closing hours fixed by or under this Act:

Provided that any closing order (*a*) shall be of no effect in so far as it authorises sales after the general closing hours (*f*) fixed by or under this Act or contains provisions inconsistent with the provisions of this Act relating to general closing hours (*f*).

(5) Nothing in any closing order (*a*) shall prevent—

(a) the serving of a customer where it is proved that the customer was in the shop before the closing hour (*g*) fixed by the order, or that reasonable grounds existed for believing that the article supplied after that hour was required in the case of illness; or

(b) any transaction mentioned in the Second Schedule to this Act.

(6) *In the case of a shop as respects which a closing order is in force on the first Sunday in November in any year, the foregoing provisions of this Act as to general closing hours in the winter months shall not be construed as making later the hours at which the shop is required to be closed while the order remains in force* (*h*).

(*a*) ***Order.*** For procedure as to the making of closing orders, see s. 9, *infra*, and for procedure as to revocation, see s. 11.

(*b*) ***Local authority.*** For definition, see s. 73.

(*c*) ***Shop.*** For definition, see s. 74.

(*d*) ***Specified class.*** Where a number of businesses are carried on under one roof, as in a supermarket, the closing order has to be for the whole premises, and there can only be one closing hour for these premises; s. 13 (3) does not apply; *Fine Fare Ltd.* v. *Aberdare U.D.C.*, [1965] 2 Q.B. 39; [1965] 1 All E.R. 679. This case was explained in *Redbridge London Borough Council* v. *Wests (Ilford), Ltd.*, [1968] 1 Q.B. 789; [1968] 1 All E.R. 277, see especially *per* WIDGERY, J.

(*e*) ***Closed.*** See note (*b*) to s. 1.

(*f*) ***General closing hours.*** For definition, see s. 74 (1).

(*g*) ***Customer in shop before closing hour.*** See note (*l*) to s. 1.

(*h*) ***Subsection (6).*** This subsection no longer has effect owing to the revocation by S.I. 1952 No. 1862, of the provisions of the Act dealing with general closing hours in the winter.

---

9. Procedure for making closing orders.—(1) Whenever a local authority (*a*) are satisfied that a prima facie case is made out for making a closing order (*b*), the authority (*a*) shall give public notice in the prescribed manner and in the prescribed form (*c*) of their intention to make an order, specifying therein a period (not being less than the prescribed period) within which objections may be made to the making of the proposed order, and, if after taking into consideration any objections they may have received the local authority are satisfied that it is expedient to make the order and that the occupiers of at least two-thirds in number of the shops to be affected (*d*) by the order approve the order, they may make the order.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied, in the prescribed manner (*c*) and the order shall be submitted to the Secretary of State, and the Secretary of State shall consider any objections to the order, and may either disallow the order or confirm the order with or without amendments.

His power of confirmation shall be exercisable by statutory instrument.

(3) As soon as the Secretary of State has confirmed any order, the order shall become final (*e*) and have the effect of an Act of Parliament:

Provided that every statutory instrument confirming a closing order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Closing order.*** For definition, see s. 8 (1).

(*c*) ***Prescribed manner and prescribed form.*** See the Shops Regulations 1912, regs. 6–22, pp. 305 *et seq.*

(*d*) ***Two-thirds of shops affected.*** As to shops in which several trades or businesses are carried on, see s. 13 (4).

(*e*) ***Order shall become final.*** When once an order has been confirmed it cannot be invalidated on account of any defect in the preliminary proceedings; see the Shops Regulations, 1912, reg. 21, p. 309

and *Hamilton* v. *Fyfe*, 1907 S.C. (J.) 79; *Patent Agents Institute* v. *Lockwood*, [1894] A.C. 347. It may, however, be objected that an order is *ultra vires* (*Mackey* v. *Monks* (*James Henry*) (*Preston*), *Ltd.*, [1918] A.C. 59; *Minister of Health* v. *R.*, *Ex parte Yaffe*, [1931] A.C. 494).

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10. Local inquiries for the purpose of promoting and facilitating early closing.—(1) Where it appears to the Secretary of State, on the representation of the local authority (*a*) or a joint representation from a substantial number of occupiers of shops (*b*) and shop assistants (*d*) in the area of the local authority (*a*), that it is expedient to ascertain the extent to which there is a demand for early closing in any locality, and to promote and facilitate the making of a closing order therein, the Secretary of State may appoint a competent person to hold a local inquiry.

(2) If, after holding such an inquiry and conferring with the local authority (*a*), it appears to the person holding the inquiry that it is expedient that a closing order (*c*) should be made, he shall prepare a draft order and submit it to the Secretary of State together with his report thereon.

(3) If the Secretary of State, after considering the draft order and report, and any representations which the local authority (*a*) may have made in respect thereof, is of opinion that it is desirable that a closing order (*c*) should be made, he may communicate his decision to the local authority, and thereupon there shall be deemed to be a prima facie case for making a closing order in accordance with the terms of the draft order, subject to such modifications (if any) as the Secretary of State may think fit.

(4) The person who held the inquiry shall, if so directed by the Secretary of State on the application of the local authority (*a*), assist and co-operate with the local authority in taking the steps preliminary to making the order.

(*a*) ***Local authority.*** For definition, see s. 73.
(*b*) ***Shop.*** For definition, see s. 74.
(*c*) ***Closing order.*** For definition, see s. 8 (1).
(*d*) ***Shop assistant.*** For definition, see s. 74 (1).

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11. Revocation of closing orders.—The Secretary of State may, at any time on the application of the local autho-

rity (*a*), revoke a closing order (*b*) either absolutely or so far as it affects any particular class of shops (*c*), and, if at any time it is made to appear to the satisfaction of the local authority (*a*) that the occupiers of a majority (*d*) of any class of shops (*c*) to which a closing order (*b*) applies are opposed to the continuance of the order, the local authority (*a*) shall apply to the Secretary of State to revoke the order in so far as it affects that class of shops (*c*), but any such revocation shall be without prejudice to the making of any new closing order (*b*).

The power of the Secretary of State to revoke a closing order (*b*) shall be exercisable by statutory instrument (*e*).

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Closing order.*** For definition, see s. 8 (1).

(*c*) ***Shop.*** For definition, see s. 74.

(*d*) ***Majority.*** As to shops in which several trades or businesses are carried on, see s. 13 (4).

(*e*) ***Statutory instrument.*** See the Statutory Instruments Act 1946.

Trading outside Shops and Shops with Several Trades

12. Trading elsewhere than in shops.—It shall not be lawful in any locality to carry on in any place not being a shop (*a*) retail trade or business (*b*) of any class at any time when it would be unlawful in that locality to keep a shop (*c*) open for the purposes of retail trade or business (*b*) of that class, and, if any person carries on any trade or business (*b*) in contravention of this section, this Part of this Act and the provisions in Part V for the enforcement (*d*) of this Act shall apply as if he were the occupier of a shop and the shop were being kept open in contravention of this Part of this Act:

Provided that—

(a) the prohibition imposed by this section shall be subject, in so far as the prohibition is affected by any closing order (*e*), to such exemptions and conditions, if any, as may be contained in the order; and

(b) nothing in this section shall be construed as preventing a barber or hairdresser from attending a customer in the customer's residence, or the holding of an auction sale of private effects in a private dwelling-house; and

(c) nothing in this section shall apply to the sale of newspapers.

General note. This section is printed as amended by the Shops (Early Closing Days) Act 1965. Nothing in this section requires a person to comply with the provisions for early closing days; see *ibid.*, s. 4 (2).

(*a*) ***Place not being a shop.*** In *Cowden* v. *McEvoy*, [1914] 3 K.B. 108, the respondent's mother carried on a grocer's business in a shop which was duly closed on the half-holiday afternoons (Wednesday). On those afternoons and on no other day the respondent sold groceries at her private house. These groceries were supplied to the respondent by her mother. No notice under s. 4 (2) (i) of the Shops Act 1912 was exhibited in the house substituting Saturday for Wednesday. It was held that she had committed an offence under s. 9 of the 1912 Act, the terms of which are in all material respects the same as those of s. 12 of the present Act.

In *Willesden Urban District Council* v. *Morgan*, [1915] 1 K.B. 349, a dairyman locked up his shop at closing time, but placed inside it a reservoir of milk connected with an automatic machine outside the shop in such a manner that a customer, by putting money into the machine, could obtain a supply of milk. It was held that this was not trading in a place not being a shop.

In *Stone* v. *Boreham*, [1959] 1 Q.B. 1; [1958] 2 All E.R. 715, a mobile shop was held not to be a shop, nor to be a place where retail trade was carried on. This was a decision under s. 47 and s. 58 of the Act, but in *Kahn* v. *Newberry*, [1959] 2 Q.B. 1; [1959] 2 All E.R. 202, the Court held that a costermonger's barrow, which was frequently moved about, was not within s. 12, as it was a mobile counter only and so not a place where a retail trade was carried on. *Quaere*, whether a stall or barrow which is regularly set up on the same spot would be a place within s. 12. It seems that it would be, in the light of *Greenwood* v. *Whelan*, [1967] 1 All E.R. 294, although that case was not under this Act, and only in terms decided that a stall (which could be moved, but was in fact kept in one spot) was not a shop. The test seems to be the degree of permanency; see *Maby* v. *Warwick Corporation*, [1972] 2 Q.B. 242; [1972] 2 All E.R. 1198, another stall case, though in fact under s. 58. See also the Scottish cases of *Nixon* v. *Capaldi*, 1949 S.C.(J.) 155 and *Cowlairs Co-operative Society Ltd.* v. *Glasgow Corporation*, 1957 S.C.(J.) 51.

(*b*) ***Retail trade or business.*** For definition, see s. 74.

(*c*) ***Shop.*** For definition, see s. 74.

(*d*) ***Enforcement.*** For provisions as to enforcement, see s. 71. For penalties, see s. 14.

(*e*) ***Closing order.*** See note (*k*) to s. 1.

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13. Shops where more than one trade or business is carried on.—(1) Where several trades or businesses are carried on in the same shop (*a*), and any of those trades or businesses is of such a nature that, if it were the only trade

or business carried on in the shop (*a*), the shop would be exempt from the obligation to be closed on the early closing day, the exemption (*b*) shall apply to the shop (*a*) so far as the carrying on of that trade or business is concerned, subject, however, to such conditions (*c*) as may be prescribed.

(2) Where several trades or businesses are carried on in the same shop (*a*) and any of those trades or businesses consists only of transactions carried on in the shop (*a*), the provisions of this Act relating to general closing hours would not apply to the shop, the shop may be kept open after the general closing hours for the purposes of those transactions alone, subject, however, to such conditions (*c*) as may be prescribed.

(3) Where several trades or businesses are carried on in the same shop (*a*) and any of those trades or businesses is of such a nature that if it were the only trade or business carried on in the shop a closing order (*d*) would not apply to the shop, the shop may be kept open for the purposes of that trade and business alone after the closing hour fixed by the closing order (*d*), but on such terms and under such conditions as may be specified in the order.

(4) Where several trades or businesses are carried on in the same shop (*a*), the local authority (*e*) may require the occupier of the shop to specify which trade or business he considers to be his principal trade or business, and no trade or business other than that so specified shall for the purpose of determining a majority (*f*) or any proportion or number of occupiers or of shops for the purposes of this Part of this Act, be considered as carried on in the shop (*a*) unless the occupier of the shop satisfies the local authority (*e*) that it forms a substantial part of the business carried on in the shop.

General note. The section is printed as amended by the Shops (Early Closing Days) Act 1965.

(*a*) ***Shop.*** For definition, see s. 74.

(*b*) ***Exemption from early closing day.*** In *Margerison* v. *Wilson* (1914), 112 L.T. 76, where there was a weekly half-holiday for pork butchers but not for confectioners, a confectioner and refreshment-room proprietor sold on the half-holiday pork sausages for consumption off the premises. This was incidental to his main business. It was held that he had committed no offence.

Similar decisions have been given in two Scottish cases. In *Thomson* v. *Somerville*, 1917 S.C. (J.) 3, a company carried on a number of businesses in one set of premises including drapery, ironmongery, upholstery and china, and also had a small hairdressing department for the convenience

of their customers; the whole premises was closed on Tuesday afternoons. The local authority fixed Wednesday as the early closing day for hairdressers' shops, but the company did not close the hairdressing department on that afternoon. It was held that they had committed no offence. In *MacDonald* v. *Groundland*, 1923 S.C. (J.) 28, a jewellery and tobacco business was carried on in the front part of a shop, and hairdressing in the back part. The whole shop was closed on Tuesday afternoons. The local authority fixed Thursday or Saturday as the closing day for hairdressers' shops. It was held that the hairdressing part need not be closed on Thursday or Saturday.

These cases were followed in *Fine-Fare, Ltd.* v. *Brighton County Borough Council*, [1959] 1 All E.R. 476, where the company carried on several businesses under one roof. The local authority had fixed Wednesday as early closing day for certain of those businesses but the company closed the whole shop only on Thursday. It was held they had committed no offence and did not need to close various parts of the shop on different days of the week. See also note (*d*) to s. 8.

In *Redbridge London Borough Council* v. *Wests (Ilford), Ltd.*, [1968] 1 Q.B. 789; [1968] 1 All E.R. 277, it was held that the defendants committed no offence when they kept a department store open on the early closing day but only sold items comprised in an exemption order made under s. 1 (4).

(*c*) ***Conditions.*** See reg. 5 and Form IV of the Shops Regulations 1912.

(*d*) ***Closing order.*** See note (*k*) to s. 1.

(*e*) ***Local authority.*** For definition, see s. 73.

(*f*) ***Determining a majority.*** See ss. 1 (2), proviso iii, (4), (6); s. 4 (6); s. 6, proviso and s. 11.

Supplemental

14. Offences under Part I.—(1) In the case of any contravention (*b*) of any of the provisions of section one (*a*) of this Act, the occupier (*c*) of the shop (*d*) shall be liable to a fine not exceeding—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence (*e*), five pounds; and

(c) in the case of a third or subsequent offence (*e*), ten pounds.

(2) In the case of any contravention (*b*) of any provisions of this Part of this Act not punishable under the foregoing subsection, or of any contravention (*b*) of a closing order (*f*), or of any breach of a condition imposed by any order made under subsection (2) of section two of this Act, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, five pounds;

(b) in the case of a second or subsequent offence (*e*), twenty pounds.

In considering for the purposes of this subsection whether an offence is or is not a first offence, any offence under subsection (3) of section forty-one or subsection (3) of section forty-two of this Act shall be treated as if it were an offence under this subsection.

(*a*) ***Section one.*** The reference to s. 1 includes a reference to the Shops (Early Closing Days) Act 1965 (*ibid.*, s. 5 (2)).

(*b*) ***Contravention.*** For definition, see s. 74.

(*c*) ***Occupier.*** A limited company may be prosecuted under this section; see *Evans & Co., Ltd.* v. *London County Council*, [1914] 3 K.B. 315.

(*d*) ***Shop.*** For definition, see s. 74.

(*e*) ***Second or third offence, etc.*** A second or third offence is one which is committed after a first or second conviction; see *R.* v. *South Shields Licensing Justices*, [1911] 2 K.B. 1.

(*f*) ***Closing order.*** See note (*k*) to s. 1.

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15. Expenses of Secretary of State.—Any expenses incurred by the Secretary of State under this Part of this Act, including the remuneration of any person holding a local inquiry (*a*) under section ten of this Act, shall, to such extent as may be sanctioned by the Treasury, be paid out of moneys provided by Parliament.

(*a*) ***Local inquiry.*** See ss. 10 and 16.

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16. Local inquiries.—In addition to the local inquiries which the Secretary of State is empowered to hold under section ten of this Act, the Secretary of State may cause a local inquiry to be held for the purposes of any of his powers and duties under this Part of this Act, and, save in Scotland, the costs incurred in relation to any such last-mentioned inquiry, including the salary of any officer engaged in the inquiry, not exceeding three guineas a day, shall be paid by the local authority (*a*) concerned, and the Secretary of State may certify the amount of the costs incurred.

Any sums so certified shall be a debt to the Crown from the local authority.

(*a*) ***Local authority.*** For definition, see s. 73.

PART II

CONDITIONS OF EMPLOYMENT

Statutory Half-holiday and Meal Times

17. Statutory half-holiday for shop assistants.—(1) Subject to the provisions of this Part of this Act, on at least one week day in each week a shop assistant (*a*) shall not be employed about the business (*b*) of a shop (*c*) after half-past one o'clock in the afternoon:

Provided that this provision shall not apply to the week preceding a bank holiday (*d*) if the shop assistant (*a*) is not employed on the bank holiday (*d*), and if on one week day in the following week in addition to the bank holiday (*d*) the employment of the shop assistant (*a*) ceases not later than half-past one o'clock in the afternoon.

(2) The occupier of a shop shall fix, and shall specify in a notice in the prescribed (*e*) form, which must be affixed in the shop in such manner and at such time as may be prescribed (*e*), the day of the week on which his shop assistants (*a*) are not employed after half-past one o'clock and may fix different days for different shop assistants (*a*).

(3) In the case of any contravention (*f*) of this section, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence (*g*), five pounds; and

(c) in the case of a third or subsequent offence (*g*), ten pounds—

unless, in the case of a shop assistant (*a*) employed after half-past one o'clock in contravention of this section, he proves that the shop assistant (*a*) was employed merely for the purpose of serving a customer whom he was serving at that time, or, where the time for closing the shop was also half-past one o'clock, that the shop assistant (*a*) was employed merely for the purpose of serving customers who were in the shop at that time (*h*).

In considering for the purposes of this subsection whether an offence is a first, second or subsequent offence, any offence under subsection (2) of section nineteen of this Act shall be treated as if it were an offence under this subsection.

(*a*) ***Shop assistant.*** See ss. 74 and 21 (8).

(*b*) ***Employed about the business of a shop.*** In *George* v. *James*, [1914] 1 K.B. 278, the manager of one of Messrs. Lipton's shops, which was duly closed on half-holidays, employed some of the assistants to distribute in the streets "in their spare time" handbills advertising Lipton's Margarine, but without giving the address of the shop. The assistants in fact distributed them on the half-holiday afternoon. It was held that in so doing the assistants were employed about the business of the shop on the half-holiday and that Lipton, Ltd., had been properly found guilty of an offence.

The principle of that case was followed in *London County Council* v. *Wettman*, [1922] 1 K.B. 153, where a retail confectioner had two shops in London, one in district A and the other in district B. Different early closing days were fixed by the local authorities in the two districts. An assistant belonging to the A shop was found to be working in the B shop on the afternoon of the A early closing day. It was held that an offence had been committed, as the two shops were one business, and the assistant was being employed at the time "about the business" of the A shop.

An assistant who works without the knowledge or consent of his employer is none the less employed about his business, and the latter can only escape the penalty by taking proceedings under s. 71 (6) (*Ward* v. *Smith* (*W. H.*) *& Son*, [1913] 3 K.B. 154).

(*c*) ***Shop.*** For definition, see s. 74.

(*d*) ***Bank holiday.*** For definition, see s. 74. If two bank holidays come in the same week, the assistants need not have a half-holiday either in that week or the preceding one (*Todd, Burns & Co., Ltd.* v. *Dublin Corporation*, [1913] 2 I.R. 397).

(*e*) ***Prescribed.*** See the Shops Regulations, 1912, regs. 1–3, p. 303.

(*f*) ***Contravention.*** For definition, see s. 74.

(*g*) ***Second or third offence, etc.*** See note (*d*) to s. 14.

(*h*) ***Customers in shop at time.*** See note (*l*) to s. 1.

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18. Modifications in application of s. 17 to young persons.—(1) For the purposes of the last foregoing section every young person (*a*) who is wholly or mainly employed about the business of a shop (*b*) shall be deemed to be a "shop assistant" (*c*);

Provided that this subsection shall not apply to any person employed in a residential hotel.

(2) The last foregoing section shall not apply to any young person (*a*) in any week (*d*) unless he is employed as a shop assistant (*c*) for more than twenty-five hours in that week (*d*) and shall not apply to the employment of any young person in a theatre in any week (*d*) (notwithstanding that he may be employed as a shop assistant for more than twenty-five hours in that week (*d*)) if he is not employed in the theatre before midday on any day in that week (*d*).

(3) If in any proceedings against any person in respect of a contravention (*e*) of the last foregoing section in relation to any young person (*a*) it is shown that the young person was not so employed by him in the week (*d*) in which the contravention (*e*) occurred so as to render that section applicable to the young person, it shall be a defence to prove that he did not know, and could not with reasonable diligence have ascertained, that the young person (*a*) was also employed in that week (*d*), as a shop assistant (*c*), by some other employer.

(4) For the purposes of the last foregoing section, every young person (*a*) who is wholly or mainly employed in connection with any retail trade or business carried on in any place not being a shop (*f*) shall be deemed to be a "shop assistant" (*c*) and in the application of that section to persons employed in connection with such a retail trade or business—

(a) subsection (2) shall not apply;

(b) references to "employment about the business of a shop" shall be deemed to include references to employment in connection with any retail trade or business carried on in any place not being a shop (*f*);

(c) references to "a shop" (*b*) shall be deemed to include references to the place in or from which the retail trade or business is carried on; and

(d) references to "the occupier of a shop" shall be deemed to include references to the person by whom the retail trade or business is carried on.

(5) Nothing in this section shall apply with respect to the employment of persons whose hours of employment are regulated by or under the Factories Acts, 1937 and 1948 (*g*).

For the purposes of this subsection, employment wholly or mainly outside a factory (*h*) in collecting, carrying or delivering goods, carrying messages or running errands, being employment for the purposes of retail trade or business carried on from the factory, shall be deemed not to be employment in the business of the factory.

(6) For the purposes of this section, a person who works about the business of a shop (*b*) for the occupier thereof or in connection with any retail trade or business for the person by whom it is carried on shall be deemed to be employed, notwithstanding that he receives no reward for his labour.

(7) In the application of the last foregoing section to young persons (*a*), and in this section, the expression "shop" includes any wholesale shop and any warehouse (*i*) occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

(8) For the purposes of this section, employment in connection with a wholesale shop (*b*) or a warehouse (*i*) occupied by a wholesale dealer or merchant which is neither—

(a) employment within the premises; nor

(b) employment in the collection or delivery of goods or in attendance upon customers or in carrying messages or running errands,

shall not be deemed to be employment about the business of a shop (*b*); but, save as aforesaid, any employment in the service of the occupier of the shop (*b*) upon any work, whether within the shop (*b*) or outside it, which is ancillary to the business carried on at the shop (*b*) shall be deemed to be employment about the business of the shop (*b*), and that expression shall be construed accordingly.

(*a*) ***Young person.*** For definition, see s. 74.

(*b*) ***Shop; wholesale shop.*** For definitions, see ss. 74 and 71 (7).

(*c*) ***Shop assistant.*** For definition, see ss. 74 and 21 (8).

(*d*) ***Week.*** For definition, see s. 74.

(*e*) ***Contravention.*** For definition, see s. 74.

(*f*) ***Trading elsewhere than in shops.*** For application of the Act, see s. 12.

(*g*) ***Factories Acts 1937 and 1948.*** These Acts were repealed and replaced by the Factories Act 1961.

(*h*) ***Factory.*** For definition, see s. 175 of the Factories Act 1961 (Redgrave's Factories Acts, 22nd Edn., pp. 440 *et seq.*).

(*i*) ***Warehouse.*** See note (*c*) to s. 125 of the Factories Act 1961 (Redgrave's Factories Acts, 22nd Edn., p. 362).

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19. Meal times.—(1) Intervals for meals shall be allowed to each shop assistant (*a*) in accordance with Part I of the Third Schedule to this Act:

Provided that this section shall not apply to a shop (*b*) if the only persons employed as shop assistants (*a*) are members of the family of the occupier of the shop, maintained by him and dwelling in his house.

(2) In the case of any contravention of the provisions of this section, the occupier of a shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, one pound;

(b) in the case of a second offence (*c*), five pounds; and

(c) in the case of a third or subsequent offence (*c*), ten pounds.

In considering for the purposes of this subsection whether an offence is a first, second or subsequent offence, any offence under subsection (3) of section seventeen of this Act shall be treated as if it were an offence under this subsection.

(*a*) ***Shop assistant.*** For definition, see ss. 74 and 21 (8). Note that s. 20 modifies this section in the case of young persons.

(*b*) ***Shop.*** For definition, see s. 74.

(*c*) ***Second or third offence.*** See note (*d*) to s. 14. For further provisions as to offences, see s. 71.

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20. Modifications in application of s. 19 to young persons.—(1) In the application of the last foregoing section and of the Third Schedule to this Act to young persons (*a*), the provisions of Part I of the said Schedule shall have effect subject to Part II of that Schedule.

(2) For the purposes of the last foregoing section and the said Schedule, every person who is wholly or mainly employed about the business of a shop (*b*) shall be deemed to be a "shop assistant (*c*)".

(3) For the purposes of the last foregoing section and the said Schedule, every young person (*a*) who is wholly or mainly employed in connection with any retail trade or business carried on in any place not being a shop (*d*) shall be deemed to be a "shop assistant" (*c*), and in the application of that section to persons employed in connection with such a retail trade or business—

(a) references to "a shop" shall be deemed to include references to the place in or from which the retail trade or business is carried on; and

(b) references to "the occupier of a shop" shall be deemed to include references to the person by whom the retail trade or business is carried on.

(4) This section shall not apply to any person employed in a residential hotel who is not a shop assistant (*c*) within the meaning of section seventy-four of this Act, or, in the case of a person employed at premises to which the provisions of the next following section apply, is not wholly or mainly employed there in connection with the business of selling intoxicating liquors or refreshments for consumption on the premises.

(5) Nothing in this section shall apply with respect to the employment of persons whose hours of employment are regulated by or under the Factories Acts 1937 and 1948 (*e*).

For the purposes of this subsection, employment wholly or mainly outside a factory (*f*) in collecting, carrying or delivering goods, carrying messages or running errands, being employment for the purposes of retail trade or business carried on from the factory (*f*), shall be deemed not to be employment in the business of the factory (*f*).

(6) For the purposes of this section, a person who works about the business of a shop (*b*) for the occupier thereof or in connection with any retail trade or business for the person by whom it is carried on, shall be deemed to be employed, notwithstanding that he receives no reward for his labour.

(7) In the application of the last foregoing section and of the Third Schedule to this Act to young persons (*a*), and in this section, the expression "shop" includes any wholesale shop (*b*) and any warehouse occupied for the purpose of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

(8) For the purposes of this section, employment in connection with a wholesale shop (*b*) or a warehouse occupied by a wholesale dealer or merchant which is neither—

(a) employment within the premises; nor

(b) employment in the collection or delivery of goods or in attendance upon customers or in carrying messages or running errands,

shall not be deemed to be employment about the business of a shop (*b*); but, save as aforesaid, any employment in the service of the occupier of the shop upon any work, whether within the shop or outside it, which is ancillary to the business carried on at the shop shall be deemed to be

employment about the business of the shop, and that expression shall be construed accordingly.

(*a*) ***Young person.*** For definition, see s. 74.
(*b*) ***Shop; wholesale shop.*** For definitions, see s. 74.
(*c*) ***Shop assistant.*** For definition, see ss. 74 and 21 (8).
(*d*) ***Place not being a shop.*** See note (*a*) to s. 12.
(*e*) ***Factories Acts 1937 and 1948.*** These Acts were repealed and replaced by the Factories Act 1961.
(*f*) ***Factory.*** For definition, see s. 74, and the Factories Act 1961, s. 175 (Redgrave's Factories Acts, 22nd Edn., pp. 440 *et seq.*).

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21. Application of foregoing provisions to premises for the sale of refreshments.—(1) This section applies to shop assistants (*a*) employed in any premises for the sale of refreshments, whether licensed for the sale of intoxicating liquor or not, if their employment is wholly or mainly in connection with the sale of intoxicating liquors or refreshments for consumption on the premises.

(2) The foregoing sections of this Part of this Act shall not apply to shop assistants (*a*) to whom this section applies if the occupier of the premises in which they are employed, by such a notice as is hereinafter mentioned, signifies that he elects that, instead of those provisions, the following provisions shall apply.

(3) The said provisions are—

(a) that no assistant (*a*) to whom this section applies shall be employed for more than sixty-five hours in any week exclusive of meal times;

(b) that provision shall be made for securing to every assistant (*a*) to whom this section applies—

(i) thirty-two whole holidays on a week day in every year of which at least two shall be given within the currency of each month and which shall comprise a holiday on full pay of not less than six consecutive days so, however, that two half-holidays on a week day shall be deemed equivalent to one whole holiday on a week day;

(ii) twenty-six whole holidays on Sunday in every year, so distributed that at least one out

of every three consecutive Sundays shall be a whole holiday;

(c) that unless the only persons employed as shop assistants (*a*) are members of the family of the occupier of the premises maintained by him and dwelling in his house—

(i) intervals for meals shall be allowed to every assistant to whom this section applies amounting on a half-holiday to not less than three-quarters of an hour, and on every other day to not less than two hours, and

(ii) no assistant (*a*) shall be employed for more than six hours without being allowed an interval of at least half an hour;

(d) that the occupier shall affix and constantly maintain in a conspicuous position in the premises a notice in the prescribed form (*b*) referring to the provisions of this section, and stating the steps taken with a view to compliance therewith.

(4) Paragraph (a) of the last foregoing subsection shall not apply to any young person (*c*) whose hours of employment are regulated under sections twenty-four to thirty-one of this Act.

(5) Where the occupier of any premises has signified as aforesaid that he elects that the foregoing provisions of this section shall apply, and any of those provisions are not complied with, the occupier of the premises shall be liable to a fine not exceeding—

(a) in the case of a first offence, one pound; and

(b) in the case of a second offence (*d*), five pounds; and

(c) in the case of a third or subsequent offence (*d*), ten pounds.

(6) For the purposes of this section, the expression "half-holiday" means a day on which the employment of an assistant (*a*) ceases not later than three o'clock in the afternoon and on which he is not employed for more than six hours including meal time.

(7) A notice under this section may be withdrawn by the occupier of the shop (*e*) at the expiration of a year from the date when it was given, and thereafter at the expiration of

any succeeding year, and upon any such withdrawal the foregoing sections of this Part of this Act shall apply to the shop in like manner as before the notice was given.

(8) The foregoing sections of this Part of this Act and Part III of this Act shall, in their application to any premises in respect to which a notice under this section is in force, have effect as though the expression "shop assistant" (*a*) included all persons wholly or mainly employed in any capacity at the premises in connection with the business there carried on.

(*a*) ***Shop assistant.*** For definition, see s. 74, and sub-s. (8) of this section.

(*b*) ***Prescribed form.*** See the Shops Regulations 1913, Schedule, p. 315.

(*c*) ***Young person.*** For definition, see s. 74.

(*d*) ***Second or third offence.*** See note (*d*) to s. 14.

(*e*) ***Shop.*** For definition, see s. 74.

Sunday Employment in England and Wales.

22. Sunday employment.—(1) No person shall be employed on Sunday about the business of a shop (*a*) which is open for the serving of customers on that day unless the following requirements are complied with—

(a) in the case of a person so employed for more than four hours on any Sunday, that person shall—

(i) receive in respect of his employment on that Sunday a whole holiday on a day other than that of his statutory half-holiday, if any, and that whole holiday shall be on a weekday of the week beginning with that Sunday unless he has, in respect of his employment on that Sunday, already received such a holiday on a weekday of the previous week;

(ii) not be employed about the business of a shop (*a*) on more than two other Sundays in the same month;

(b) in the case of a person not so employed for more than four hours on a Sunday in any month, that person shall receive in respect of his employment on any Sunday in the month a half-holiday in addition to his statutory half-holiday, if any, and that additional

half-holiday shall be on a weekday of the week beginning with that Sunday unless he has, in respect of his employment on that Sunday already received such a half-holiday on a weekday of the previous week;

Provided that this subsection shall not apply—

(i) to any person employed wholly or mainly in connection with the sale of intoxicating liquor; or

(ii) to any shop assistant (*b*) employed in any premises for the sale of refreshments to whom the provisions of paragraphs (a), (b), (c) and (d) of subsection (3) of the last foregoing section apply by virtue of an election made under that section by the occupier of the premises; or

(iii) to any person employed wholly or mainly as a milk roundsman; or

(iv) to any person wholly employed in the transaction of post office business (*c*); or

(v) to any registered pharmacist within the meaning of the Pharmacy and Poisons Act, 1933, employed in connection with the sale or supply of medicines or medical or surgical appliances in any premises required to be kept open on Sunday for the serving of customers in pursuance of a contract between the occupier of the premises and an Executive Council (*d*)—

(a) if he is not employed for more than two hours on that Sunday, and has not been employed on the previous Sunday, and

(b) if on a weekday (other than the day of the statutory half-holiday) of the previous week or of the week commencing with the Sunday on which he is so employed, either he has not been, or will not be, employed before half-past ten o'clock in the morning, or has not been, or will not be, employed after six o'clock in the afternoon.

(2) For the purposes of this section—

(a) a person who works about the business of a shop (*a*) for the occupier thereof shall be deemed to be employed notwithstanding that he receives no reward for his labour;

(b) in relation to any person employed about the business of a shop (*a*) the following expressions have the meanings hereby respectively assigned to them, that is to say,

"whole holiday" means a day on which that person is not employed about the business of that shop (*a*);

"statutory half-holiday" means a day on which under section seventeen of this Act he is not employed about the business of that shop (*a*) after half-past one o'clock in the afternoon;

"half-holiday" means a day on which he is either not employed before, or not employed after, half-past one o'clock in the afternoon of that day about the business of that shop (*a*).

(3) The occupier of any shop (*e*) which by virtue of any provision of Part IV of this Act, other than section sixty-two, is open for the serving of customers on Sunday shall keep in the prescribed form (*f*) and in the prescribed manner a record of the names of and the hours worked by all the persons employed about the business of the shop (*a*) on Sunday, who are entitled to any holidays prescribed by this section, and of the respective days of the week upon which those persons receive those holidays.

(4) Nothing in this section shall authorise the employment of any person at any time when it would under any other provision of this Act or under the Sunday Entertainments Act, 1932, be unlawful for him to be so employed.

(5) Nothing in this section shall apply to the carrying on on Sunday of the business of a retail dealer in butcher's meat.

(6) In the case of any contravention of this section, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, five pounds;

(b) in the case of a second or subsequent offence (*g*), twenty pounds.

In considering for the purposes of this subsection whether an offence is or is not a first offence, any offence under subsection (1) of section fifty-nine of this Act shall be treated as if it were an offence under this subsection.

(7) This section shall not extend to Scotland.

(*a*) ***Employed about the business of a shop.*** This includes the delivering of advertisements of the wares sold; see *George* v. *James*, [1914] 1 K.B. 278, and note (*b*) to s. 17.

(*b*) ***Shop assistant.*** For definition, see s. 74.

(*c*) ***Post Office business.*** This refers to business of any of the kinds that the Post Office carries on (Post Office Act 1969, s. 76 and Sch. 4, para. 51).

(*d*) ***Executive Council.*** For provisions as to Executive Councils, see National Health Service Act 1946, s. 31 and Fifth Schedule, as amended by National Health Service (Amendment) Act 1949, s. 29 (1), and Schedule, Part I.

(*e*) ***Shop.*** For definition, see s. 74.

(*f*) ***Prescribed form and prescribed manner.*** See the Shops Regulations 1937, regs. 8–11, and Schedule, Form VII, pp. 319, 323. See also s. 76 (2), (3) of this Act.

(*g*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

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23. Sunday employment in retail trading elsewhere than in shops.—The last foregoing section shall extend to any place (*a*) outside Scotland where any retail trade or business (*b*) is carried on as if that place were a shop (*c*), and as if in relation to any such place (*a*) the person by whom the retail trade or business (*b*) is carried on were the occupier of a shop, but as so extended shall apply only to persons wholly or mainly employed in connection with the retail trade or business (*b*) carried on at that place (*a*).

(*a*) ***Place.*** For the purposes of this section neither a warehouse nor a box tricycle is a "place": the warehouse is not because it is not open for the service of customers and no retail trade is carried on at it; the tricycle is not because though always at a place it never can be a place; see *Eldorado Ice Cream Co., Ltd.* v. *Clark*, [1938] 1 K.B. 715; [1938] 1 All E.R. 330.

This case was followed in *Stone* v. *Boreham*, [1959] 1 Q.B. 1; [1958] 2 All E.R. 715, where a mobile shop was held not to be a place where retail trade was carried on. See also *Kahn* v. *Newberry*, [1959] 2 Q.B. 1; [1959] 2 All E.R. 202, where the same decision was reached in the case of a costermonger's barrow. But if a stall were regularly set up in the same spot it might be a place within this section even if it was on wheels. The test will be the degree of permanency; see *Maby* v. *Warwick Corporation*, [1972] 2 Q.B. 242; [1972] 2 All E.R. 1198, where, under s. 58, a stall was held to be a place. See also the Scottish cases of *Nixon* v. *Capaldi*, 1949 S.C. (J.) 155 and *Cowlairs Co-operative Society Ltd.* v. *Glasgow Corporation*, 1957 S.C. (J.) 51.

(*b*) ***Retail trade or business.*** For definition, see s. 74.

(*c*) ***Shop.*** For definition, see s. 74.

Hours of Employment of Young Persons

24. Hours of employment of persons between 16 and 18.—(1) Subject to the following provisions of this Part of this Act, no young person (*a*) between the ages of sixteen and eighteen years shall be employed about the business of a shop (*b*) for more than the normal maximum working hours (*c*), that is to say, forty-eight working hours (*c*) in any week.

(2) On occasions of seasonal or exceptional pressure of work at any shop (*b*), young persons (*a*) between the ages of sixteen and eighteen years may, subject as hereinafter provided, and subject to the provisions of any other enactment, be employed about the business of the shop overtime, that is to say, in excess of the normal maximum working hours (*c*):

Provided that in the case of any shop (*b*)—

(a) when in any year there have been six weeks (whether consecutive or not) in which young persons have been employed overtime about the business of the shop (*b*), no young person (*a*) shall be so employed during the remainder of that year;

(b) no young person shall be employed overtime about the business of the shop (*b*)—

(i) in any year after he has been employed overtime about the business of the shop (*b*) for fifty working hours in that year;

(ii) in any week after he has been employed overtime about the business of the shop (*b*) for twelve working hours in that week.

(3) In the case of any contravention (*d*) of the provisions of this section, the occupier of the shop shall be liable to a fine not exceeding ten pounds for every person in respect of whom the contravention occurs.

(4) In this section—

"shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant;

"year" means the period between midnight on the last Saturday in the month of December and midnight on the last Saturday night in the next month of December.

General note. Though this section is of general application, special provisions apply to certain trades or businesses; see s. 25 for its application to the catering trade and s. 26 for its application to the selling of accessories for aircraft, motor vehicles and cycles. See also ss. 34 and 46 for cases to which this section does not apply or exemption has been granted. Where a business is carried on at a residential hotel, a place of public entertainment or amusement or a public swimming bath, bathing place or turkish bath, the employer may, by s. 68, elect that Pt. I of the Young Persons (Employment) Act 1938 applies.

(*a*) ***Young person.*** For definition, see s. 74 (1). See also s. 74 (2) for the meaning of "between the ages of . . ."

(*b*) ***Shop.*** For definition, see s. 74 (1), and also sub-s. (4) of this section. See also s. 33.

(*c*) ***Working hours.*** For definition, see s. 74 (1).

(*d*) ***Contravention.*** See s. 29 (2).

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25. Hours of employment of persons between 16 and 18 in catering trade.—(1) The occupier of any shop (*a*) in which there is carried on the business of serving meals, intoxicating liquors, or refreshments to customers for consumption on the premises may, by exhibiting a notice (*b*) to that effect, secure that the provisions of this subsection will, during a period of two consecutive weeks (*c*) specified in the notice (*b*), be applicable to that shop, and when such a notice has been duly exhibited in the prescribed form and in the prescribed manner (*b*) and at such time before the period therein specified as may be prescribed, then—

(a) a young person between the ages (*d*) of sixteen and eighteen years whose employment is wholly or mainly in connection with the said business, shall be deemed, for the purposes of the last foregoing section, not to be employed about the business of the shop (*a*) in excess of the normal maximum working hours in either week (*c*) of the period specified in the notice (*b*), if he is employed about the business thereof neither for more than sixty working hours in either week (*c*) nor for more than ninety-six hours throughout the period and

(b) the provisions of the last foregoing section permitting employment overtime shall not apply during the period specified in the notice (*b*) in relation to young persons whose employment is such as aforesaid:

Provided that, after the provisions of this subsection have been applicable to any shop during twelve such periods beginning in any calendar year, the said provisions shall not again be applicable to the shop in that year.

(2) If the occupier of any shop (*a*) gives notice (*b*) that he elects that the provisions of this subsection shall not be applicable to that shop, then, unless and until the notice (*b*) is withdrawn, the said provisions shall not be applicable thereto, but as respects business carried on at any shop (*a*) to which the said provisions are not so rendered inapplicable—

(a) proviso (a) to subsection (2) of the last foregoing section shall not apply to the overtime employment of persons whose employment is wholly or mainly in connection with the business of serving meals, intoxicating liquors, or refreshments to customers for consumption on the premises, and

(b) if other business is carried on in the shop (*a*), the overtime employment of persons in relation to whom this subsection applies shall not be taken into account for the purposes of the application of the said proviso in relation to other young persons (*e*):

Provided that, while the provisions of this subsection are applicable to a shop (*a*), the last foregoing section shall, in relation to any young persons (*e*) so employed in connection with the business aforesaid, have effect as if in proviso (b) to subsection (2) thereof there were inserted the following additional paragraph, that is to say—

(iii) in any period of two consecutive weeks so that he is employed overtime about the business of the shop for more than eight working hours in that period.

(3) A notice (*b*) given under the last foregoing subsection with respect to any shop, and a notice (*b*) withdrawing any such notice (*b*) as aforesaid, shall be given in such form, in such manner, and subject to such conditions as may be prescribed (*b*), to the local authority (*f*) whose duty it is to enforce this section within the district in which the shop (*a*) is situated, and any such notice (*b*) shall take effect on such date after it is given as may be prescribed.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Shop.*** For definition, see s. 74 (1). An employer may, by giving notice under s. 68, elect that Pt. I of the Young Persons (Employment) Act 1938 applies, where the business is carried on at a residential hotel, a place of public entertainment or amusement or a public swimming bath, bathing place or turkish bath.

(*b*) ***Notice in prescribed form and manner.*** See the Shops Regulations 1939, regs. 2, 3 (1), (3), 8 and Schedule, Forms A, B (1) and B (2), pp. 328 *et seq.*

(*c*) ***Week.*** For definition, see s. 74 (1).

(*d*) ***"Between the ages of . . . ."*** See s. 74 (2).

(*e*) ***Young person.*** For definition, see s. 74 (1).

(*f*) ***Local authority.*** For definition, see s. 73.

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26. Hours of employment of persons between 16 and 18 selling accessories for aircraft, motor vehicles and cycles.—(1) If the occupier of any shop (*a*) in which there is carried on the business of serving customers with supplies or accessories for aircraft, motor vehicles, or cycles sold for immediate use gives notice (*b*) that he elects that the provisions of this subsection shall be applicable to that shop (*a*), then, unless and until the notice (*b*) is withdrawn, in relation to young persons between the ages of sixteen and eighteen years employed in connection with the business aforesaid, the normal maximum working hours shall, instead of being forty-eight working hours in any week (*c*), be such number of hours, being neither more than fifty-four in any week (*c*) nor more than one hundred and forty-four in any period of three consecutive weeks (*c*), as may be specified in the notice, and section twenty-four of this Act shall have effect accordingly:

Provided that, while the provisions of this subsection are applicable to a shop (*a*), section twenty-four of this Act shall in relation to any young person (*d*) employed in connection with the business aforesaid have effect as if in proviso (b) to subsection (2) thereof there were inserted the following additional paragraphs, that is to say—

(iii) (a) in any week (*c*) after he has been employed about the business of the shop (*a*) for fifty-four working hours in that week (*c*);

(iii) (b) in any period of three consecutive weeks (*c*) so that he is employed overtime about the business of the shop (*a*) for more than twelve working hours in that period.

(2) If the occupier of any shop (*a*) gives notice (*b*) that he elects that the provisions of this subsection shall not be applicable to that shop (*a*) then, unless and until the notice (*b*) is withdrawn, the said provisions shall not be applicable thereto, but as respects business carried on at any shop to which the said provisions are not so rendered inapplicable—

(a) proviso (a) to subsection (2) of section twenty-four of this Act shall not apply to the employment of persons employed in connection with the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use, and

(b) if other business is carried on in the shop (*a*), the overtime employment of persons in relation to whom this subsection applies shall not be taken into account for the purposes of the application of the said proviso in relation to any other young persons (*d*):

Provided that, while the provisions of this subsection are applicable to a shop (*a*), section twenty-four of this Act shall, in relation to any young person (*d*) employed in connection with the business aforesaid, have effect as if in proviso (b) to subsection (2) thereof there were inserted the following paragraph, that is to say—

(iii) (b) in any period of three consecutive weeks (*c*) so that he is employed overtime about the business of the shop (*a*) for more than twelve working hours in that period.

(3) A notice (*b*) given under subsection (1) or under subsection (2) of this section with respect to any shop (*a*) and a notice (*b*) withdrawing any such notice (*b*) as aforesaid shall be given in such form, in such manner and subject to such conditions as may be prescribed (*e*) to the local authority (*f*) whose duty it is to enforce this section within the district in which the shop (*a*) is situated, and any such notice (*b*) shall take effect on such date after it is given as may be prescribed (*e*).

(4) Where two or more retail trades or businesses are carried on in the same shop (*a*), and the business of serving customers with supplies or accessories for aircraft, motor vehicles, or cycles sold for immediate use is not the principal retail trade or business carried on in the shop (*a*), the provisions of this section shall apply only in relation to young persons (*d*)

employed about the business of the shop (*a*) who are wholly or mainly employed in connection with the business of serving customers with such supplies or accessories as aforesaid.

(5) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (5) of this section.

(*b*) ***Notice.*** The notice must be given in the prescribed form and manner; see the Shops Regulations 1939, regs. 3 (2), (3), 4, 8 and Schedule, Forms C (1), C (2), D (1), D (2), pp. 328 *et seq.*

(*c*) ***Week.*** For definition, see s. 74 (1).

(*d*) ***Young person.*** For definition, see s. 74 (1).

(*e*) ***Prescribed.*** For definition, see s. 74 (1).

(*f*) ***Local authority.*** For definition, see s. 73.

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27. Hours of employment of persons under 16.— (1) Subject to the provisions of this section, no person who has not attained the age of sixteen years shall be employed about the business of a shop (*a*) for more than the normal maximum working hours (*b*), that is to say, forty-four working hours in any week (*c*).

(2) The occupier of a shop (*a*) may, by exhibiting a notice (*d*) to that effect, secure that the next following subsection shall be applicable to the shop (*a*) during the week (*c*) within which Christmas Day falls and either the week before or the week (*c*) after that week (*c*), as may be specified in the notice (*d*).

(3) When such a notice (*d*) has been duly exhibited in the prescribed form and in the prescribed manner and at such time before the period therein specified as may be prescribed (*e*), then, in relation to a young person (*f*), employed about the business of the shop (*a*) who has not attained the age of sixteen years, the normal maximum working hours shall, as respects the period specified in the notice (*d*), be neither more than forty-eight in either week of that period nor more than eighty-eight throughout that period.

(4) In the case of any contravention (*g*) of the provisions of this section, the occupier of the shop shall be liable to a fine

not exceeding ten pounds for every person in respect of whom the contravention (*g*) occurs.

(5) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (5) of this section. See also s. 33.

(*b*) ***Working hours.*** For definition, see s. 74 (1).

(*c*) ***Week.*** For definition, see s. 74 (1).

(*d*) ***Notice.*** The notice must be exhibited in the prescribed form and manner. For particulars see the Shops Regulations 1939, regs. 1, 8 and Schedule, Form Z, pp. 327 *et seq.*

(*e*) ***Prescribed.*** For definition, see s. 74 (1).

(*f*) ***Young person.*** For definition, see s. 74 (1).

(*g*) ***Contravention.*** See ss. 29, and 71 (5) and (6).

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28. Employment partly in factory and partly in shop.—(1) No young person (*a*) who has to the knowledge of the occupier of a shop (*b*) been previously employed on any day in a factory (*c*) shall be employed on that day about the business of the shop (*b*) for a longer period than will, together with the time during which he has been previously employed on that day in the factory (*c*), complete the number of hours permitted by the Factories Acts 1937 and 1948 (*d*).

(2) In the case of any contravention (*e*) of the provisions of this section, the occupier of the shop (*b*) shall be liable to a fine not exceeding ten pounds for every person in respect of whom the contravention (*e*) occurs.

(3) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Young person.*** For definition, see s. 74 (1).

(*b*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (3) of this section. See also s. 33.

(*c*) ***Factory.*** For definition, see s. 74 (1) and Factories Act 1961, s. 175 (Redgrave's Factories Acts, 22nd Edn., p. 440).

(*d*) ***Factories Acts 1937 and 1948.*** These Acts were repealed and replaced by the Factories Act 1961. See especially ss. 86 and 87 of the Act of 1961 (Redgrave's Factories Acts, 22nd Edn., pp. 253, 256).

(*e*) ***Contravention.*** See ss. 29 and 71 (5) and (6).

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29. Method of computing hours of employment.—(1) In determining for the purposes of this Part of this Act the number of working hours (*a*) for which a young person (*b*) has in any week (*c*) or period of two or three consecutive weeks been employed about the business of any shop (*d*), he shall be deemed to have been also employed about the business thereof during any time during which he was in that week (*c*) or period employed—

(a) about the business of any other shop;

(b) in a factory (*e*);

(c) in or in connection with any process (not being a process to which section one hundred and six of the Factories Act 1937 applies (*f*)) carried on at any dock, wharf or quay to which section one hundred and five of the Factories Act 1937 applies or any warehouse (*g*) (except a warehouse (*g*) which forms part of a factory (*e*) or a warehouse (*g*) occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant) and by a person having the use or occupation of the dock, wharf, quay or warehouse (*g*) or of premises within it or forming part of it;

(d) in or in connection with the process of loading, unloading or coaling any ship in any dock, harbour or canal (*h*);

(e) in the collection or delivery of goods, or in any carrying loading or unloading of goods incidental to the collection or delivery thereof;

(f) in connection with a business carried on at any premises in carrying messages or running errands, being employment wholly or mainly outside the premises;

(g) in collecting, carrying or delivering goods, carrying messages or running errands, being employed in connection with any business carried on at such a dock, wharf, quay or warehouse (*g*) as is mentioned in

paragraph (c) of this subsection and by a person having such use or occupation as is therein mentioned;

(h) at a residential hotel (*i*) or club in carrying messages or running errands, or in connection with the reception of guests or members thereat;

(i) in connection with the business carried on at any premises where a newspaper is published, in carrying messages or running errands;

(j) at a place of public entertainment or amusement, or at a public swimming-bath, bathing place or turkish bath, for carrying messages or running errands, or in the reception of or attendance upon persons resorting thereto;

(k) elsewhere than in a private dwelling-house, in the operation of a hoist or lift connected with mechanical power;

(l) in, or in connection with, the operation of cinematograph apparatus;

(m) at any premises occupied for the purposes of a laundry, dyeing or cleaning works or other factory (*e*), in receiving or despatching goods.

(2) If in any proceedings against the occupier of a shop in respect of a contravention of the provisions of this Part of this Act it is shown that the contravention (*k*) occurred only by reason of time during which a young person (*b*) was employed by another employer being deemed, in accordance with the provisions of this section, to be time during which he was employed about the business of that shop (*d*), it shall be a defence to prove that the occupier did not know and could not with reasonable diligence have ascertained that the young person (*b*) was employed for that time by the other employer.

(3) In this section the expression "shop" includes any wholesale shop and any warehouse (*g*) occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant, and for the purposes of subsection (1) of this section

(a) the expression "premises" means, in relation to a young person (*b*), premises occupied by his employer

for the purposes of the business in connection with which that person is employed; and

(b) the carrying on of a club shall be deemed to be a business notwithstanding that the club is not carried on for the purposes of profit:

Provided that, for the purposes of paragraphs (c), (d) and (g) of that subsection, the foregoing provisions of this subsection shall not apply but section one hundred and fifty-two of the Factories Act 1937 (*l*) shall apply for the interpretation of those paragraphs.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Working hours.*** For definition, see s. 74 (1).

(*b*) ***Young person.*** For definition, see s. 74 (1).

(*c*) ***Week.*** For definition, see s. 74 (1).

(*d*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (3) of this section. See also s. 33.

(*e*) ***Factory.*** For definition, see the Factories Act 1961, s. 175 (Redgrave's Factories Acts, 22nd Edn., p. 440). As to employment of young persons in a factory see the Factories Acts 1961, Part VI (*op. cit.*, pp. 253 *et seq.*).

(*f*) ***Process . . . applies.*** See now s. 125 of the Factories Act 1961 (Redgrave's Factories Act, 22nd Edn., pp. 358 *et seq.*).

(*g*) ***Warehouse.*** See note (*c*) to s. 125 of the Factories Act 1961 (Redgrave's Factories Acts, 22nd Edn., p. 362).

(*h*) ***Loading . . . canal.*** See the Factories Act 1961, s. 125 (3) (Redgrave's Factories Acts, 22nd Edn., p. 360).

(*i*) ***Residential hotel.*** For definition, see s. 74 (1).

(*k*) ***Contravention.*** See ss. 74 (1), and 71 (5) and (6).

(*l*) ***Factories Act 1937.*** Now s. 176 of the Factories Act 1961.

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30. Power to regulate employment in spells.—(1) If the Secretary of State is satisfied that it is necessary to make provisions for preventing the hours of employment of young persons (*a*) from being so divided into spells as to deprive them of reasonable opportunities for instruction and recreation, he may make regulations (*b*) directing that, subject to such exceptions and modifications as may be provided by the regulations (*b*), the working hours (*c*) of a young person (*a*) employed shall (notwithstanding anything in the definition of the expression "working hours" contained in this Act) be deemed, for the purposes of this Part of this Act, to include

the period from the time at which that person first begins on any day to be employed about the business of a shop (*d*) until the time at which he last ceases on that day to be so employed, exclusive only—

(a) of such intervals, whether for rest or meals or otherwise; and

(b) of time allowed for attendance at such instructional courses,

as may be specified in the regulations (*b*).

(2) The power under this section to make regulations (*b*) shall be exercisable by statutory instrument, and any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Young person.*** For definition, see s. 74 (1).

(*b*) ***Regulations.*** No regulations have yet been made or have effect as if made under this section

(*c*) ***Working hours.*** For definition, see s. 74 (1), in conjunction with the latter part of this subsection.

(*d*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (3) of this section. See also s. 33.

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31. Night employment.—(1) A young person (*a*) who is employed about the business of a shop (*b*) shall in every period of twenty-four hours between midday on one day and midday on the next day be allowed an interval of at least eleven consecutive hours, which shall include the hours from ten o'clock in the evening until six o'clock in the morning:

Provided that the said interval of eleven consecutive hours need not include the hour between five and six o'clock in the morning in the case of male persons between the ages of sixteen and eighteen (*c*) years who are employed during that hour in connection with the collection or delivery of milk or bread or newspapers.

(2) As respects male persons between the ages of sixteen and eighteen (*c*) years whose employment is wholly or mainly

in connection with the business of serving meals to customers for consumption on the premises, the interval of at least eleven consecutive hours required by this section need not include any time between ten o'clock in the evening and midnight during which they are wholly employed in connection with that business.

(3) As respects young persons (*a*) between the ages of sixteen and eighteen (*c*) employed wholly or mainly in connection with any retail trade or business carried on in a theatre (*d*) where a performance is taking place which begins before and ends after ten o'clock in the evening, the interval of at least eleven consecutive hours required by this section need not include any time between ten o'clock in the evening and the time at which the performance ends.

(4) In the case of any contravention (*e*) of the provisions of this section, the occupier of the shop (*b*) shall be liable to a fine not exceeding ten pounds for every person in respect of whom the contravention (*e*) occurs.

(5) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Young person.*** For definition, see s. 74 (1).

(*b*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (5) of this section. See also s. 33.

(*c*) ***"Between the ages of . . ."*** For meaning, see s. 74 (2).

(*d*) ***Theatre.*** For the definition of the terms "theatre" and "performance," see s. 74 (1).

(*e*) ***Contravention.*** See ss. 74 (1), and s. 71 (5) and (6).

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32. Records.—(1) Subject to the provisions of this section, the occupier of any shop (*a*) about the business of which young persons (*b*) are employed shall in the prescribed form and in the prescribed manner (*c*) keep a record of the hours worked by, and of the intervals allowed for rest and meals to, every young person (*b*) employed about the business of the shop (*a*), and particulars of all employment overtime shall be separately entered in the record.

(2) If the occupier of any shop (*a*) keeps exhibited in the prescribed manner (*c*) in the shop or in any department thereof notices in the prescribed form (*c*) specifying the daily hours to be worked by, and intervals for rest and meals to be allowed to, young persons (*b*) employed about the business of the shop (*a*) or of the department, as the case may be, he need only enter in the said record any time which any such person is employed about the business of the shop (*a*) or department outside the daily hours so specified or during the intervals so specified:

Provided that any such time shall be entered as, and shall be deemed to be, overtime, unless the time was worked by that person in lieu of time not worked by him during the same week within the specified daily hours, and both the time not so worked and the time worked in lieu thereof are entered in the record.

(3) The occupier of any shop (*a*) about the business of which young persons (*b*) are employed shall in the prescribed form and in the prescribed manner (*c*) keep exhibited in the shop notices setting forth the number of hours in the week during which young persons may in accordance with the provisions of this Act be employed about the business of the shop (*a*) and such other particulars as may be prescribed.

(4) The provisions of the last foregoing subsection shall not apply as respects any place in which retail trade or business is carried on, not being a shop (*a*).

(5) In the case of any contravention (*d*) of the foregoing provisions of this section, the occupier of the shop shall be liable to a fine not exceeding five pounds for every day on which the contravention (*d*) occurs or continues.

(6) If any person with intent to deceive (*e*) makes, or causes or allows to be made, in any such record or notice as aforesaid an entry which is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such record or notice an entry required to be made therein, he shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(7) In this section the expression "shop" includes any wholesale shop and any warehouse occupied for the purposes

of his trade by any person carrying on any retail trade or business or by any wholesale dealer or merchant.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Shop.*** For definition, see s. 74 (1), and sub-s. (7) of this section. See also s. 33.

(*b*) ***Young person.*** For definition, see s. 74 (1).

(*c*) ***Prescribed form and manner.*** For particulars, see the Shops Regulations 1939, regs. 5, 6, 8, and Schedule, Forms E, F, G, H and J, pp. 330 *et seq.* See also s. 76 (2) and (3).

(*d*) ***Contravention.*** See ss. 74 (1) and 71 (5) and (6).

(*e*) ***Intent to deceive.*** See note (*a*) to s. 68 of the Offices, Shops and Railway Premises Act 1963.

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33. Extension of foregoing provisions as to young persons to retail trading elsewhere than in shops.—The provisions of section twenty-four and sections twenty-seven to thirty-two of this Act shall extend to the employment of young persons in connection with any retail trade or business carried on in any place not being a shop (*a*), and accordingly—

(a) in those provisions references to employment about the business of a shop (*b*) shall be deemed to include references to such employment as aforesaid, and

(b) for the purposes of the application of those provisions to such employment, references in this Act to a shop shall be deemed to include references to the place in or from which the retail trade or business is carried on, and references to the occupier of a shop shall be deemed to include references to the person by whom the retail trade or business is carried on.

General note. See s. 34 for cases to which this section does not apply.

(*a*) ***Place not being a shop.*** See note (*a*) to s. 12.

(*b*) ***Shop.*** For definition, see s. 74 (1), in conjunction with this section.

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34. Cases where foregoing provisions as to employment of young persons do not apply.—(1) Sections twenty-four to thirty-three of this Act shall not apply to—

(a) any person employed in a residential hotel (*a*) who is not a shop assistant (*b*) within the meaning of section seventy-four of this Act, or, in the case of a person

employed at premises to which the provisions of section twenty-one of this Act apply, is not wholly or mainly employed there in connection with the business of selling intoxicating liquors or refreshments for consumption on the premises;

(b) the employment of persons in or about a theatre (*c*) except in relation to young persons (*d*) employed wholly or mainly in connection with any retail trade or business (*e*) carried on in the theatre.

(2) Sections twenty-four to thirty-three of this Act, except for the provisions of sections twenty-eight and twenty-nine in so far as they relate to employment in a factory (*f*), shall not apply with respect to the employment of persons whose hours of employment are regulated by or under the Factories Acts 1937 and 1948 (*g*).

For the purposes of this subsection, employment wholly or mainly outside a factory (*h*) in collecting, carrying or delivering goods, carrying messages or running errands, being employment for the purposes of retail trade or business carried on from the factory, shall be deemed not to be employment in the business of the factory.

(*a*) ***Residential hotel.*** See s. 74 (1).

(*b*) ***Shop assistant.*** For definition, see s. 74 (1).

(*c*) ***Theatre.*** For definition, see s. 74 (1).

(*d*) ***Young person.*** For definition, see s. 74 (1).

(*e*) ***Retail trade or business.*** For definition, see s. 74 (1).

(*f*) ***Factory.*** For definition, see the Factories Act 1961, s. 175 (Redgrave's Factories Acts, 22nd Edn. p. 440).

(*g*) ***Factories Acts 1937 and 1948.*** See now the Factories Act 1961.

(*h*) ***Employment outside a factory.*** See the Factories Act 1961, s. 116.

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35. Birth Certificates.—(1) Where the age of any person is required to be ascertained or proved for the purposes of this Part of this Act, any person shall, on presenting a written requisition in such form and containing such particulars as may be from time to time directed by the Registrar-General (*a*) and on payment of a fee of [10p] (*b*), be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register under the Births and

Deaths Registration Acts, 1836 to 1929, of the birth of that person; and such a form of requisition shall on request be supplied without charge by every registrar and superintendent registrar of births, deaths and marriages.

(2) This section shall have effect in Scotland as if for references to the Registrar-General and the Births and Deaths Registration Acts 1836 to 1929 there were respectively substituted references to the Registrar-General of Births, Deaths and Marriages in Scotland and the Registration of Births, Deaths and Marriages (Scotland) Acts 1854 to 1938 and as if any reference to a superintendent registrar were omitted.

(*a*) ***Directions of Registrar-General.*** No directions have been given by the Registrar-General under this section, but see s. 76 (2) and (3) of this Act and the Certificates of Births, Deaths and Marriages (Registration) (Registrar-General) Rules 1938 (S.R. & O. 1938 No. 250), the relevant provisions of which have effect as if made under this section.

(*b*) ***Fee.*** The price in square brackets was substituted by S.I. 1968 No. 1242.

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36. Interpretation of provisions as to employment of young persons.—(1) For the purposes of sections twenty-four to thirty-five of this Act, a person who works about the business of a shop (*a*) for the occupier thereof, or in connection with any retail trade or business (*b*) for the person by whom it is carried on, shall be deemed to be employed, notwithstanding that he receives no reward for his labour.

(2) For the purposes of the said sections, employment in connection with a wholesale shop (*c*) or a warehouse occupied by a wholesale dealer or merchant which is neither—

(a) employment within the premises; nor

(b) employment in the collection or delivery of goods or in attendance upon customers or in carrying messages or running errands,

shall not be deemed to be employment about the business of a shop (*a*); but, save as aforesaid, any employment in the service of the occupier of the shop (*a*) upon any work, whether within the shop (*a*) or outside it, which is ancillary to the business carried on at the shop shall be deemed to be employment about the business of the shop (*a*), and that expression shall be construed accordingly.

(*a*) ***Shop.*** For definition, see s. 74 (1).
(*b*) ***Retail trade or business.*** For definition, see s. 74 (1).
(*c*) ***Wholesale shop.*** For definition, see s. 74 (1).

Arrangements for Health and Comfort of Shop-workers.

[*Sections* 37 *to* 39 *have been repealed by* s. 91 *of and Sched.* 2 *to the Offices, Shops and Railway Premises Act* 1963. *That Act contains a new code for health, safety and welfare in shops.*]

PART III

MODIFICATIONS OF PARTS I AND II IN SPECIAL CASES

40. Suspension of early closing day in holiday resorts.—(1) In places frequented as holiday resorts during certain seasons of the year the local authority (*a*) may by order (*b*) suspend, for such period or periods as may be specified in the order (*b*), not exceeding in the aggregate four months in any year, the obligation imposed by this Act to close shops (*c*) on the early closing day (*d*).

(2) Any order (*b*) made under this section may be made so as to apply to the whole or to any part of the area of the local authority (*a*), and to all shops (*c*), or to shops of any class, within that area or part.

(3) Where the occupier of any shop (*c*) in any place in which any such order of suspension is in force satisfies the local authority (*a*) that it is the practice to allow all his shop assistants (*e*) a holiday on full pay of not less than two weeks in every year, and keeps affixed in his shop (*c*) a notice to that effect, the requirements that on one day in each week a shop assistant (*e*) shall not be employed after half-past one o'clock shall not apply to the shop (*c*) during such period or periods as aforesaid.

General note. This section is printed as amended by the Shops (Early Closing Days) Act 1965.
(*a*) ***Local authority.*** For definition, see ss. 71 and 73.
(*b*) ***Order.*** For provisions as to the making and revocation of orders, see ss. 52, 70.
(*c*) ***Shop.*** For definition, see s. 74 (1).
(*d*) ***Early closing day.*** See s. 1.
(*e*) ***Shop assistant.*** For definition, see ss. 74 (1), and 21 (8).

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41. Alteration of general closing hours in holiday resorts and sea fishing centres.—(1) In places frequented as holiday resorts during certain seasons of the year, and in places where sea fishing is principally carried on during certain seasons of the year, the local authority (*a*) shall by order, during such period as may be specified in the order, substitute for the general closing hours (*b*) fixed by or under this Act such later hours as they may think fit if, upon application being made to them for an order under this section, they are satisfied that such an order is desired by the occupiers of a majority of the shops (*c*) to be affected by the order:

Provided that the local authority (*a*) shall not in any year by orders under this subsection substitute later hours for the general closing hours fixed by this Act for periods exceeding four months in the aggregate in that year.

(2) Any order under this section—

(a) may be made so as to apply to the whole or to any part of the area of the local authority (*a*), and to all shops (*c*), or to shops of any class, within that area or part; and

(b) shall be made subject to such conditions as the local authority (*a*) may consider necessary for securing that shop assistants (*d*) affected by the order shall not be employed in or about the business of a shop for more than such number of hours as may be specified by the order; and

(c) may suspend the operation of any closing order (*e*) which is for the time being in force in the area of the local authority (*a*).

(3) In the case of any breach of a condition imposed by any order made under this section, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, five pounds;

(b) in the case of a second or subsequent offence (*f*), twenty pounds.

In considering for the purposes of this subsection whether an offence is or is not a first offence, any offence under subsection (2) of section fourteen or subsection (3) of section forty-two of this Act shall be treated as if it were an offence under this subsection.

(4) If, while orders made under this section are in force, any shop assistant (*d*) affected by any order under this section is, in any year, employed on or about the business of a shop (*c*) for extra hours, he shall, subject to the provisions of the Fourth Schedule to this Act, be entitled to corresponding holidays, calculated in accordance with the provisions of that Schedule, with full wages.

If at the date of the termination of his employment or at the end of the year, whichever first occurs, default has been made in granting to him any holiday or wages to which he is entitled under this subsection, the shop assistant (*d*) may recover as a debt due from the employer for every day's holiday in respect of which such default has been made a sum equal to one-sixth of the highest weekly rate of wages paid to him in respect of his employment in or about the business of the shop (*c*) during the year or the part thereof during which he has been employed therein.

(5) For the purpose of this section and the said Fourth Schedule—

"extra hours" means, in relation to any shop assistant (*d*), hours in excess of the customary working day, being hours after the general closing hours fixed by or under this Act otherwise than by an order made under this section;

"customary working day" means, in relation to any shop assistant (*d*), the daily number of hours during which shop assistants (*d*) of his class are, while unaffected by any order made under this section, customarily employed in or about the business of the shop (*c*) in which he is employed;

"full wages" means, in relation to any holiday granted to a shop assistant (*d*), wages at a rate equivalent to the rate of wages to which he was entitled immediately before the holiday.

(6) *In the case of a shop as respects which an order under this section is in force on the first Sunday in November in any year, the provisions of Part I of this Act as to general closing hours in the winter months shall not be construed as making earlier the hours at which the shop is required to be closed while the order remains in force* (*g*).

(*a*) ***Local authority.*** For definition, see s. 73 (1).

(*b*) ***General closing hours.*** See ss. 2 *et seq.*, and s. 74 (1).

(*c*) ***Shop.*** For definition, see s. 74 (1).

(*d*) ***Shop assistant.*** For definition, see s. 74 (1), in conjunction with s. 21 (8).

(*e*) ***Closing order.*** See ss. 8 and 9.

(*f*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

(*g*) ***Subsection (6).*** This subsection no longer has effect owing to the revocation by S.I. 1952 No. 1862 of the provisions of the Act dealing with general closing hours in winter to which it referred.

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42. Alteration of general closing hours and closing orders for exhibitions.—(1) As respects any retail trade or business (*a*) carried on at an exhibition or show within the area of a local authority (*b*), the local authority may by order substitute for the general closing hours (*c*) fixed by or under this Act, or for any closing hour fixed by a closing order (*d*), later hours, not being later than ten o'clock in the evening, if they are satisfied that the retail trade or business (*a*) so carried on is subsidiary or ancillary only to the main purpose of the exhibition or show.

(2) Any order under this section shall be made subject to such conditions as the local authority (*b*) may consider necessary for securing that shop assistants (*e*) affected by the order shall not be employed in or about the retail trade or business (*a*) to which the order relates for more than such number of hours as may be specified by the order.

(3) In the case of any breach of a condition imposed by any order made under this section, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, five pounds;

(b) in the case of a second or subsequent offence (*f*), twenty pounds.

In considering for the purposes of this subsection whether an offence is or is not a first offence, any offence under subsection (2) of section fourteen or subsection (3) of section forty-one of this Act shall be treated as if it were an offence under this subsection.

(4) *In the case of a shop as respects which an order under this section is in force on the first Sunday in November in any year, the provisions of Part I of this Act as to general closing hours in*

the winter months shall not be construed as making earlier the hours at which the shop is required to be closed while the order remains in force (*g*).

(*a*) ***Retail trade or business.*** For definition, see s. 74 (1).

(*b*) ***Local authority.*** For definition, see s. 73.

(*c*) ***General closing hours.*** For definition, see s. 74 (1), in conjunction with ss. 2 *et seq.*

(*d*) ***Closing order.*** For definition, see s. 8 (1). For provisions as to the making and revocation of closing orders, see ss. 8–11 and the Shops Regulations 1912.

(*e*) ***Shop assistant.*** For definition, see s. 74 (1), in conjunction with s. 21 (8).

(*f*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

(*g*) ***Subsection (4).*** This subsection no longer has effect. See note (*g*) to s. 41.

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43. Suspension of general closing hours and closing orders on special occasions.—(1) The Secretary of State may by order for such periods as he thinks fit suspend the operation of the provisions of this Act relating to general closing hours (*a*) during the Christmas season or in connection with any other special occasion, and while any order made under this subsection is in force the provisions of any closing order (*b*) shall be deemed to be suspended except in so far as may be otherwise directed by the order of the Secretary of State.

The power of making orders under this subsection shall be exercisable by statutory instrument.

(2) A local authority (*c*) may, in connection with any special occasion, by order suspend the operation of the provisions of this Act relating to general closing hours (*a*) and the provisions of any closing order (*b*) made by them for such period as they may think fit:

Provided that a local authority (*c*) shall not in any year by orders under this subsection suspend the operation of the said provisions for more than seven days in the aggregate in that year.

(3) The Secretary of State may cause a local inquiry to be held for the purposes of any of his powers and duties under this section, and section sixteen of this Act shall apply in relation to any such local inquiry.

(*a*) ***General closing hours.*** For definition, see s. 74 (1), in conjunction with ss. 2 *et seq.*

(*b*) ***Closing order.*** For definition, see s. 8 (1). For provisions as to the making and revocation of closing orders, see ss. 8–11 and the Shops Regulations 1912, p. 303.

(*c*) ***Local authority.*** For definition, see s. 73.

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44. Exemptions for post office business.—(1) Where post office business (*a*) is carried on in any shop (*b*) in addition to any other business, this Act shall apply to that shop (*b*) subject to the following modifications—

(a) if the shop (*b*) is a telegraph office, the obligation to close on the early closing day (*c*) shall not apply to the shop (*b*) so far as relates to the transaction of post office business thereat;

(*b*) where the Postmaster-General (*d*) certifies that the exigencies of the postal service requires that post office business should be transacted in any such shop (*b*) at times when under the provisions of this Act relating to the early closing day (*c*) the shop (*b*) would be required to be closed, or under conditions not authorised by sections seventeen to twenty of this Act, the shop (*b*) shall, for the purpose of the transaction of post office business, be exempted from the provisions of Part I (*e*) and sections seventeen to twenty of this Act to such extent as the Postmaster-General (*d*) may certify to be necessary for the purpose:

Provided that in such cases the Postmaster-General (*d*) shall make the best arrangements that the exigencies of the postal service allow with a view to the conditions of employment of the persons employed being on the whole not less favourable than those secured by Part I (*e*) and sections seventeen to twenty of this Act:

(2) Save as aforesaid, nothing in Part I (*e*) or section seventeen to twenty of this Act shall apply to post office business, or to any premises in which post office business is transacted.

General note. This section is printed as amended by the Shops (Early Closing Days) Act 1965.

(*a*) ***Post office business.*** See note (*c*) to s. 22.

(*b*) ***Shop.*** For definition, see s. 74 (1).

(*c*) ***Early closing day.*** See s. 1 (2).

(*d*) ***Postmaster-General.*** Now the Minister of Posts and Telecommunications (Post Office Act 1969, ss. 2–5).

(*e*) ***Part I.*** The reference to Part I includes a reference to the Shops (Early Closing Days) Act 1965 (*ibid.*, s. 5 (2)).

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45. Exemption for fairs, etc., and non-profit-making libraries.—Nothing in Part I (*a*) or sections seventeen to twenty-one of this Act shall apply—

(a) to any fair lawfully held or any bazaar or sale of work for charitable or other purposes from which no private profit is derived; or

(b) to any library at which the business of lending books or periodicals is not carried on for purposes of gain other that that of making profits for some philanthropic or charitable object (including any religious or educational object) or for any club or institution which is not itself carried on for purposes of gain.

General note. This section is printed as amended by s. 91 and Sch. 2 of the Offices, Shops and Railway Premises Act 1963.

(*a*) ***Part I.*** The reference to Part I includes a reference to the Shops (Early Closing Days) Act 1965 (*ibid.*, s. 5 (2)).

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46. Exemption for Industrial and Provident Societies' libraries.—Nothing in the provisions of Part I (*a*) or II of this Act other than those relating to Sunday employment (*b*) shall apply to any library which, on the first day of January, nineteen hundred and thirty-six, was carried on by a society registered under the Industrial and Provident Societies Acts 1893 to 1928, mainly for the purpose of affording to its members means of education or recreation, so long as the following conditions are complied with, that is to say—

(a) that the library continues to be carried on by the society mainly for the purpose aforesaid;

(b) that no pecuniary profit is directly derived from the lending of books or periodicals at or from the library;

(c) that no person employed about the business of any shop (*b*) occupied by the society is engaged about the business of the library.

(*a*) ***Part I.*** The reference to Part I includes a reference to the Shops (Early Closing Days) Act 1965 (*ibid.*, s. 5 (2)).

(*b*) ***Sunday employment.*** For provisions relating to Sunday employment in shops and elsewhere, see ss. 22 and 23.

(*c*) ***Shop.*** For definition, see s. 74 (1).

PART IV

SUNDAY TRADING

General Provisions in England and Wales

47. Closing of shops on Sunday.—Every shop (*a*) shall, save as otherwise provided by this Part of this Act, be closed for the serving of customers on Sunday:

Provided that a shop (*a*) may be open (*b*) for the serving of customers on Sunday for the purposes of any transaction mentioned in the Fifth Schedule to this Act (*c*).

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Open.*** In *Waterman* v. *Wallasey Corporation*, *Hesketh* v. *Wallasey Corporation*, [1954] 2 All E.R. 187; W allowed prospective customers on a Sunday to inspect a car which was for sale. H also allowed prospective customers to view a car but in addition took one for a demonstration run. There was no sale in either case. In both cases the premises were garages lawfully open for the sale of motor accessories, petrol and oil under the 5th Schedule. It was held that W was not guilty as the mere fact that someone inspected a car did not mean that the shop was open for the serving of customers, but that H was guilty as there was evidence that he went further and his shop was therefore not closed.

In *Betta Cars* v. *Ilford Corporation* (1959), 124 J.P. 19, a car dealer opened his doors on Sunday and the cars had prices on them. An employee was present and told an Inspector the premises were open for viewing only. There was no evidence of customers being there or sales taking place. A conviction was upheld, the court saying that the shop was clearly open for the purpose of serving customers.

In *Ruffell* v. *Ilford Corporation* (1960), 125 J.P. 104, the Divisional Court upheld the conviction of a salesman who knew that the appropriate notice permitting Sunday trading was not displayed, although he did not know that this constituted an offence.

In *Ilford Corporation* v. *Betterclean (Seven Kings) Ltd.*, [1965] 1 All E. R. 900, a coin-operated self-service launderette was held not to be open for the serving of customers as there was no personal service despite the fact that someone cleaned the premises and re-stocked the machines.

In *Monaco Garage, Ltd.* v. *Watford Borough Council*, [1967] 2 All E.R. 1291, a garage was lawfully open on a Sunday for the sale of motor supplies; on one such occasion only a customer was given information about the sale of a car (which was a prohibited transaction); held, that even though there had been a serving of a customer the shop was not open for that purpose. See also *Warley Caravans, Ltd.* v. *Wakelin* (1968), 66 L.G.R. 534.

A sale must be genuine and not a sham. In *Waller* v. *Hardy* (1972), 70 L.G.R. 331 the defendants owned a furniture shop. On Sunday they sold carrots at the price appropriate to furniture with a "free gift" of the furniture; held, they were guilty of an offence under this section.

(*c*) ***Fifth Schedule.*** See also s. 49 as to refreshments for consumption elsewhere than at the shop, and s. 50 as to shops where several trades or businesses are carried on. For provisions as to partial exemption orders, see. s. 48.

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48. Partial exemption orders.—(1) The local authority (*a*) may by order (in this Part of this Act referred to as a "partial exemption order") made in accordance with the provisions of this Part of this Act (*b*) provide that shops (*c*) situated in their area or in such part thereof as is specified in the order may for the purpose of such of the transactions mentioned in the Sixth Schedule to this Act as may be so specified be open for the serving of customers on Sunday subject to the limitations hereafter provided.

(2) A partial exemption order shall not authorise a shop (*c*) to be open for the serving of customers after ten o'clock on Sunday morning:

Provided that an order may authorise the serving of customers after ten o'clock on Sunday morning in shops to which the order applies in cases of emergency and in such other cases as may be specified in the order.

(3) A partial exemption order may contain such incidental, supplemental or consequential provisions as may appear to the local authority (*a*) necessary or proper.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Provisions of this Part of this Act.*** See s. 52 and note (*b*) thereto.

(*c*) ***Shop.*** For definition, see s. 74 (1).

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49. Sale of meals and refreshments off the premises.—(1) As respects shops (*a*) which, by virtue of the provisions of this Part of this Act, may be open for the serving of customers on Sunday for the purpose of the sale of meals or refreshments for consumption elsewhere than at the shop (*a*) at which they are sold, the local authority (*b*) may by order made in accordance with the provisions of this Part of this Act (*c*) provide that those shops (*a*) or any class of those shops specified in the order, being shops (*a*) situated in their area or in such part thereof as may be so specified, shall cease to be entitled to be open for the serving of customers on Sunday for that purpose:

Provided that no order made under this section shall—

(a) apply to shops (*a*) in which the sale of meals or refreshments for consumption at the shop (*a*) forms a substantial part of the business carried on therein; or

(b) prevent the sale on Sunday of meals and refreshments elsewhere than at a shop (*a*) except to such extent and subject to such conditions as may be specified in the order.

(2) An order under this section may provide for the provisions thereof being in force throughout the year or during such periods as may be specified in the order, and may be made subject to such conditions as may be so specified.

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Local authority.*** For definition, see s. 73.

(*c*) ***Provisions of this Part of this Act.*** See s. 52 and note (*b*) thereto.

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50. Shops where several trades or businesses are carried on.—Where several trades or businesses are carried on in the same shop (*a*) and any of those trades or businesses consist only of transactions of such a nature that, if they were the only transactions carried on in the shop (*a*), the provisions of this Part of this Act requiring the shop (*a*) to be closed for the serving of customers for the whole or any part of Sunday would not apply to the shop (*a*), the shop (*a*) may be kept open for the whole or any part of Sunday, as the case may be, for the purposes of those transactions alone, subject, however, to such conditions (*b*) as may be prescribed.

General note. This section applies to shops, but s. 58 extends the foregoing provisions of Part IV of the Act to retail trading elsewhere than in shops. Also, s. 57 requires the display, in the shop, of a notice in the prescribed form. This section creates no offence, but if the conditions are not observed an offence is committed under s. 47; *Tonkin* v. *Raven*, [1959] 1 Q.B. 177; [1958] 3 All E.R. 374.

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Conditions.*** For prescribed conditions, see the Shops Regulations 1937, reg. 1, and Schedule, Form I, pp. 317, 320.

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51. Holiday resorts.—Where the area or any part of the area of a local authority (*a*) is a district which is frequented as a holiday resort during certain seasons of the year, the

local authority (*a*) may by order (*b*) provide that on such Sundays as may be specified in the order (*b*) shops or any class of shops (*c*), being shops (*c*) situated in the district or in such part thereof as may be so specified, may, subject to such conditions and during such hours as may be so specified, be open for the serving of customers for the purpose of any of the transactions specified in the Seventh Schedule to this Act or such of them as may be specified in the order:

Provided that the Sundays specified in any such order (*b*) shall not be more than eighteen in any year.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Order.*** As to the making of orders, see s. 52 and note (*b*) thereto. As to the revocation of orders, see s. 70 (2).

(*c*) ***Shop.*** For definition, see s. 74 (1).

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52. Making and revocation of orders.—(1) The local authority (*a*) shall, before making any order under the foregoing provisions of this Part of this Act, give public notice in the prescribed manner (*b*) of their intention to make the order, specifying in the notice a period (not being less than the prescribed period (*b*)) within which objections may be made to the making of the proposed order, and, if after taking into consideration any objections they have received the local authority (*a*) are satisfied that it is expedient to make the order and that the occupiers of not less than two-thirds in number of the shops (*c*) or classes of shops (*c*) to be affected by the order approve the order, they may make the order.

(2) Where several trades or businesses are carried on in the same shop (*c*), the local authority (*a*) may require the occupier of the shop (*c*) to specify which trade or business he considers to be his principal trade or business, and no trade or business other than that so specified shall, for the purpose of determining whether the occupiers of not less than two-thirds in number of the shops (*c*) to be affected by any order approve the order, be considered as carried on in the shop (*c*), unless the occupier thereof satisfies the local authority that it forms a substantial part of the business carried on in the shop (*c*).

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Prescribed manner and prescribed period.*** For the form in which public notice must be given, see the Shops Regulations 1963 and

the form there prescribed, pp. 355, 356. The period within which objections must be made is still contained in the Shops Regulations 1937, reg. 2 (2), p. 317.

(*c*) ***Shop.*** For definition, see s. 74 (1).

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53. Persons observing the Jewish Sabbath.—(1) Subject to the provisions of this section, the occupier of any shop (*a*) who is a person of the Jewish religion shall be entitled, upon making to the local authority (*b*) an application in accordance with the provisions of this section, to have the shop registered (*c*) under this section by the local authority, and so long as the shop is so registered then—

(a) the shop (*a*) shall be closed for all purposes connected with trade or business on Saturday; and

(b) the provisions of this Part of this Act requiring the shop (*a*) to be closed for the serving of customers on Sunday shall not apply until two o'clock in the afternoon; and

(c) there shall be kept conspicuously placed in the shop a notice stating that it will be closed on Saturday and, if the shop will be open for the serving of customers on Sunday after two o'clock in the afternoon for the purposes of any transaction for which it is permitted under this Part of this Act to be so open, specifying the hours during which, and the purposes for which, it will be so open.

(2) Any regulation for the registration (*c*) of a shop under this section shall be in the prescribed form and shall be accompanied—

(*a*) by a statutory declaration (*d*) made by the occupier of the shop in such form as may be prescribed declaring that he conscientiously objects on religious grounds to carrying on trade or business on the Jewish Sabbath; and

(b) by such further statutory or other declarations (*d*) and certificates, if any, made by such persons, and in such form, as may be prescribed.

(3) For the purposes of this section, a shop (*a*) occupied by a partnership or company shall be deemed to be occupied by a person of the Jewish religion if the majority of partners or

of the directors, as the case may be, are persons of that religion, but not otherwise, and such a shop (*a*) shall not be registered under this section unless the statutory declaration (*d*) required by paragraph (a) of the last foregoing subsection is made by the majority of partners or directors and specifies the names and addresses of all the other partners or directors.

(4) If for the purpose of procuring the registration (*c*) of any shop under this section any person knowingly or recklessly makes an untrue statement or untrue representation, he shall be liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(5) So long as a shop (*a*) is registered under this section—

(a) no other shop (*a*) occupied by the same occupier shall be kept open for any purpose connected with trade or business on Saturday;

(b) no person by whom the statutory declaration (*d*) aforesaid has been made in connection with the application for the registration (*c*) of the shop (*a*) shall be employed or engaged on the Jewish Sabbath about the business of any shop or shall so employ, or be directly concerned in the control or management of any partnership or company which so employs, any person.

(6) Where any person is convicted of a contravention of this section, the court may, in addition to any other penalty, order the registration of any shops occupied by him or by any partnership or company in the control or management of which he is directly concerned to be revoked:

Provided that the court shall not order the registration of any shop not occupied, or not occupied solely, by the person convicted to be revoked except after affording an opportunity to the occupier or to the other occupiers, as the case may be, to appear and be heard.

(7) If upon representations made to them it appears to the local authority (*b*) that there is reason to believe—

(a) that the occupier of any shop registered under this section is not a person of the Jewish religion; or

(b) that a conscientious objection on religious grounds to carrying on business on the Jewish Sabbath is not genuinely held by the occupier of the shop, or in the

case of a shop occupied by a partnership or company by the majority of the partners or of the directors, as the case may be,

the local authority (*b*) may furnish particulars of the case to such tribunal (*e*) as may, after consultation with the London Committee of Deputies of the British Jews, be prescribed, and if that tribunal (*e*), after considering the case in accordance with such rules as may be prescribed (*f*), report to the local authority (*b*) that in their opinion the occupier of the shop (*a*) is not a person of the Jewish religion or that such a conscientious objection is not so held as aforesaid, the local authority (*b*) shall revoke the registration of the shop, and upon the revocation thereof the registration under this section of all other shops occupied by the same occupier, whether in the area of that local authority or elsewhere, shall be deemed to be also revoked.

(8) In the event of any change in the occupation of a shop registered under this section, it shall be the duty of the person who becomes the occupier to serve on the local authority (*b*) notice of the change, and in the event of any change in any partnership or among the directors of any company by which such a shop is occupied, it shall be the duty of the partnership, or of the company, as the case may be, to serve on the local authority (*b*) a notice giving particulars of the change, and, whether or not such a notice is served, the registration of the shop shall, upon the expiration of a period of fourteen days from the date on which the change occurred, be deemed to be cancelled, unless within that period, or within such further time as may be allowed by the local authority, a fresh application (*c*) under this section is made in respect of the shop:

Provided that, where such a fresh application (*c*) is made by reason of a change in any partnership or among the directors of any company by which the shop is occupied, the local authority (*b*) may dispense with the statutory or other declaration (*d*) or certificates required by paragraph (a) of subsection (2) and by subsection (3) of this section in the case of any person who has made such a declaration (*d*) in connection with a former application in respect of that shop or any other shop in the area of the local authority.

(9) The registration of any shop under this section shall be

cancelled upon application in that behalf being made to the local authority (*b*) by the occupier of the shop, but shall not be so cancelled during the period of twelve months from the date on which an application for registration (*c*) of the shop was last made.

(10) Where an application is made to a local authority in accordance with the provisions of this section for the registration (*c*) of a shop under this section—

(a) the local authority (*b*) shall refuse to register the shop if the registration of that shop has been revoked or has been cancelled under the last foregoing subsection while the shop was in the occupation of the applicant; and

(b) the local authority (*b*) may refuse to register the shop if the registration of that shop or of any other shop occupied or formerly occupied by the applicant, or by any partnership or company of which he was a partner or director, has been revoked or cancelled.

(11) Where the local authority (*b*) refuse to register a shop in accordance with the provisions of paragraph (b) of the last foregoing subsection, they shall serve notice of their refusal upon the applicant, and, if the applicant is aggrieved by such refusal, he may, within twenty-one days of the date when the notice was so served upon him, appeal against such refusal to a court of summary jurisdiction for the petty sessional division in which the shop is situated, and the appellant or the local authority (*b*), if aggrieved by the order made by the court of summary jurisdiction, may appeal against that order to the Crown Court (*g*).

(12) This section shall apply to persons who are members of any religious body regularly observing the Jewish Sabbath as it applies to persons of the Jewish religion, and references therein to persons of the Jewish religion shall be construed accordingly as including any person who is a member of such a body, and in the application of this section to such persons this section shall have effect as if for the reference therein to the London Committee of Deputies of the British Jews there were substituted a reference to such body as appears to the Secretary of State to represent such persons.

(13) As respects any shop (*a*) which is for the time being

registered under this section, this Act shall have effect (*h*) as if—

(a) in subsection (1) of section one and subsection (1) of section seventeen, the references to weekdays were construed as references to weekdays other than Saturdays;

(b) [*Repealed by s.* 4 (1) (*c*) *of the Shops* (*Early Closing Days*) *Act* 1965].

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Local authority.*** For definition, see s. 73.

(*c*) ***Application for registration.*** For the prescribed form of application, see the Shops Regulations 1937, regs. 3 and 4, and Schedule, Forms III, IV (*a*), IV (*b*), pp. 317 *et seq.* and the Shops (Procedure for Jewish Tribunals) Regulations 1937, p. 324.

(*d*) ***Declaration.*** For form of declaration see the Shops Regulations 1937, Schedule, Form IV (*a*) and Form IV (*b*), pp. 321, 322.

(*e*) ***Tribunal.*** See the Shops (Procedure for Jewish Tribunals) Regulations 1937, p. 324.

(*f*) ***Rules prescribed.*** See note (*e*).

(*g*) ***Crown Court.*** Substituted for quarter sessions by the Courts Act 1971, s. 56 and Sch. 9.

(*h*) ***This Act shall have effect.*** See *Miller's Cash Stores, Ltd.* v. *West Ham Corporation*, [1955] 3 All E.R. 282.

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54. Special provisions for London.—(1) If the Common Council of the City of London or the London County Council (*c*) are satisfied that any part of their respective areas—

(a) is a district in which it was, before the first day of January, nineteen hundred and thirty-six, customary to hold street markets on Sunday; or

(b) is a district, being a district within the City of London or the metropolitan boroughs of Bethnal Green, Shoreditch, or Stepney, in which it was customary before the said date for the majority of the shops (*a*) in the district to be kept open on Sunday and that, having regard to the character and habits of the population in the district, the application of the provisions of this Part of this Act requiring shops (*a*) to be closed on Sunday would cause undue hardship,

they may, by order (*b*) made in accordance with the provisions of this section, authorise such shops (*a*) or classes of shops (*a*)

as may be specified in the order, being shops (*a*) situated in the district or in such parts of the district as may be so specified, to be open for the serving of customers on Sunday until two o'clock on Sunday afternoon subject to the conditions hereinafter mentioned:

Provided that, before making an order (*b*) applying to any district referred to in paragraph (b) of this subsection, the council shall take steps to ascertain the wishes of the occupiers of such shops (*a*) as appear to them to be likely to be affected, and, if they are satisfied that the occupiers of a majority of any class of such shops (*a*) are opposed to the making of the order (*b*), the council shall exclude that class of shops (*a*) from the operation of the order (*b*).

(2) Any order (*b*) made under this section authorising shops (*a*) to be kept open for the serving of customers on Sunday shall fix a weekday upon which such shops (*a*) must be closed (in this section referred to as "the closing day"), and may fix different days for different classes of shops, and the occupier of a shop (*a*) who intends to keep open the shop (*a*) on Sunday in pursuance of the order (*b*) shall give notice in writing to the Common Council of the City of London or to the London County Council (*c*) as the case may be, of his intention to so do, and he shall not keep open the shop on Sunday unless such notice has been given and the shop has been closed on the closing day in the preceding week in like manner and for the like purposes as it would, but for the order, have been required by this Part of this Act to be closed on Sunday:

Provided that—

(a) the occupier of a shop (*a*) shall not be entitled to keep his shop closed for the purposes of the weekly half-holiday (*e*) on the closing day:

(b) where the closing day (*d*) so fixed is a day other than Saturday, the order shall provide for enabling Saturday to be substituted as the closing day (*d*) as respects any shop.

(3) Any order (*b*) made under this section shall contain such provisions as may be necessary or expedient to secure—

(a) that where a notice has been given under the last foregoing subsection to the Common Council of the City of London or to the London County Council (*c*) by the

occupier of a shop, the shop (*a*) shall not be kept open on the closing day (*d*) during a period of not less than six months from the date when the notice was given; and

(b) that so long as the shop (*a*) is kept open on Sunday in pursuance of the order (*b*), such notices as the Common Council of the City of London or the London County Council (*c*) as the case may be, may require, shall be kept exhibited in the shop.

(4) The Common Council of the City of London or the London County Council (*c*) shall, before making any order (*b*) under this section, give public notice of their intention to make the order, defining by reference to a map the district or parts of the district to which the order (*b*) is to apply and the times and places at which the map may be inspected, and specifying a period (not being less than four weeks) within which objections may be made to the making of the proposed order, and if, after taking into consideration any objections they have received, the Common Council of the City of London or the London County Council (*c*) are satisfied that it is expedient to make the order (*b*), they may make the order, and the provisions of subsections (2) and (3) of section nine and the provisions of section sixteen of this Act shall have effect as if any such order, or any order varying or revoking (*f*) such an order, were a closing order.

General note. This section is printed as amended by s. 4 (1) (d) of the Shops (Early Closing Days) Act 1965.

By virtue of s. 51 (3) of the London Government Act 1963 (which comes into force on 1st April 1965) no order may be made under this section except an order revoking a previous order made under this section, and outside the City and Temples the power of making such an order shall be exercisable by the council of the London borough in which that area falls: in subsections (2)–(4) of this section and in any order made thereunder references to the London County Council shall be construed as references to that borough.

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Order.*** For requirements as to notices, see Shops Regulations 1937, regs. 5, 6, and Schedule, Form V, pp. 318 *et seq.*

(*c*) ***London County Council.*** See the general note.

(*d*) ***Closing day.*** For the meaning of "closing day", see sub-s. (2).

(*e*) ***Weekly half-holiday.*** See s. 1 (2).

(*f*) ***Revocation of order.*** For provisions as to revocation, see s. 70 (2).

55. Delivery of goods.—Goods sold retail to a customer shall not be delivered or dispatched for delivery from a shop (*a*) at any time when under the provisions of this Part of this Act a customer could not be served with those goods in that shop (*a*):

Provided that this section shall not apply—

(a) on any Sunday being also Christmas Day; or

(b) on any Sunday when the succeeding Monday is Christmas Day.

(*a*) ***Shop.*** For definition, see s. 74 (1).

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56. Savings.—(1) Nothing in this Part of this Act shall prevent—

(a) the sale, dispatch or delivery of victuals, stores or other necessaries required by any person for a ship or aircraft on her arrival at, or immediately before her departure from, a port or aerodrome;

(b) the sale, despatch or delivery of goods to a club for the purposes of the club;

(c) the cooking on Sunday, before half-past one o'clock in the afternoon, at any shop (*a*) of any food brought to that shop (*a*) by a customer and required by him for consumption on that day, or the despatch or delivery not later than the hour aforesaid of any such food so cooked.

(2) Where any person is charged with keeping open a shop (*a*) for the serving of customers, or with dispatching or delivering goods, in contravention of this Part of this Act, it shall be a good defence to prove that reasonable grounds existed for believing that the goods supplied, dispatched or delivered were required in the case of illness.

(3) Where any person is charged with keeping open for the serving of customers in contravention of this Part of this Act a shop (*a*) which is permitted to be open until a certain hour by reason of his having served a customer after that hour, it shall be a good defence to prove that the customer was in the shop before that hour and left the shop (*a*) not later than half-an-hour after that hour (*c*).

(4) Notwithstanding anything in section forty-seven of this Act, any person carrying on or employed in the business of a hairdresser or barber may, at any time, for the purposes of that business attend any person—

(a) in any place, if such attendance is necessary by reason of the bodily or mental infirmity of that person; or

(b) in any hotel or club, if that person is resident therein.

(5) If the local authority (*b*) are satisfied that any person engaged in handicraft at his home is dependent for his livelihood upon the sale on Sunday of articles produced by him in the course of his handicraft to such extent that the prohibition of such sale would involve substantial hardship, they may grant to him a certificate exempting him during such period as may be specified in the certificate from any of the foregoing provisions of this Part of this Act in respect of the sale of those articles during such hours and subject to such conditions as may be so specified.

(6) The foregoing provisions of this Part of this Act shall not apply to any sea-going ship (*c*).

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Local authority.*** For definition, see s. 73.

(*c*) ***Sea-going ship.*** Under the Merchant Shipping Acts 1894–1970 a sea-going ship is a ship which does go to sea, rather than one which could go to sea; see *Salt Union, Ltd.* v. *Wood*, [1893] 1 Q.B. 370.

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57. Notices.—The occupier of any shop (*a*) which by virtue of the foregoing provisions of this Part of this Act is open for the serving of customers on Sundays shall cause to be kept conspicuously posted in the shop a notice in the prescribed form (*b*) stating the terms of any order applying to the shop.

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Notice in the prescribed form.*** For form of notice, see the Shops Regulations 1937, reg. 7, and Schedule, Form VI, pp. 319, 323.

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58. Extension of foregoing provisions of Part IV to retail trading elsewhere than in shops.—The foregoing provisions of this Part of this Act except—

(a) those provisions of section fifty-two and section fifty-four which relate to the approval by occupiers of shops (*a*) of orders made under those sections; and

(b) paragraph (c) of subsection (1) of section fifty-three; and

(c) the last foregoing section,

shall extend to any place where any retail trade or business (*b*) is carried on as if that place were a shop (*a*), and as if in relation to any such place the person by whom the retail trade or business (*b*) is carried on were the occupier of a shop:

Provided that the provisions of section forty-seven of this Act shall, as applied by this section, have effect as if there were included in the Fifth Schedule to this Act the sale by fishermen of freshly caught fish (including shellfish) and the sale at a farm, smallholding, allotment or similar place, of produce produced thereon.

(*a*) ***Shop.*** For definition, see s. 74 (1).

(*b*) ***Retail trade or business.*** For definition, see s. 74 (1). See also the Shops Regulations 1937, reg. 11 (1), p. 319.

This section was considered in *Maby* v. *Warwick Corporation*, [1972] 2 Q.B. 242; [1972] 2 All E.R. 1198, which held that a stall from which regular trading was conducted could be a place within this section; this decision was followed in *Randall* v. *D. Turner Garages, Ltd.*, (1973), 117 Sol. Jo. 446. See also the notes to ss. 12, 23 and 74 (1).

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59. Offences connected with Sunday trading.—(1) In the case of any contravention (*a*) of any of the foregoing provisions of this Part of this Act, the occupier of the shop shall be liable to a fine not exceeding—

(a) in the case of a first offence, £50;

(b) in the case of a second or subsequent offence (*b*), £200.

In considering for the purposes of this subsection whether an offence is or is not a first offence, any offence under subsection (6) of section twenty-two of this Act shall be treated as if it were an offence under this subsection.

(2) [*Repealed*]

General note. This section is printed as amended by s. 31 of the Criminal Justice Act 1972.

(*a*) ***Contravention.*** For definition, see s. 74 (1).

(*b*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

Retail Meat Dealers' Shops in England and Wales

60. Exclusion of foregoing provisions as to Sunday trading in the case of retail meat dealers.—Nothing in the foregoing provisions of this Part of this Act shall apply to

the carrying on on Sunday of the business of a retail dealer in butchers' meat (*a*).

(*a*) ***Retail dealer in butchers' meat.*** For definition of "butchers' meat", see s. 74 (1). See also ss. 61 *et seq.*

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61. Business of retail dealer in meat not to be carried on on Sunday.—Subject to the following provisions (*a*) of this Part of this Act, it shall not be lawful for any person to carry on the business of a retail dealer in butchers' meat (*b*) on Sunday, and, where the business is carried on in a shop (*c*), the shop shall for the purposes of that business be closed for the serving of customers on Sunday.

(*a*) ***Following provisions.*** That is to say, ss. 62–65.
(*b*) ***Butchers' meat.*** For definition, see s. 74 (1).
(*c*) ***Shop.*** For definition, see s. 74 (1).

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62. Exemption as respects Jewish retail dealers in meat.—(1) Notwithstanding anything in this or any other Act prohibiting the carrying on of business on Sunday, any person of the Jewish religion may carry on the business of a retail dealer in Kosher meat (*a*) and may keep open a shop (*b*) for the serving of customers for the purposes of that business on Sunday, on condition that he complies with the following provisions, that is to say—

(a) he must be licensed for the sale of Kosher meat (*a*) by the Local Board of Shechita, or in the absence of any such Board by a committee appointed for the purpose by the local Jewish congregation established in accordance with Jewish law;

(b) he shall not carry on the business either of a retail dealer in Kosher meat (*a*) or of a retail dealer in butchers' meat (*c*) on Saturday and, if he carries on the business in a shop (*b*), he shall not keep open the shop (*b*) for the purpose of the business on Saturday;

(c) he shall previously give notice to the local authority (*d*) of his intention to carry on the business of a retail dealer in Kosher meat (*a*) on Sunday; and

(d) if he carries on the business in any shop (*b*), he shall cause to be kept conspicuously posted in the shop a notice stating that it is open on Sunday for the

purposes of retail dealing in Kosher meat (*a*), but is not open on Saturday.

(2) As respects any shop (*b*) in which any such person carries on the said business on Sunday in compliance with the provisions of this section, this Act shall have effect as if—

(a) in subsection (1) of section one and subsection (1) of section seventeen, the references to weekdays were construed as references to weekdays other than Saturdays;

(b) [*Repealed by s.* 4 (1) (*c*) *of the Shops* (*Early Closing Days*) *Act* 1965]

(*a*) ***Kosher meat.*** For definition, see s. 74 (1).
(*b*) ***Shop.*** For definition, see 74 (1).
(*c*) ***Butchers' meat.*** For definition, see s. 74 (1).
(*d*) ***Local authority.*** For definition, see s. 73.

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63. Delivery of meat.—It shall not be lawful to dispatch any butchers' meat (*a*) from a shop (*b*) or to deliver any butchers' meat (*a*) so dispatched at any time when under the two last foregoing sections the shop (*b*) may not be open for the serving of customers:

Provided that this section shall not apply—

(a) on any Sunday being also Christmas Day; or

(b) on any Sunday when the succeeding Monday is Christmas Day.

General note. See the saving effected by s. 65.
(*a*) ***Butchers' meat.*** For definition, see s. 74 (1).
(*b*) ***Shop.*** For definition, see s. 74 (1).

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64. Offences related to dealing in butchers' meat on Sundays.—Any person who contravenes any of the provisions of the three last foregoing sections shall be liable to a penalty not exceeding—

(a) in the case of a first offence, £50; and

(b) in the case of a second or subsequent offence (*a*), £200.

General note. This section is printed as amended by s. 31 of the Criminal Justice Act 1972.
(*a*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

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65. Saving for ships and aircraft.—Nothing in this Part of this Act shall prevent the sale, dispatch, or delivery of butchers' meat (*a*) required by any person for a ship or aircraft on her arrival at, or immediately before her departure from, a port or aerodrome.

(*a*) ***Butchers' meat.*** For definition, see s. 74 (1).

Foregoing Provisions of Part IV not to extend to Scotland

66 Foregoing provisions of Part IV not to extend to Scotland.—The foregoing provisions of this Part of this Act shall not extend to Scotland.

Barbers and Hairdressers in Scotland

67. Business of hairdresser or barber not to be carried on on Sunday.—(1) Subject to the provisions of this section, it shall not be lawful for any person in Scotland to carry on the business of a hairdresser or barber (*a*) on Sunday.

(2) Notwithstanding anything in this or any other Act, any person carrying on the business of a hairdresser or barber (*a*) in Scotland may at any time for the purposes of that business attend any person—

(a) in any place if that person is unable, by reason of bodily or mental infirmity, to go to the place where such business as aforesaid is carried on; or

(b) in any hotel if that person is resident therein; or

(c) in any sea-going ship;

Provided that nothing in this subsection shall authorise the employment of any shop assistant (*b*) in or about the business of a shop (*c*) at any time when it would, under this Act, be unlawful for him to be so employed.

(3) Notwithstanding anything in this or any other Act, any person of the Jewish religion may carry on the business of a hairdresser or barber (*a*) in Scotland on Sunday on condition that he complies with the following provisions, that is to say—

(a) he shall not carry on the business on Saturday; and

(b) he shall previously give notice to the local authority (*d*) of his intention to carry on the business on Sunday; and

(c) if he carries on the business in any shop (*c*), he shall cause to be kept conspicuously posted in the shop (*c*) a notice stating that it is open on Sunday for the purposes of the business, but is not open on Saturday for those purposes.

(4) As respects any shop (*c*) in which any such person carries on the said business on Sunday in compliance with the provisions of the last foregoing subsection, this Act shall have effect as if—

(a) in subsection (1) of section one and subsection (1) of section seventeen, the references to weekdays were construed as references to weekdays other than Saturdays;

(b) [*Repealed by s.* 4 (1) (*c*) *of the Shops* (*Early Closing Days*) *Act* 1965.]

(5) Any person who contravenes the provisions of this section shall be liable to a penalty not exceeding—

(a) in the case of a first offence, £50; and

(b) in the case of a second or subsequent offence (*e*), £200.

General note. This section is printed as amended by s. 31 of the Criminal Justice Act 1972.

(*a*) ***Business of a hairdresser or barber.*** The definition of a "retail trade or business" in s. 74 (1), includes the business of a barber or hairdresser. See also the definition of "shop" in s. 74 (1).

(*b*) ***Shop assistant.*** For definition, see s. 74 (1).

(*c*) ***Shop.*** For definition, see s. 74 (1).

(*d*) ***Local authority.*** For definition, see s. 73.

(*e*) ***Second or subsequent offence.*** See note (*d*) to s. 14.

PART V

GENERAL

68. Option to apply either this Act or the Young Persons (Employment) Act 1938, in certain cases.—(1) An employer who employs young persons (*a*) at, or in connection with the business carried on at, a residential hotel (*b*), a place of public entertainment or amusement, or a

swimming bath, bathing place or turkish bath, being young persons (*a*) to whom apart from this section the provisions of this Act or the provisions of Part I of the Young Persons (Employment) Act 1938 (*c*), would apply, may give notice that he elects that the provisions of this Act shall apply to all such young persons as aforesaid for the time being so employed by him as aforesaid, or may give notice (*d*) that he elects that the provisions of Part I of the Young Persons (Employment) Act 1938 (*c*), shall apply to all of them.

(2) When a notice given under the foregoing subsection has taken effect, then, until another notice withdrawing that notice (*d*) takes effect, the provisions of this Act or of Part I of the Young Persons (Employment) Act 1938, as the case may be, shall apply to all the young persons (*a*) aforesaid, and, in the case of young persons (*a*) to whom apart from this section those provisions would not have applied, shall apply to them subject to the prescribed adaptations (*e*) and to the exclusion of the provisions of the said Part I of the Act, of 1938 or of this Act, as the case may be:

Provided that, where the provisions that are to apply are the provisions of this Act—

(a) those provisions shall have effect with the substitution in section seventeen of, and Part II of the Third Schedule to, this Act for references to half-past one o'clock of references to one o'clock; and

(b) section twenty-five of this Act shall have effect only in the case of young persons (*a*) employed at, or in connection with the business carried on at, a residential hotel (*b*), and in the case of those persons shall have effect notwithstanding anything in subsection (1) of section thirty-four of this Act.

(3) A notice (*d*) to be given under subsection (1) of this section and a notice (*d*) withdrawing such a notice shall be given to the local authority (*f*) in such form, in such manner and subject to such conditions as may be prescribed (*g*) and any such notice (*d*) shall have effect as from such date after it is given as may be prescribed (*g*).

(4) In this section the expression "prescribed" means

prescribed by order of the Secretary of State which may be varied or revoked by a subsequent order, and the power of making orders under this subsection shall be exercisable by statutory instrument.

(5) For the purposes of this section—

(a) the carrying on of a club shall be deemed to be a business notwithstanding that the club is not carried on for the purpose of profit;

(b) a young person shall be deemed to be employed by the person for whom he works notwithstanding that he receives no wages for his work.

(*a*) ***Young person.*** For definition, see s. 74 (1).

(*b*) ***Residential hotel.*** For definition, see s. 74 (1).

(*c*) ***Young Persons (Employment) Act 1938.*** See Redgrave's Factories Acts, 22nd Edn., pp. 1221 *et seq.* It should be noted that ss. 8, 11, 12 and 13, have been repealed by s. 76 (1) of this Act.

(*d*) ***Notice.*** For the various forms of notices, see the Young Persons (Employment) Order 1938 (S.R. & O. 1938 No. 1501).

(*e*) ***Prescribed Adaptations.*** See the Young Persons (Employment) Adaptation Order 1938 (S.R. & O. 1938, No. 1502).

(*f*) ***Local authority.*** For definition, see s. 73.

(*g*) ***Prescribed.*** For definition, see s. 74 (1), and sub-s. (4) of this section.

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69. Regulations.—(1) The Secretary of State may make regulations (*a*)—

(a) for prescribing anything which under this Act is to be prescribed by regulations; and

(b) as to the mode of ascertaining the opinion of occupiers of shops (*b*); and

(c) as to conduct of local inquiries and matters incidental thereto (*c*); and

(d) as to the procedure for obtaining the revocation of a closing order (*d*); and

(e) generally for carrying into effect the following provisions of this Act, that is to say, Part I (*e*), in Part II sections seventeen to twenty-one, Part III and, so far as it applies in relation to those provisions, Part V.

(2) The power of making regulations under this section shall be exercisable by statutory instrument (*f*).

General note. This section is printed as amended by s. 91 of and Sch. 2 to the Offices, Shops and Railway Premises Act 1963.

(*a*) ***Regulations.*** No regulations have been made under this section at the time of going to press, but by virtue of s. 76 (2), the Shops Regulations 1912; the Shops Regulations 1913; the Shops Regulations 1937; the Shops (Procedure for Jewish Tribunals) Regulations 1937; the Young Persons (Employment) Order 1938, and the Shops Regulations 1939, are continued in force and have effect as if made under this Act.

(*b*) ***Shops.*** See the Shops Regulations 1912, reg. 4 (3), p. 304.

(*c*) ***Local inquiries.*** See also ss. 10 and 16 of this Act, and the Shops Regulations 1912, regs. 12–18.

(*d*) ***Closing order.*** See the Shops Regulations 1912, regs. 23 and 24.

(*e*) ***Part I.*** The reference to Part I includes a reference to the Shops (Early Closing Days) Act 1965 (*ibid.*, s. 5 (2)).

(*f*) ***Statutory Instrument.*** See the Statutory Instruments Act 1946.

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70. Proof and revocation of orders of local authorities.—(1) Any order made by a local authority (*a*) under Parts I or III of this Act may be proved by the production of a copy thereof certified to be a true copy by a person purporting to be the clerk of the local authority (*a*) by whom the order was made.

(2) Any order made by a local authority (*a*) under this Act, may, unless some other method of revocation (*b*) is provided by this Act, be revoked by an order made in the like manner and subject to the like approval, if any, as the original order.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Revocation.*** As to revocation of closing orders, see s. 11.

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71. Enforcement.—(1) It shall be the duty of every local authority (*a*) to enforce within their district the provisions of this Act and of the orders made under those provisions, and for that purpose to institute and carry on such proceedings in respect of contraventions (*b*) of the said provisions and such orders as aforesaid as may be necessary to secure observance thereof.

(2) For the purpose of their duties under the foregoing subsection, it shall be the duty of every local authority (*a*) to appoint inspectors (*c*), and an inspector (*c*) so appointed shall, for the purposes of his powers and duties, have in relation to shops all the powers conferred in relation to factories on inspectors by section one hundred and twenty-three of the

Factories Act 1937 (*d*), and that section and section one hundred and twenty-five of the same Act (*d*) shall apply accordingly.

An inspector may, if so authorised by the local authority (*a*), institute and carry on any proceedings under this Act on behalf of the authority.

(3) The following enactments in the Factories Act 1937 (*d*), that is to say—

subsection (1) of section one hundred and forty (which provides for the summary prosecution of offences),

subsection (2) of section one hundred and forty (which relates to the terms of an information in proceedings under the Act),

subsection (7) of section one hundred and forty (which disqualifies certain interested persons from acting as members of a court trying an offence),

section one hundred and forty-one (which provides for an appeal from an order made by a court of summary jurisdiction in England or Wales),

subsection (2) of section one hundred and forty-two (which in proceedings with respect to a young person imposes on the defendant the onus of proving that the young person is not below a given age),

subsection (7) of section one hundred and fifty-six (which confers on certain courts in Scotland power to deal with minor offences under the Act),

subsection (9) of section one hundred and fifty-six (which enables a prosecutor in Scotland to give evidence in the proceedings), and

subsection (10) of section one hundred and fifty-six (which renders a person convicted in Scotland of an offence against the Act liable in expenses),

shall, so far as they are applicable, have effect as if re-enacted in this Act and in terms made applicable thereto.

(4) All fines imposed in any proceedings instituted by or on behalf of a local authority (*a*) in pursuance of their powers and duties under this Act shall be paid to the local authority (*a*):

Provided that in England and Wales this subsection shall cease to have effect upon the coming into operation of section twenty-seven of the Justices of the Peace Act 1949.

(5) Where an offence for which the occupier of a shop (*e*) is liable (*f*) under this Act has, in fact, been committed by some manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to the like penalty as if he were the occupier.

(6) Where the occupier of a shop (*e*) is charged with an offence under this Act, he shall be entitled upon information duly laid by him to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, he proves to the satisfaction of the court that he has used due diligence to enforce the execution of this Act and that the said other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be summarily convicted of such offence, and the occupier shall be exempt from any fine.

(7) The expression "shop" in this section—

(a) so far as it relates to the enforcement of any other provision of this Act, has the same meaning as in that other provision; and

(b) so far as it relates to the enforcement of any provision in Part II or Part IV of this Act which applies to retail trade or business carried on at any place not being a shop, includes a reference to any such place.

General note. Subsection (6) of this section provides a third-party procedure whereby the occupier of a shop who is charged with an offence under the Act may lay an information against the actual offender and may be exempt from a fine. See the interpretation of the similar provisions of s. 5 of the Agriculture (Poisonous Substances) Act 1952.

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Contravention.*** For definition, see s. 74.

(*c*) ***Inspector.*** For certificates of appointment, see the Shops Regulations 1912, reg. 25, and Schedule, Form V, pp. 310, 313.

(*d*) ***Factories Act 1937.*** This Act has been repealed by the Factories Act 1961, which will be found in Redgrave's Factories Acts, 22nd Edn. References to the 1937 Act are now to the corresponding provisions of the 1961 Act (see s. 183 of and the 6th Schedule to the 1961 Act). The following is a comparative table of the sections in the Factories Acts mentioned in this section:

Factories Act 1937	*Factories Act* 1961
s. 123	s. 146
s. 125	s. 150
s. 140 (1)	s. 164 (1)
s. 140 (2)	s. 164 (2)
s. 140 (7)	s. 164 (7)
s. 141	s. 165
s. 142 (2)	s. 166 (2)
s. 156 (7)	s. 182 (4)
s. 156 (9)	s. 182 (6)
s. 156 (10)	s. 182 (7)

(*e*) **Shop.** For definition, see s. 74 (1), and sub-s. (7) of this section.

(*f*) ***Liability of employer.*** If the offence has been committed by a servant without the knowledge or consent of his employer, the latter is also liable to the penalty, unless he has brought the actual offender to justice under sub-s. (6) (*Ward* v. *W. H. Smith & Son*, [1913] 3 K.B. 154).

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72. Further provision for enforcement.—(1) It shall be the duty of the local authority (*a*) having power under the Children and Young Persons Act 1933 (*b*), to enforce the provisions of that Act as to street trading, to enforce as part of their duties under that Act the provisions of Part II of this Act (other than section twenty-two) in their application to street trading, and the last foregoing section shall not apply with respect to the provisions to be enforced under this subsection, except that offences under those provisions shall be punishable on summary conviction.

(2) (3) [*These subsections were repealed as from* 1*st August* 1964 *by the Offices, Shops and Railway Premises Act* 1963, *s.* 91 *and Sched.* 2.]

(4) In the application of this section to Scotland—

(a) subsection (1) shall have effect as if for the local authority and the provisions of the Children and Young Persons Act 1933, therein mentioned there were respectively substituted references to the local authority for the purposes of this Act, and the provisions of this Act, and the last foregoing section shall apply accordingly;

(b) [*This paragraph was repealed as from* 1*st August* 1964 *by the Offices, Shops and Railway Premises Act* 1963, *s.* 91 *and Sched.* 2.]

(*a*) ***Local authority.*** For definition, see s. 73.

(*b*) ***Children and Young Persons Act 1933.*** See also ss. 35 and 36 of the Children and Young Persons Act 1963.

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73. Local authorities.—(1) In this Act the expression "local authority" means—

as respects the city of London, the common council;

as respects any municipal borough, the council of the borough;

as respects any urban district with a population according to the returns of the last published census for the time being of twenty thousand or upward, the district council;

elsewhere, the county council.

(2) A county council may, with the approval of the Secretary of State, make arrangements with the council of an urban district in the county with a population of less than twenty thousand, or with the council of a rural district, for the exercise by the council of that district as agents for the county council, on such terms and subject to such conditions as may be agreed on, of any powers of the county council under this Act within the district, and the council of the district may, as part of the agreement, undertake to pay the whole or any part of the expenses incurred in connection with the exercise of the powers delegated to them.

(3) The expenses of a county council under this Act shall be defrayed as expenses for special county purposes.

(4) In Scotland, the foregoing provisions of this section shall not apply; and the expression "local authority" in the application of this Act to Scotland means a county or town council.

General note. This section is printed as amended by the London Government Act 1963, s. 93 and Sched. 18. After 1st April 1965 the London boroughs became municipal boroughs; see the London Government Act 1963, s. 1 (6) (20 Halsbury's Statutes (3rd Edn.) 451).

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74. Interpretation.—(1) In this Act, save where the context otherwise requires—

"bank holiday" (*a*) includes any public holiday or day of public rejoicing or mourning;

"butchers' meat" means beef, mutton, veal, lamb or pork (including livers, heads, feet, hearts, lights, kidneys or sweetbreads), whether fresh, chilled, frozen or salted, and includes Kosher meat;

"closing order" has the meaning assigned to it by section eight of this Act;

"contravention", in relation to any provision, includes any failure to comply with that provision;

"early closing day" means, as respects a shop, the day on which a shop is required to be closed for the serving of customers not later than one o'clock in the afternoon in pursuance of s. 1 of this Act and the Shops (Early Closing Days) Act 1965;

"enactment" includes any Act, and any rule, regulation, byelaw or order made under any Act;

"factory" has the same meaning as in the Factories Act 1937 (*b*);

"general closing hours" means the hours fixed by or under section two of this Act or the hours substituted therefor by or under any other provision of this Act;

"Kosher meat" means butchers' meat killed and prepared by the Jewish ritual method;

"local authority" has the meaning assigned to it by the last foregoing section;

"prescribed" means prescribed by regulations made under section sixty-nine of this Act;

"residential hotel" means premises used for the reception of guests and travellers desirous of dwelling or sleeping therein;

"retail trade or business" (*c*) includes the business of a barber or hairdresser, the sale of refreshments or intoxicating liquors, the business of lending books or periodicals when carried on for purposes of gain, and retail sales by auction, but does not include the sale of programmes and catalogues and other similar sales at theatres and places of amusement;

"shop" (*d*) includes any premises where any retail trade or business is carried on;

"shop assistant" (*e*) means any person wholly or mainly employed in a shop in connection with the serving of customers or the receipt of orders or the despatch of goods;

"theatre" includes any place used for the exhibition of pictures or other optical effects by means of a cinematograph or other suitable apparatus and any music hall or other similar place of entertainment; and "performance" has a corresponding meaning;

"week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night;

"wholesale shop" means premises occupied by a wholesale dealer or merchant where goods are kept for sale wholesale to customers resorting to the premises;

"the winter months" means the period beginning with the first Sunday in November in any year and ending with the day before the first Sunday in March in the succeeding year;

"working hours" means the time during which the persons employed are at the disposal of the employer, exclusive of any intervals allowed for rest and meals; and "hours worked" has a corresponding meaning;

"young person" does not include a child whose employment is regulated by section eighteen of the Children and Young Persons Act 1933 (*f*), or section twenty-eight of the Children and Young Persons (Scotland) Act 1937, but save as aforesaid means a person who has not attained (*g*) the age of eighteen years.

(2) For the purposes of this Act, a person shall be deemed to be between any two ages therein mentioned if he has attained (*g*) the first-mentioned age but has not attained the second-mentioned age.

(3) Any reference in this Act to any enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by any subsequent enactment.

General note. This section is printed as amended by the Offices, Shops and Railway Premises Act 1963, s. 91 and Sch. 2 and by the Shops (Early Closing Days) Act 1965, s. 3.

(*a*) ***Bank holiday.*** This presumably means the holidays provided by the Bank Holidays Act 1871, and the Holidays Extension Act 1875, as to which see note (*e*) to s. 94 of the Factories Act 1961 (Redgrave's Factories Acts, 22nd Edn., 285).

(*b*) ***Factories Act 1937.*** This Act was repealed and replaced by the Factories Act 1961 (*ibid.*, s. 183 (2) and Sched. 7). The definition of "factory" is now contained in *ibid.*, s. 175, to which reference must now be made (*ibid.*, s. 183 (1) and Sched. 6). Principally, that definition provides that the expression "factory" means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of certain specific purposes, of which the most important are (a) the making of any

article or of part of any article; (b) the altering, repairing, ornamenting, polishing, cleaning, or washing or the breaking up or demolition of any article and (c) the adapting for sale of any article. By *ibid.*, s. 175 (2) certain specific types of premises are brought within the definition, and by *ibid.*, s. 175 (6) where a place situate within the close, curtilage or precincts forming a factory is solely used for such purpose other than the processes carried on in the factory, that place is not deemed to form part of the factory, but, if otherwise it would be a factory, is deemed to be a separate factory. For the full terms of *ibid.*, s. 175, and for the authorities thereon, see Redgrave's Factories Acts, 22nd Edn., pp. 440 *et seq.*

(*c*) ***Retail trade or business.*** The ordinary meaning of the term "retail seller" is one who deals with customers, and of "wholesale seller" is one who deals only with persons who buy to sell again (*per* BACON, V.C., in *Treacher & Co., Ltd.* v. *Treacher*, [1874] W.N. 4). The word "trade" has the technical meaning of buying or selling (*per* WILLES, J., in *Harris* v. *Amery* (1865), 35 L.J.C.P. 89, at p. 92). It was held in the Irish case of *Wallace* v. *Dixon*, [1917] 2 I.R. 236, that this definition is not confined to sales across the counter, and that it extends to places where retail orders are received, such as a retail coal-merchant's office. In *W. H. Smith & Son* v. *Kyle*, [1902] 1 K.B. 286; Lord ALVERSTONE, C.J., expressed the opinion that for most purposes of the Shops Acts a temporary bookstall consisting of boards laid upon trestles would be a "shop", even under the much narrower definition in the Shop Hours Act 1892. In *Dennis* v. *Hutchinson* and *Trafford* v. *Hutchinson*, [1922] 1 K.B. 693, the appellants kept wooden stalls on the beach at Skegness containing mechanical contrivances by which the public could play games of mixed chance and skill for prizes of chocolates, etc, paying an entrance fee in cash. It was held that these were not "premises where a retail trade was carried on", and were therefore not "shops".

In *Ilford Corporation* v. *Betterclean (Seven Kings) Ltd.*, [1965] 1 All E.R. 900 a coin operated launderette with vending machines was held to be a shop where retail trade business was carried on. In *M. & F. Frawley, Ltd.* v *Ve-Ri-Best Manufacturing Co., Ltd.*, [1953] 1 Q.B. 318; [1953] 1 All E.R. 50. A ran a builder's and decorator's business. Apart from some small sales of materials to the public (which were disregarded) the premises were used as offices and for storing materials. The work was carried out upon the customer's own premises. The court, in considering the words "retail trade or business", said that they primarily suggested the sale of goods rather than services and that although "business" was a slightly wider word than "trade", it could only cover analogous situations, *e.g.*, repairing shoes, cleaning clothes or mending watches. A similar result was reached in *Deeble* v. *Robinson*, [1954] 1 Q.B. 77; [1953] 2 All E.R. 1348. There the applicant for a new lease of his premises was a retail milk roundsman; he had sheds where he stored his milk and kept his horse and float; but he sold no milk on the premises. It was held that a shop was a place on which sales are made and it was not enough that the premises are occupied for the purpose of sales made elsewhere.

The authorities relating to the interpretation of "retail trade or business" are further considered in note (*k*) to s. 1 of the Offices, Shops and Railway Premises Act, 1963.

See also *Turpin* v. *Middlesbrough Assessment Committee*, [1931] A.C. 451; *Finn* v. *Kerslake*, [1931] A.C. 457; and *Ritz Cleaners, Ltd.* v. *West Middlesex Assessment Committee*, [1937] 2 K.B. 642; [1937] 2 All E.R. 368.

(*d*) ***Shop.*** There have to be premises, *i.e.* some sort of fixed structure, before the definition is satisfied. Thus a mobile shop is not within the definition; see *Eldorado Ice Cream Co., Ltd.* v. *Keating*, [1938] 1 K.B. 715; [1938] 1 All E.R. 330; *Stone* v. *Boreham*, [1959] 1 Q.B. 1; [1958] 2 All E.R. 715 and *Cowlairs Co-operative Society, Ltd.* v. *Glasgow Corporation*, 1957 S.C. (J.) 51. A stall is not a shop (*Greenwood* v. *Whelan*, [1967] 1 Q.B. 396; [1967] 1 All E.R. 294) although it might well be a place other than a shop; see *Maby* v. *Warwick Corporation*, [1972] 2 Q.B. 242; [1972] 2 All E.R. 1198, followed in *Randall* v. *D. Turner Garages, Ltd.*, (1973), 117 Sol. Jo. 446.

It is submitted that in spite of the fact that the definition "includes" any premises where retail trade or business is carried on, that this really is equivalent to "means" any premises where retail trade or business is carried on. The word "includes", if used in an interpretation clause, may be used in order to extend the ordinary meaning of the term defined; or it may be used merely in order exhaustively to explain the meaning of the term (see *Dilworth* v. *Stamp Commrs.*, [1899] A. C. 99 at pp. 105, 106, P.C.). In the present case it would appear that the word "includes" is equivalent to "means and includes", so that no premises other than those specified are to be regarded as within the definition; see *per* Lord TREVETHIN, C.J., in *Dennis* v. *Hutchinson*, [1922] 1 K.B. 693 at p. 697, and *per* SOMERVELL, L.J., in *M. & F. Frawley, Ltd.* v. *Ve-Ri-Best Co., Ltd.*, [1953] 1 Q.B. 318, at p. 323; [1953] 1 All E.R. 50 at p. 51.

The ordinary meaning of the word "shop" is a spot where a retail trade is carried on (*per* TINDAL, C.J., in *R.* v. *Chapman and Alderman* (1843), 7 J.P. 132); it may also include places used not only for selling but also for storing goods (*per* MELLOR, J., in *Pope* v. *Whalley* (1865), 6 B. & S. 303 at p. 313).

The mere fact that the premises alleged to be the shop are part of a larger whole which may not be a shop is not conclusive. In *George Hotel (Colchester), Ltd.* v. *Ball*, [1938] 3 All E.R. 790 the court held that where the restaurant of a residential hotel did 63% of its trade with non-residents, it could be a shop.

A department store or supermarket, which constituted a single hereditament, has been held to be one shop and not a number of shops collected under one roof (*Fine Fare, Ltd.* v. *Brighton County Borough Council*, [1959] 1 All E.R. 476.)

(*e*) ***Shop assistant.*** In *Melluish* v. *London County Council*, [1914] 3 K.B. 325 it was held that a kitchen maid in a restaurant kitchen, who never went into the room where the customers were served, was within the definition of person "employed in a shop in connection with the serving of customers"; and in *Prance* v. *London County Council*, [1915] 1 K.B. 688, it was held that the term included a potman at a public-house who was employed in putting up and taking down tables for customers' dinners, cleaning knives for the dinners, washing pots and glasses and cleaning up the premises, all of which duties were held to be sufficiently proximate to the serving of customers. In *George Hotel*

(*Colchester*), *Ltd.* v. *Ball*, [1938] 3 All E.R. 790, a waiter in a hotel dining-room used mainly for serving meals to non-residents was also held to be a shop assistant.

(*f*) ***Children and Young Persons Act 1933.*** Section 18 of that Act is amended by s. 34 of the Children and Young Persons Act 1963.

(*g*) ***Attained.*** A person is deemed to attain a given age at the commencement of the relevant anniversary of his birth (Family Law Reform Act 1969, s. 9).

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75. General application to Scotland.—In the application of this Act to Scotland—

for any reference to a county court there shall be substituted a reference to the sheriff;

for any reference to intoxicating liquor there shall be substituted a reference to exciseable liquor.

General note. This section is printed as amended by the Offices, Shops and Railway Premises Act 1963, s. 91 and Sch. 2.

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76. Repeal.—(1) The enactments set out in the Eighth Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(2) Nothing in this repeal shall affect any instrument made or other thing whatsoever done under any enactment repealed by this Act or under any enactment repealed by the Shops Act 1912, and every such instrument or other thing shall continue in force and, so far as it could have been made or done under this Act, shall have effect as if made or done under the corresponding provision of this Act (*a*).

(3) Any document referring to any Act or enactment repealed by this Act shall be construed as referring to this Act or the corresponding enactment in this Act.

(4) Where under any Act passed before this Act there is power to affect Acts passed or in force before a particular time and that power would, but for the passing of this Act, have included power to change the law which is reproduced in this Act, then that power shall include power to make such provision as will secure the like change in the law as reproduced in this Act notwithstanding that this Act is not an Act

passed or in force before that time and notwithstanding that the terms of this Act, apart from this subsection, are not such as to render that power applicable.

(5) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act 1889, with regard to the effect of repeals.

(*a*) ***Subsection (2).*** See *Miller's Cash Stores, Ltd.* v. *West Ham Corporation*, [1955] 3 All E.R. 282.

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77. Short title, extent and commencement.—(1) This Act may be cited as the Shops Act 1950.

(2) This Act shall not extend to Northern Ireland.

(3) This Act shall come into operation on the first day of October, nineteen hundred and fifty.

FIRST SCHEDULE

(Section 1)

TRADES AND BUSINESSES EXEMPTED FROM THE PROVISIONS AS TO EARLY CLOSING DAY

The sale by retail of intoxicating liquors.

The sale of refreshments, including the business carried on at a railway refreshment room.

The sale of motor, cycle, and aircraft supplies and accessories (*a*) to travellers.

The sale of newspapers and periodicals.

The sale of meat, fish, milk, cream, bread, confectionery (*b*), fruit, vegetables, flowers, and other articles of a perishable nature (*c*).

The sale of tobacco and smokers' requisites (*d*).

The business carried on at a railway bookstall (*d*) on or adjoining a railway platform.

The sale of medicines and medical and surgical appliances.

Retail trade carried on at an exhibition or show, if the local authority (*e*) certify that such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show.

General note. This schedule is printed as amended by the Shops (Early Closing Days) Act 1965.

(*a*) ***Accessories.*** This means only accessories relating to motors, cycles, and aircraft; not accessories generally (*Williams* v. *Gosden*, [1914] 1 K.B. 35). It does not include a touring caravan (*Warley Caravans* v. *Wakelin* (1968), 66 L.G.R. 534).

(*b*) ***Confectionery.*** Run honey is not "confectionery": *London County Council* v. *Welford's Surrey Dairies Co., Ltd.*, [1913] 2 K.B. 529. The word includes both sweets and pastry (*Gee* v. *Davies* (1916), 85 L.J.K.B. 1431).

(*c*) ***Perishable articles.*** Butter is an "article of a perishable nature" (*London County Council* v. *Welford's Surrey Dairies Co., Ltd.*, *supra*).

(*d*) ***Sale of tobacco; railway bookstall.*** An order of a local authority extending (under s. 1 (6)) the early closing day to "the sale of tobacco and smokers requisites" does not apply to a railway bookstall adjoining a platform, at which a substantial part of the business consists of the sale of such articles, since such sales are part of the ordinary business of a railway bookstall (*Fyfe* v. *Menzies* (*John*) *& Co.*, 1920 S.C. (J.) 7).

(*e*) ***Local authority.*** For definition, see s. 73.

SECOND SCHEDULE

(Sections 2 and 8)

TRANSACTIONS NOT AFFECTED BY GENERAL CLOSING HOURS OR BY CLOSING ORDERS

1. The sale of—

(a) meals or refreshments (including table waters, sweets, chocolates, sugar confectionery, and ice cream), for consumption on the premises, or (in the case of meals or refreshments sold on railway premises) for consumption on the trains:

Provided that—

(i) in the case of canteens attached to and situated within or in the immediate vicinity of any works, if persons are employed at such works after the closing hour, and the canteen is kept open only for the use of such persons, meals or refreshments may be sold after the closing hour for consumption anywhere within the works premises; and

(ii) for the purposes of the foregoing provisions, tobacco supplied at a meal for immediate consumption shall be deemed to form part of the meal;

(b) newly cooked provisions (*a*) and cooked or partly cooked tripe to be consumed off the premises;

(c) intoxicating liquors to be consumed on or off the premises;

(d) tobacco, table waters or matches on licensed premises during the hours during which intoxicating liquor is permitted by law to be sold on the premises;

(e) tobacco, matches, table waters, sweets, chocolates, or other sugar confectionery or ice cream at any time during the performance in any theatre, cinema, music hall, or other similar place of entertainment so long as the sale is to a *bonâ fide* member of the audience and in a part of the building to which no other members of the public have access;

(f) medicine or medical or surgical appliances, so long as the shop is kept open only for such time as is necessary for serving the customer;

(g) newspapers, periodicals and books from the bookstalls of such terminal and main line stations as may be approved by the Secretary of State;

(h) aircraft, motor, or cycle supplies or accessories for immediate use, so long as the shop is kept open only for such time as is necessary for serving the customer;

(i) victuals, stores, or other necessaries required by any naval, military or air force authority for His Majesty's forces (*b*) or required for any ship on her arrival at or immediately before her departure from a port, so long as the shop is kept open only for such time as is necessary for the serving the customer.

2. The transaction of any post office business (*c*).

(*a*) ***Newly cooked provisions.*** In *London County Council* v. *Davis*, [1938] 2 All E.R. 764, the defendant, a shopkeeper, sold newly baked rolls for consumption off the premises at 9.55 p.m., the closing hour for shops being 8 p.m., but, as it was impossible to exclude newly baked rolls or newly baked bread from the scope of the expression 'newly cooked provisions' within the meaning of the exemption clause in the Act of 1928, no offence had been committed.

In the *Magistrates of Alloa* v. *Dalziel*, 1955 S.L.T. (Notes), p. 60, rolls were baked at 7.30 p.m. and sold at 9.5 p.m. The High Court of Justiciary upheld a conviction that they were not newly cooked provisions. But in *Lanark County Council* v. *Dalziel*, 1956 S.L.T. (Sh. Ct.) 30 the Sheriff-Substitute held that warm rolls sold half an hour after they had been baked were newly cooked goods.

(*b*) ***Forces.*** By the Visiting Forces (Application of Law) Order 1954, Article 11 and Schedule 3, references to His Majesty's forces in this subparagraph shall include references to a visiting force. Para. 1 (i) is also modified by the Visiting Forces and International Headquarters (Appli-

cation of Law) Order 1965 (S.I. 1965 No. 1536), art. 12 (2) and Sch. 11, so as to apply to visiting forces and headquarters as defined by that Order.

THIRD SCHEDULE

(Section 19)

INTERVALS FOR MEALS

PART I

Intervals for meals shall be arranged so as to secure that no person shall be employed for more than six hours without an interval of at least twenty minutes being allowed during the course thereof.

Without prejudice to the foregoing provision—

(1) where the hours of employment include the hours from 11.30 a.m. to 2.30 p.m., an interval of not less than three-quarters of an hour shall be allowed between those hours for dinner (*a*) and

(2) where the hours of employment include the hours from 4 p.m. to 7 p.m., an interval of not less than half an hour shall be allowed between those hours for tea.

and the interval for dinner shall be increased to one hour in cases where that meal is not taken in the shop (*b*), or in a building of which the shop (*b*) forms part or to which the shop (*b*) is attached:

Provided that an assistant employed in the sale of refreshments or in the sale by retail of intoxicating liquors need not be allowed the interval for dinner between 11.30 a.m. and 2.30 p.m. if he is allowed the same interval so arranged as either to end not earlier than 11.30 a.m. or to commence not later than 2.30 p.m., and the same exemption shall apply to assistants employed in any shop (*b*) on the market day in any town in which a market is held not oftener than once a week, or on a day on which an annual fair is held.

PART II

Part I of this Schedule shall, in its application to young persons (*c*) to whom subsection (1) of section twenty of this Act applies, have effect as if for the words "six hours" there were substituted the words "five hours or, on the day of the week on which he is not to be employed after half-past one o'clock, five and a half hours."

(*a*) ***Interval.*** The whole of the interval must fall within the specified times and a break from 10.45 to 11.45 does not comply with the Act; *Hutchinson* v. *Cumming*, 1926 S.C. (J.) 110.

(*b*) ***Shop.*** For definition, see s. 74 (1).
(*c*) ***Young person.*** For definition, see s. 74 (1).

FOURTH SCHEDULE

(Section 41)

METHOD OF CALCULATING THE HOLIDAYS TO WHICH ANY SHOP ASSISTANT IS ENTITLED UNDER SECTION FORTY-ONE OF THIS ACT

1. The number of extra hours (*a*) for which a shop assistant (*b*) has been employed in or about the business of the shop (*c*) while any one or more orders have been in force under section forty-one of this Act shall be added together, any fraction of an hour not exceeding half being treated as half an hour, and any fraction of an hour exceeding half being treated as an hour.

2. For the purposes of this Schedule the number of hours comprised in the customary working day (*d*) on days other than half-holidays shall be taken as the standard unit.

3. The aggregate number of the extra hours (*a*), as calculated in accordance with the provisions of paragraph 1 of this Schedule shall be divided by the standard unit, and the quotient, fractions thereof being disregarded, shall be the number of the days' holiday to which the shop assistant (*b*) shall be entitled.

(*a*) ***Extra hours.*** For definition, see s. 41 (5).
(*b*) ***Shop assistant.*** For definition, see s. 74.
(*c*) ***Shop.*** For definition, see s. 74.
(*d*) ***Customary working day.*** For definition, see s. 41 (5).

FIFTH SCHEDULE

(Section 47)

TRANSACTIONS FOR THE PURPOSES OF WHICH A SHOP MAY BE OPEN IN ENGLAND AND WALES FOR THE SERVING OF CUSTOMERS ON SUNDAY

1. The sale of—

(a) intoxicating liquors;

(b) meals or refreshments (*a*) whether or not for consumption at the shop at which they are sold, but not including the sale of fried fish and chips at a fried fish and chip shop;

(c) newly cooked provisions (*b*) and cooked or partly cooked tripe;

(d) table waters, sweets, chocolates, sugar confectionery (*c*) and ice cream (including wafers and edible containers):

(e) flowers, fruit and vegetables (including mushrooms) other than tinned or bottled fruit or vegetables;

(f) milk and cream, not including tinned or dried milk or cream, but including clotted cream whether sold in tins or otherwise;

(g) medicines and medical and surgical appliances—

(i) at any premises registered under section twelve of the Pharmacy and Poisons Act, 1933; or

(ii) by any person who has entered into a contract with an Executive Council for the supply of drugs and appliances;

(h) aircraft, motor, or cycle supplies or accessories (*d*);

(i) tobacco and smokers' requisites;

(j) newspapers, periodicals and magazines;

(k) books and stationery from the bookstalls of such terminal and main line railway or omnibus stations, or at such aerodromes as may be approved by the Secretary of State;

(l) guide books, postcards, photographs, reproductions, photographic films and plates, and souvenirs (*e*)—

(i) at any gallery, museum, garden, park or ancient monument under the control of a public authority or university; or

(ii) at any other gallery or museum, or any place of natural beauty or historic interest, or any zoological, botanical or horticultural gardens, or aquarium, if and to the extent that the local authority certify that such sale is desirable in the interests of the public; or

(iii) in any passenger vessel within the meaning of Part II of the Finance (1909–1910) Act 1910, while engaged in carrying passengers;

(m) photographs for passports;

(n) requisites for any game or sport at any premises or place where that game or sport is played or carried on;

(o) fodder for horses, mules, ponies and donkeys at any farm, stables, hotel or inn.

2. The transaction of—

(a) post office business (*f*);

(b) the business carried on by a funeral undertaker.

(*a*) ***Meals or refreshments.*** A loaf of bread has been held to be a "refreshment"; see *Binns* v. *Wardale*, [1946] K.B. 451; [1946] 2 All E.R. 100; It seems to follow from *London County Council* v. *Lees*, [1939] 1 All E.R. 191 that an article may be a meal or refreshment even though it also falls within another subsection.

In *Newberry* v. *Cohen's (Smoked Salmon), Ltd.* (1956), 54 L.G.R. 343, a kipper was held to be a meal but a packet of tea or flour was not. The test was stated to be whether it could equally well be eaten in the shop and at home.

(*b*) ***Newly cooked provisions.*** See note (*a*) to the Second Schedule.

(*c*) ***Confectionery.*** See note (*b*) to First Schedule.

(*d*) ***Accessories.*** See note (*a*) to First Schedule.

(*e*) ***Reproduction; Souvenir.*** A gramophone record with a "Souvenir of London" label but having no connection with London is not a reproduction or souvenir (*Disci, Ltd.* v. *Westminister City Council* (1968), 66 L.G.R. 639).

(*f*) ***Post office business.*** See note (*c*) to s. 22.

SIXTH SCHEDULE

(Section 48)

TRANSACTIONS IN RESPECT OF WHICH A PARTIAL EXEMPTION ORDER MAY BE MADE UNDER SECTION FORTY-EIGHT OF THIS ACT

The sale of—

(a) bread and flour confectionery, including rolls and fancy bread;

(b) fish (including shell-fish);

(c) groceries and other provisions commonly sold in grocers shops,

in so far as such sales are not included amongst the transactions mentioned in the Fifth Schedule to this Act.

SEVENTH SCHEDULE

(Section 51)

TRANSACTIONS IN RESPECT OF WHICH AN ORDER MAY BE MADE UNDER SECTION FIFTY-ONE OF THIS ACT

The sale of—

(a) any articles required for the purposes of bathing or fishing;

(b) photographic requisites;

(c) toys, souvenirs and fancy goods;

(d) books, stationery, photographs, reproductions and post-cards;

(e) any article of food.

EIGHTH SCHEDULE

(Section 76)

ENACTMENTS REPEALED

Session and Chapter	Short Title	Extent of Repeal
2 & 3 Geo. 5, c. 3.	The Shops Acts, 1912.	The whole Act.
2 & 3 Geo. 5, c. 24.	The Shops Act, 1913.	The whole Act.
18 & 19 Geo. 5, c. 33.	The Shops (Hours of Closing) Act, 1928.	The whole Act.
20 & 21 Geo. 5, c. 35.	The Hairdressers' and Barbers' Shops (Sunday Closing) Act, 1930.	The whole Act.
24 & 25 Geo. 5, c. 42.	The Shops Act, 1934.	The whole Act.
26 Geo. 5 & 1 Edw. 8, c. 28.	The Shops Act, 1936.	The whole Act.
26 Geo. 5 & 1 Edw. 8, c. 30.	The Retail Meat Dealers' Shops (Sunday Closing) Act, 1936.	The whole Act.
26 Geo. 5 & 1 Edw. 8, c. 53.	The Shops (Sunday Trading Restriction) Act, 1936.	The whole Act.
1 Edw. 8 & 1 Geo. 6, c. 67	The Factories Act 1937.	In section ninety-eight, subsection (6).
1 & 2 Geo. 6, c. 69.	The Young Persons (Employment) Act, 1938.	Sections eight, eleven twelve and thirteen.
9 & 10 Geo. 6, c. 81.	The National Health Service Act 1946.	In the Tenth Schedule, the amendments of the Shops (Sunday Trading Restriction) Act 1936.
	Defence Regulation	
	The Defence (General) Regulations 1939.	Regulation sixty AB.

THE SHOPS (EARLY CLOSING DAYS) ACT 1965

(1965, c. 35)

An Act to provide for a shop's early closing day to be selected by its occupier; to abolish the power to change the closing time on early closing days and the power to extend early closing day requirements to exempted shops; to substitute the expression "early closing day" for the expression "weekly half-holiday" in the Shops Act 1950*; and for purposes connected with the matters aforesaid.* [5th August 1965]

1. Selection of shop's early closing day by its occupier— (1) The week day on which a shop (*a*) is required to be closed for the serving of customers by one o'clock in the afternoon in pursuance of section 1 (1) of the Shops Act 1950 (in this Act referred to as "the early closing day") shall, subject to subsection (4) of this section, be fixed by the occupier of the shop (*a*) in accordance with subsections (2) and (3) of this section; and accordingly subsections (2) and (3) of the said section 1 (which authorise local authorities (*b*) to fix early closing days by order and provide for early closing days to be fixed by the occupiers of shops (*a*) only in cases where they are not fixed by the local authority (*b*)) are hereby repealed.

(2) The occupier of every shop (*a*) to which the said section 1 applies—

(*a*) shall keep conspicuously displayed in the shop, so as to be visible from outside the ship at an entrance used by its customers, a notice specifying the day selected by him as the early closing day for the shop; and

(b) may, subject to the next following subsection, alter that day by specifying a different day in the notice aforesaid;

and the day for the time being specified in the notice shall be the early closing day for the shop (*a*).

(3) The occupier shall not be entitled to alter the early closing day for a shop (*a*) except—

(a) after the expiration of the period of three months beginning with the date on which that day became or last became the early closing day for the shop (*a*); and

(b) where in accordance with the foregoing paragraph he has altered the early closing day for the shop (*a*) from a particular day to another day and the period of one month beginning with the date of the alteration has not expired, by again specifying that particular day in the notice aforesaid;

and where the occupier of a shop (*a*) has exercised as respects the shop the power conferred by paragraph (b) of this subsection he shall not be entitled to exercise that power again as respects the shop before the expiration of the period of three months beginning with the date on which he exercised it (*c*).

(4) Every order fixing an early closing day, in so far as it was made or has effect as if made in pursuance of section 1 (2) of the Shops Act 1950 and is in force immediately before the date of the commencement of this Act,—

(a) shall, unless previously revoked, continue in force until the expiration of the period of three months beginning with that date as if this section had not been passed and shall then cease to have effect; and

(b) may be revoked during that period as if this section had not been passed;

and the provisions of subsections (2) and (3) of this section shall not apply in relation to a shop (*a*) during any period when an order is in force by virtue of this subsection as respects the shop (*a*).

(*a*) ***Shop.*** For definition, see s. 74 (1) of the Shops Act 1950.
(*b*) ***Local Authority.*** For definition, see s. 73 of the Shops Act 1950.
(*c*) ***Early Closing Day.*** See also s. 4 (2) of this Act.

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2. Repeal of powers to change closing time on early closing days and to extend early closing day provisions to exempted shops.—(1) A local authority (*a*) shall not have power to alter from one o'clock the hour by which a shop (*b*) must be closed for the serving of customers on its early closing day; and accordingly in section 1 (4) of the Shops Act 1950 the words from "either wholly" where they first occur to the words "two o'clock" and the words "either wholly or to such extent as aforesaid" are hereby repealed.

(2) A local authority (*a*) shall not have power to extend the

provisions of the said section 1 to shops to which by virtue of subsection (6) of that section those provisions do not apply; and accordingly the words from "but the local authority" onwards in that subsection are hereby repealed.

(*a*) ***Local Authority.*** For definition, see s. 73 of the Shops Act 1950.

(*b*) ***Shops.*** For definition, see s. 74 (1) of the Shops Act 1950.

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3. Substitution of "early closing day" for "weekly half-holiday". For any reference to the weekly half-holiday—

(a) in the Shops Act 1950 (which uses that expression to refer to the day commonly known as and in this Act referred to as the early closing day); and

(b) in any order having effect by virtue of section 1 (4) of this Act,

there shall be substituted a reference to the early closing day; and accordingly in section 74 (1) of that Act the definition of "weekly half-holiday" is hereby repealed and immediately after the definition of "contravention" there shall be inserted the following definition:—

> "'early closing day' means, as respects a shop, the day on which the shop is required to be closed for the serving of customers not later than one o'clock in the afternoon in pursuance of section 1 of this Act and the Shops (Early Closing Days) Act 1965".

4. Consequential amendments, etc.—(1) The following provisions of the Shops Act 1950 (being provisions made redundant by section 1 of this Act) are hereby repealed, that is to say—

(a) the proviso to section 3 (which prevents a local authority who have fixed the early closing day for a shop from fixing the same day as the late day for the shop);

(b) in paragraph (a) of the proviso to section 12 (which relates to trading elsewhere than in shops) the words "as respects any day other than the weekly half-holiday";

(c) sections 53 (13) (b), 62 (2) (b) and 67 (4) (b) (which modify as respects certain shops provisions repealed by section 1 of this Act); and

(d) in paragraph (a) of the proviso to section 54 (2) (which section enables certain shops in London to be open until two o'clock in the afternoon on Sundays on condition that they are kept closed on a week day specified in pursuance of that section and, among other things, provides that the week day so specified shall be a day other than that fixed by the local authority as the early closing day) the words "the closing day so fixed shall be a day other than the day fixed for the weekly half-holiday by an order made under section one of this Act and" and the words "required by the provisions of that section".

(2) Nothing in the said section 12 shall be construed as requiring any person to comply with the provisions relating to early closing days of the Shops Act 1950 or this Act; and, notwithstanding anything in section 1 (3) of this Act, the occupier of a shop (*a*) shall be entitled to alter the early closing day for the shop (*a*) if it is necessary to do so in order to comply with paragraph (a) of the proviso to the said section 54 (2) (which, as amended by paragraph (d) of the foregoing subsection, provides that the week day mentioned in the latter paragraph shall not be used as the early closing day for shops of the category there mentioned).

(*a*) ***Shop.*** For definition, see s. 74 (1) of the Shops Act 1950.

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5. Citation, construction and extent.—(1) This Act may be cited as the Shops (Early Closing Days) Act 1965, and this Act and the Shops Acts 1950 and 1962 may be cited together as the Shops Acts 1950 to 1965.

(2) This Act shall be construed as one with the Shops Act 1950, and the reference to section 1 of that Act in section 14 (1) of that Act (which penalises offences) and the references to Part I of that Act in sections 44 to 46 of that Act (which exempt certain activities from the provisions of that Part) and in section 69 (1) (e) of that Act (which provides for the making of regulations) shall be construed as including references to this Act.

(3) Without prejudice to the operation of subsection (2) of this section, this Act shall not extend to Northern Ireland.

THE SHOPS REGULATIONS 1912

(S.R. & O. 1912 No. 316)

Dated April 1, 1912, made by the Secretary of State under the Shops Act 1912

General note. These Regulations are printed as amended by the Shops (Early Closing Days) Act 1965. The Shops Act 1912 has been repealed by and consolidated in the Shops Act 1950, but Regulations made under the consolidated enactments are saved by s. 76 (2) of the 1950 Act. References in these Regulations to the 1912 Act have been correspondingly amended. The repeal of s. 1 (2) of the Shops Act 1950 by the shops (Early Closing Days) Act 1965 has rendered ineffective parts of regs. 1, 20, 22 and 23, but as they have not been revoked (and in part remain effective in relation to closing orders) they have been reprinted in this edition.

Regulations in similar terms were enacted for Scotland; see S.R. & O. 1912 No. 1861, s. 8 (not printed in this book).

As to the interpretation of terms which are defined in the enabling Act, but not in the regulations themselves, see the General Introduction.

In pursuance of the powers conferred on me by the Shops Act 1912 I hereby make the following Regulations:—

I

Notice to be given by occupier as to assistants' early closing day
[1950 *Act, s.* 17 (2)]

1. The notice required to be affixed in a shop specifying the day or days on which the shop assistants employed therein are not employed after half-past one o'clock shall be in the Form marked I in the Schedule to these Regulations.

2. The notice shall be kept constantly affixed in a position where it may be readily seen and read by any person whom it affects, and shall be renewed whenever it becomes defaced or otherwise ceases to be clearly legible.

If the half-holiday is given on different days to the assistants employed in different rooms or departments of a shop, a separate notice shall be affixed in each such room or department.

3. The notice shall be affixed before the assistants to whom it relates cease work on the Saturday preceding the week (*a*) during which it is to have effect.

(*a*) ***Week.*** For definition, see s. 74 (1) of the Act of 1950.

Inquiries by Local Authorities as to Orders fixing the day on which shops are to be closed for the early closing day [1950 *Act*, *s.* 1 (2)]

4. Before the local authority make an Order fixing the day of the early closing day for any class of shops, they shall take the following steps for ascertaining whether the occupiers of a majority of that class of shops approve the Order:—

(1) They shall cause a register of the shops of that class to be prepared in the manner hereinafter provided.

(2) They shall give notice of their intention to make the Order and of the times and place at which the register may be inspected by any shopkeeper affected, in the Form marked II in the Schedule to these Regulations. The notice shall either by advertised in at least two newspapers circulating in the area to which the Order is to apply, or be posted up in streets and public places in the area to which the Order is to apply, in such positions and in such manner that it is likely to be seen and can easily be read by persons interested.

(3) They shall take a vote of the occupiers of the shops of that class in the manner hereinafter provided, or, if the local authority have received an application in writing purporting to be signed by the occupiers of a majority of the shops of that class, they may in lieu of taking a vote take such steps as they think fit to verify the signatures to the application, and signatures so verified shall, unless reason appear to the contrary, be taken to mean that the occupiers whose signatures they purport to be approve the Order.

Provided that if shops of any class are required under a closing Order in force before the 1st May 1912, to close on a certain day of the week (other than Saturday) at one o'clock in the afternoon, it shall not be necessary to take a vote of the occupiers of those shops in respect of a proposal to make an Order fixing that day as the day of the weekly half-holiday, unless representations are made to the local authority by a substantial proportion of the occupiers in favour of another day being fixed.

Conditions for mixed shops remaining open on early closing day
[1950 *Act*, *s.* 13 (1)]

5. Where any trade or business exempted from the provisions of the Act as to closing on the early closing day (*a*) is carried on in the same shop with any trade or business not so exempted, the shop shall only be kept open for the purpose of the exempted trade or business on the day fixed for the early closing day in respect of the trade or business not exempted, on the following conditions:—(*a*) after the hour of closing on the day of the early closing day, whether fixed by the occupier or by an Order made by the local authority under the Act, there shall be exhibited in some conspicuous places on the exterior and in the interior of the shop notices in letters of the size of not less than two inches in accordance with the Form marked IV in the Schedule to these Regulations; (b) so far as reasonably practicable no goods in connexion with the trade or business not exempted shall be exhibited either inside or outside the shop.

(*a*) ***Exempted trades.*** See the Shops Act 1950, s. 1 (4) and (6), and Sched.

II

Notice of intention to make Closing Order (*a*)

6. As soon as may be after the local authority are satisfied that a *primâ facie* case (*b*) is made out for making a Closing Order they shall cause a register to be prepared in the manner hereinafter provided (*c*).

(*a*) ***Closing order.*** See the Shops Act 1950, ss. 8 and 9.
(*b*) ***Primâ facie case.*** See *ibid.*, ss. 9 (1) and 10 (3).
(*c*) ***Register.*** See reg. 19.

7.—(1) Notice of the intention of the local authority to make a Closing Order (*a*) shall be given in the Form marked A in the Schedule to these Regulations, and unless a copy of the proposed Order be annexed to it, it shall specify the area within which and the class or classes of shops to which the Order will apply and the proposed days and hours of closing. The notice shall

(i) be advertised at least twice in a newspaper or newspapers circulating in the area to which the Order is to apply;

(ii) be posted up in streets and public places in the area to which the Order is to apply, in such positions and in such manner that it is likely to be seen and can easily be read by persons interested; and

(iii) be given to any ratepayer in the area making reasonable application for it.

If the Order applies to an area with a population of not more than 5000, the local authority may, in lieu of advertising the notice in a newspaper or newspapers, cause a copy to be sent to the occupier of every shop known to be affected by the Order.

(2) If anything in the Order affects Post Office business, a copy of the notice shall be sent to the Postmaster-General.

(*a*) ***Closing order.*** See the Shops Act 1950, ss. 8 and 9.

8. The prescribed period within which objections may be made to the proposed Order shall be four weeks (*a*).

(*a*) ***Closing order.*** See the Shops Act 1950, s. 9 (1).

Ascertaining opinion of occupiers of Shops

9. If the local authority, after considering any objections or suggestions received by them in pursuance of the notice of their intention to make an Order, desire to proceed with the Order, they shall, for the purpose of ascertaining whether the occupiers of at least two-thirds in number of the shops to be affected by the Order approve the Order, either take a vote in the manner hereinafter provided (*a*) or, if they have received an application in writing for the making of the Order, purporting to be signed by the occupiers of at least two-thirds in number of the shops to be affected by the Order, they may in lieu of taking a vote take such steps as they think fit to verify the signatures to the application, and signatures so verified shall, unless reason appear to the contrary, be taken to mean that the occupiers whose signatures they purport to be approve the Order.

(*a*) ***Manner provided.*** See reg. 20.

Notice, etc., when Order submitted to Secretary of State

10. When the local authority have made a closing Order, a notice (*a*), in the Form marked C in the Schedule to these Regulations, shall be given in the manner above prescribed for the notice of intention to make an Order.

(*a*) ***Notice.*** See reg. 7.

11. In submitting the Order to the Secretary of State, the local authority shall inform him as to the method adopted by them for ascertaining the opinion of the occupiers of shops, and as to any matters which they think it desirable to bring to his notice, and shall forward to him copies of any notices given by them under these Regulations and other evidence that the Regulations have been duly complied with, verified by a certificate signed by their Clerk.

Local Enquiries (*a*)

12. When the Secretary of State directs a local enquiry to be held with regard to a closing Order it shall be held at such place as the local authority, with the approval of the Secretary of State, may appoint, and at such time as may be fixed by the person appointed by the Secretary of State to hold the enquiry (hereinafter called "the Commissioner").

(*a*) ***Local enquiries.*** See also the Shops Act 1950, ss. 10 and 69.

13. Not less than three weeks before the time of holding the enquiry notice (*a*) thereof and of the place where the enquiry will be held shall be given in the manner above prescribed for the notice of intention to make an Order.

(*a*) ***Notice.*** See reg. 7.

14. The enquiry shall be held in public, and any person who, in the opinion of the Commissioner, is affected by the closing Order, may appear and be heard either in person, or by counsel, solicitor, or agent.

15. The Commissioner may give such directions as he thinks fit as to the order in which the objections to the Order shall be considered; and, if any person who has not sent objections in writing to the Secretary of State claims to be heard at the enquiry, may require him to state his objections in writing.

16. The Commissioner may adjourn the enquiry from time to time as he thinks desirable.

17. If the objections to the Order made by more than one person appearing at the enquiry seem to the Commissioner to be the same in substance, he may select any person whom he considers representative of the largest number of the persons

affected by the Order, to state such objections, and to call evidence (if required); provided that any other person making the same objections may be heard subsequently with the consent of the Commissioner.

18. Subject to the foregoing rules, all the proceedings shall be conducted in such manner as the Commissioner may direct.

III.—General

Preparation of Register

19.—(1) A register required to be prepared in pursuance of these Regulations shall show the addresses, trades, and names of the occupiers of all the shops to be affected by the Order.

In the case of a shop in which several trades or businesses are carried on, the local authority may require the occupier to specify, in pursuance of subsection [(4) of section 13 of the 1950 Act], which trade or business he considers to be his principal trade or business, and the local authority shall not insert the name of the occupier in the register in respect of any other trade or business carried on in the shop unless the occupier satisfies them that it forms a substantial part of the business carried on in the shop.

(2) Every occupier of a shop to be affected shall be entitled to attend within the times and at the place specified in the notices required to be given by these Regulations for the purpose of securing that the entries in the register with regard to his shop are duly made.

(3) Any occupier of a shop to be affected may represent to the local authority any matter, in regard to the register, which seems to him to require to be rectified; and the local authority shall consider all such representations.

The Taking of a Vote

20. If a local authority decide, or are required, to take a vote for the purpose of ascertaining the opinion of the occupiers of shops to be affected by an Order fixing the day of the weekly half-holiday or by a closing Order, they shall proceed as follows:—

(1)—(a) A notice, together with a voting paper, in the Form marked III or in the Form marked B in the Schedule to these

Regulations, as the case may be, shall be sent by post or otherwise delivered to every occupier appearing in the register, at his registered address.

(b) Voting papers shall be returned to the local authority either through the post or by a collector appointed in writing by them for the purpose, and carrying with him at the time of collection his written appointment, which he shall show to any occupier who shall require it to be shown.

(c) A voting paper shall be deemed to be duly signed if signed by the occupier with his full name or with the ordinary signature used for the purpose of his business: Provided that, if any occupier is unable to write, he may, in the presence of some other person, who shall explain the effect of the voting paper, attach his mark thereto, and such mark shall be attested by such other person, who shall append his signature and address.

(d) The local authority shall cause the voting papers, as soon as may be after the last day fixed for their return, to be scrutinised and compared with the register, and the numbers respectively of the votes for and against the Order to be ascertained.

Other provisions as to making of Orders

21. The making of an Order shall not be frustrated nor the Order invalidated by reason merely of any failure in the delivery of a notice or a voting paper to any person or to the local authority or of any other informality in complying with these Regulations.

22. When an Order fixing the day of the weekly half-holiday is made by the local authority, or a closing Order is confirmed by the Secretary of State, the local authority shall forthwith either cause to be advertised once in a newspaper, and to be posted up in streets and public places, in the area to which the Order applies a notice giving the terms of the Order as made or confirmed, or shall send such a notice to the occupier of every shop affected by the Order.

Revocation of Orders

23. Before revoking an Order fixing the day of the weekly half-holiday or applying to the Secretary of State to revoke a closing Order, the local authority shall, for the purpose of ascertaining whether the occupiers of a majority of each of the

several classes of shops affected by the revocation approve the revocation, follow, with the necessary modifications, the same procedure as is prescribed in the foregoing Regulations in regard to the making of such Orders.

24. When an Order is revoked in whole or in part by a local authority or by the Secretary of State, as the case may be, the local authority shall forthwith either cause to be advertised once in a newspaper, and to be posted up in streets and public places, in the area to which the Order applied a notice announcing such revocation or shall send such a notice to the occupier of every shop known to be affected by the revocation.

Certificate of appointment of Inspector

25. The certificate of appointment with which an inspector is required to be furnished shall be in the form marked V in the Schedule of these Regulations.

SCHEDULE

S.A. 1.—Prescribed Form of Notice as to Assistants' Early Closing Days

[*Shops Act* 1950, *Section* 17] [Regs. 1–3]

Prescribed Form of Notice as to Assistants' Early Closing Days

I HEREBY GIVE NOTICE that the Assistants employed in this shop / room / department * will not be employed about the business of the shop after 1.30 p.m. on the day named below in the week following the date of this notice and until further notice.†

Names ‡ *or* Class *or* Department of Assistants.	Week-day on which half-holiday is allowed.

* Strike out the words which are not appropriate.

† Strike out the words "and until further notice" if the notice is intended to apply only to one week.

‡ If the same day is fixed for all the Assistants, the word "All" only need be inserted in this column.

Signature of Occupier or Manager.

Date.

This Notice must be kept constantly affixed in the shop in a position where it may be readily seen and read by any person whom it affects, and must be renewed whenever it becomes defaced or otherwise ceases to be clearly legible.

If the half-holiday is given on different days to the assistants employed in different rooms or departments of a shop, a separate notice must be affixed in each such room or department.

The Notice must be affixed before the assistants to whom it relates cease work on the Saturday preceding the week during which it is to have effect.

[Forms II and III have been omitted since they have ceased to have any practical use; see the general note, p. 303.]

IV.—Notice to be affixed in Shops Partially Exempted from Closing for the Early Closing Day

[*Shops Act* 1950, *Section* 13 (1)] [Reg. 5]

This shop is closed for to-day except for the *trade or business of [ ].

* In shops where a wholesale and retail business are carried on together, and the shop is kept open on the half-holiday for the wholesale business, the word "wholesale" should be inserted in the notice before "trade."

V.—Form of Certificate of Appointment of an Inspector under the Shops Act, 1912 [now 1950]

[*Shops Act* 1950, s. 71 (2)] [Reg. 25]

I HEREBY CERTIFY THAT A.B. has been appointed an Inspector for the purposes of the above-mentioned Act for [the City of London or County or Borough or Urban District of].

(Signature)

The Lord Mayor of the City of London
or
Chairman of the County Council of
or
Mayor of the Borough of
or
Chairman of the Urban District Council of

Dated this day of , 19 .

A.—Notice of Intention to make a Closing Order

[*Shops Act* 1950, ss. 8, 9] [Reg. 7]

NOTICE IS HEREBY GIVEN that the Council propose to make a closing Order for [specify class or classes of shops] in [specify the area] fixing the hours at which such shops shall be closed as follows:—

Any person wishing to make objections to the Order or suggestions as to the provisions of the Order should address a statement in writing to the Clerk to the Council before the [date] next.

NOTICE IS FURTHER GIVEN that the occupier of any shop to be affected by the Order may, on presenting himself at [the Council's Offices] between the hours of and on [any] day before the aforesaid date, verify that his name, address and trade are duly entered in the Register of Shops.

Dated this day of , 19 .

Clerk to the Council.

B.—NOTICE FOR ASCERTAINING THE OPINION OF OCCUPIERS OF SHOPS ON PROPOSED CLOSING ORDER BY TAKING A VOTE

[*Shops Act* 1950, ss. 8, 9] [Regs. 9, 20]

NOTICE IS HEREBY GIVEN that the Council propose to make the Order shown on the enclosed voting paper, provided they are satisfied that the occupiers of two-thirds of the shops to be affected by the Order approve the Order.

You are requested (i) to signify your opinion for or against the making of the Order by writing "Yes" or "No" on the enclosed voting paper in the space provided for the purpose: and (ii) to return the paper by post to the Council at [the Council's Office] before the day of 19 , [or to hand the paper to a Collector appointed by the Council for the purpose, who will call for it, and will show, on request, his written appointment] [or to hand the paper to the person delivering it]

Dated the day of , 19 .

Clerk to the Council.

FORM OF VOTING PAPER (*to be enclosed with the foregoing notice*)

[*Shops Act* 1950, s. 9] [reg. 9]

I. (Here insert terms of Draft Order)

II. Form of Votes

[City] [Borough] *or* [Urban District] *or* [Area] of

——	*Write in the space below either* "Yes" *or* "No"
Are you in favour of the making of the above Order?	

Signature
Address of Shop
Date

C.—Notice of Making of Order

[*Shops Act* 1950, s. 9] [reg. 10]

Notice is hereby given that the Council have made a Closing Order, of which a copy is annexed hereto, and have submitted the Order to the Secretary of State for confirmation.

A copy of the Order may be obtained by any person whom it may concern on application at [the Offices of the Council].

If any person desires to make any objections to the provisions of the Order he should address a written statement to the Secretary of State, Home Department, London, within one month from the date hereof, *i.e.* before the day of , 19 .

Dated this day of , 19 .

Clerk to the Council.

Order

THE SHOPS REGULATIONS 1913

(S.R. & O. 1913 No. 250)

Dated March 8 1913, made by the Secretary of State for the Home Department, under the Shops Acts 1912 and *1913*

General note. These Regulations are printed as amended by the Shops (Early Closing Days) Act 1965. The Shops Acts 1912 and 1913 have been repealed by, and consolidated in, the Shops Act 1950, but Regulations made under the consolidated enactments are saved by s. 76 (2) of the 1950 Act. References in these Regulations to the Shops Act 1913, have been correspondingly amended.

Regulations in similar terms were enacted for Scotland; see S.R. & O. 1913 No. 635, s. 43 (not printed in this book).

In pursuance of the powers conferred on me by the Shops Acts 1912 and 1913 I hereby make the following Regulation:—

The notice required by [section 21 (3) (d) of the Shops Act 1950] to be affixed in premises for the sale of refreshments where the occupier elects that the provisions of the Act shall apply, shall be in the Form in the Schedule to this Regulation.

SCHEDULE

(This notice must be affixed and constantly maintained in a conspicuous position in the premises)

[*Shops Act* 1950, s. 21 (3) (d)]

I HEREBY GIVE NOTICE that I elect that instead of the provisions of [Sections 17 to 20 of the Shops Act 1950], in regard to the early closing day and meal times for shop assistants, the provisions of [Section 21 of the Shops Act 1950] (as set out below), shall apply to all assistants employed wholly or mainly in connection with the business on these premises of the sale of*
and that I propose to carry out those provisions in the manner indicated below.

This notice can only be withdrawn at the end of a year from this date or at the end of any succeeding year.

Dated the day of , 19 .

Signature of Occupier or Manager.

1. The following provisions apply to all persons wholly or mainly employed in any capacity on these premises in connection with the business here carried on of the sale of*

2. *Total Hours of Work.*—An assistant must not be employed for more than 65 hours in any week *exclusive* of meal times.

* Insert "intoxicating liquor" or "refreshments" or both as the case may be.

3. *Meal Times.*—Two hours must be allowed to each assistant for meals on ordinary days and three-quarters of an hour on half-holidays. No assistant may be employed on any day for more than six hours without being allowed an interval of at least half an hour.

4. *Week-day Holidays.*—Every assistant must be given 32 whole holidays on a week day in the year. Of these six are to be given consecutively on full pay as an annual holiday, and the remaining 26 must be so distributed that there shall be at least two holidays in each month. Except as regards the consecutive holiday, two half-holidays on week days may be allowed instead of any whole holiday. On any such half-holiday the assistant may not be employed for more than six hours including meal time, and he must cease work not later than 3 p.m.

5. *Sunday Holidays.*—Every assistant must be given 26 whole holidays on Sunday in the year, and at least one in every three consecutive Sundays must be a whole holiday.

Steps taken to comply with the Act.†

Week-day Holidays.

Sunday-Holidays.†

† Here state as precisely as possible in what manner it is proposed to carry out the Act. *E.g.* it will be open to an occupier to give an early closing day commencing at 3 p.m. in lieu of the corresponding number of whole holidays. If he decides to do this, he can state this in the notice, and the day on which, as a general rule, the half-holiday will be given. Or he may decide to give a whole holiday every other week: if so, he can state this and the day on which the holiday will be given: etc., etc.

THE SHOPS REGULATIONS 1937

(S.R. & O. 1937 No. 271)

Dated April 6 1937, made by the Secretary of State under section 17 of the Shops Act 1912 and the Shops (Sunday Trading Restriction) Act 1936

General Note. The Shops Act 1912 and the Shops (Sunday Trading Restriction) Act 1936 have been repealed by, and consolidated, in the Shops Act 1950, but Regulations made under the consolidated enactments are saved by s. 76 (2) of the 1950 Act. References in these Regulations to the 1936 Act have been correspondingly amended.

In pursuance of the powers conferred on me by section 17 of the Shops Act 1912, and the Shops (Sunday Trading Restriction) Act 1936, I hereby make the following Regulations:—

Conditions for Mixed Shops remaining open on Sunday [*section 50 of the Shops Act* 1950]

1. The conditions subject to which a shop, to which section [fifty] of the [Shops Act 1950] (hereinafter referred to as "the Act"), applies, may be kept open in accordance with the provisions of that section for the whole or any part of Sunday, shall be as follows—

(a) during any time on Sunday when the shop is open for the serving of customers there shall be exhibited in some conspicuous places on the exterior and in the interior of the shop notices in the form marked I in the Schedule to these Regulations and in letters of not less than one inch in height; and

(b) so far as is reasonably practicable, no goods in connection with any trade or business shall be exhibited either inside or outside the shop at any time on Sunday when the shop cannot lawfully be kept open for the serving of customers with those goods.

Notice of Intention of Local Authority to make an Order and prescribed period within which Objections may be made [*section* 52 (1) *of the Shops Act* 1950]

2. (1) [*Repealed and replaced by the Shops Regulations* 1963, *p.* 355].

(2) The prescribed period within which objections may be made to the making of any such proposed order shall be four weeks from the publication of the notice of intention.

Provisions relating to Registration of Shops by Persons of the Jewish Religion or Members of any Religious Body regularly observing the Jewish Sabbath [*section* 53 *of the Shops Act* 1950]

3. Any application for the registration of a shop under section seven of the Act by the occupier, being a person of the Jewish religion or a member of any religious body regularly observing the Jewish Sabbath, shall be in the form marked III

in the Schedule to these Regulations and the Statutory declaration required by the said section shall be either in the form marked IV (a) or in the form marked IV (b) in the said Schedule, as the case may require.

4. The tribunal for the purpose of subsection (7) of section [fifty-three] of the Act shall—

(a) in the case of a person professing to be a person of the Jewish religion, consist of such persons as shall be nominated from time to time by the London Committee of Deputies of the British Jews (generally known as the Board of Deputies) and approved by the Secretary of State, and the secretary of the tribunal shall be the secretary of the said Committee or such other person as may be nominated by the said Committee and approved by the Secretary of State;

(b) in the case of a person professing to be a member of the Seventh-Day Adventist Church, consist of such persons as shall from time to time be nominated by the British Union Conference of Seventh-Day Adventists and approved by the Secretary of State, and the secretary to the tribunal shall be the secretary of the said Conference or such other person as may be nominated by the said Conference and approved by the Secretary of State.

Submission to Secretary of State of certain Orders relating to London [*section* 54 *of the Shops Act* 1950]

5. Where the Common Council of the City of London or the London County Council have made an order under section [fifty-four] of the Act, a notice in the form marked V in the Schedule to these Regulations shall be—

(i) published in one or more local newspapers circulating in the area to which the order applies, and

(ii) posted up in streets and public places in the area to which the order applies in such positions and such manner that it is likely to be seen and can easily be read by persons interested.

6. In submitting the order to the Secretary of State the Council shall inform him of any matters which they think it desirable to bring to his notice, and shall forward to him a copy

of the notices given under the preceding Regulation and other evidence that the provisions of the Act and the Regulations have been duly complied with.

Notice stating terms of Orders applying to a Shop
[*section* 57 *of the Shops Act* 1950]

7. The notice to be kept posted in a shop in accordance with paragraph (a) of section twelve of the Act shall be either a copy of the order or orders in force and applying to the shop or a notice in the form marked VI in the Schedule to these Regulations.

Record of Sunday Employment and Holidays
[*section* 22 (3) *of the Shops Act* 1950]

8. The record to be kept by the occupier of a shop in accordance with [subsection (3)] of section [twenty-two] of the Act containing the names of, and the hours worked by, all persons employed about the business of the shop on Sunday who are entitled to holidays in respect of their employment on Sunday, and the respective days of the week upon which those persons receive those holidays shall be in the form marked VII in the Schedule to these Regulations.

9. The entries shall be made in the record on the day to which they relate or, if it is not reasonably practicable to do so, on the following day.

10. The records relating to any month shall be preserved at the shop for a period of not less than six months from the end of that month.

Application, Interpretation, Citation and Commencement

11.—(1) The provisions of these Regulations, other than Regulations 1 and 7, shall extend to any place where any retail trade or business is carried on as if that place were a shop, and as if in relation to any such place the person by whom the retail trade or business is carried on were the occupier of a shop.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

12.—(1) These Regulations may be cited as the Shops Regulations 1937.

(2) These Regulations shall come into force on the first day of May 1937, except Regulations 2, 3, 4, 5, 6 and 11 which, being necessary for bringing the Act into operation, shall come into force forthwith.

SCHEDULE

I. *Form of Notice to be exhibited at Mixed Shops* (*Regulation* 1)

[SHOPS ACT 1950, s. 50]

This shop is open on Sunday for (*state the purposes for which and the hours during which the shop is open*).

II. [*Repealed and a new form enacted by the Shops Regulation* 1963 p. 356, *post*.]

III. *Form of Application for Registration of a Shop or Place under section* [53] *of the Act* (*Regulation* 3)

[SHOPS ACT 1950]

APPLICATION FOR REGISTRATION OF A SHOP OR PLACE UNDER SECTION 53 OF THE ACT BY A PERSON OBSERVING THE JEWISH SABBATH

To the Council of the { County / Borough / Urban District / Rural District } of

1. Name and address of occupier (see notes A and B).

.....

2. Name under which the retail trade or business is carried on.

.....

3. Address of the shop or place (see note B).

.....

4. Nature of the retail trade or business.

.....

5. Has the shop or place, to which this application relates, been previously registered either by the applicant or to his knowledge by any other person?

.....

6. Does the applicant carry on retail trade or business in any shop or place other than that to which this application relates? If so, give the addresses of all such shops and places.

.....

7. Has the registration of any other shop or place where the applicant carries on or has carried on any retail trade or business been revoked or cancelled? If so, give particulars.

.....

8. Has the registration of any shop or place where any partnership or company, of which the applicant was a partner or director, carried on retail trade or business been revoked or cancelled? If so, give particulars (see note C).

.....

I/We hereby apply for registration of the shop [*or* place] described in the answers to questions 2, 3 and 4 above.

(*Signed*)

THIS APPLICATION MUST BE ACCOMPANIED BY A STATUTORY DECLARATION IN THE FORM IV(a) PRESCRIBED BY THE SHOPS REGULATIONS 1937, WHERE THE OCCUPIER IS A PARTNERSHIP OR COMPANY, AND IN THE FORM IV(b) PRESCRIBED BY THE SAID REGULATIONS IN OTHER CASES.

IF ANY PERSON KNOWINGLY OR RECKLESSLY MAKES AN UNTRUE STATEMENT OR AN UNTRUE REPRESENTATION FOR THE PURPOSE OF PROCURING REGISTRATION OF A SHOP OR PLACE, HE IS LIABLE TO IMPRISONMENT OR A FINE, OR TO BOTH IMPRISONMENT AND FINE.

Note A. Where the occupier is a partnership or company, the name and address of the partnership or company should be given.

Note B. Where the application relates to retail trade or business carried on in a place other than a shop (*e.g.* by a street trader), the name and address of the person, partnership or company carrying on the trade or business should be given in answer to question 1, and the address or description of the place where the retail trade or business is carried on should be given in answer to question 3.

Note C. This question is not applicable where the applicant is a partnership or company.

IV (a). *Form of Statutory Declaration by a Partnership or Company under section* [53 (2) (a)] *of the Act* (*Regulation* 3)

[SHOPS ACT 1950]

STATUTORY DECLARATION BY A PARTNERSHIP OR COMPANY APPLYING FOR REGISTRATION OF A SHOP OR PLACE UNDER SECTION 7 OF THE ACT

We (*insert names and addresses of applicants*), being partners in [*or* directors of] (*insert name of partnership or company*) of (*insert address of partnership or company*), being persons of the Jewish religion [*or* members of (*insert name of religious body to which the declarant belongs*)] do solemnly and sincerely declare that we conscientiously object on religious grounds to carrying on trade or business on the Jewish Sabbath, and we further declare

[that all the partners in the above-named partnership / directors of the above-named company have subscribed to this declaration]

or

[that the names and addresses of all the partners in the above named partnership / directors of the above named company who have not subscribed to the declaration are specified in the Schedule hereto]

and we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Dated this day of , 19 .

(*Signed*)

Declared before me at , this day of , 19 .

(*Signed*)

(A Commissioner for Oaths, Justice of the Peace, or other Officer authorised to receive a Statutory Declaration.)

IV(b). *Form of Statutory Declaration by an applicant (not being a partnership or company) under section* [53 (2) (a)] *of the Act* (*Regulation* 3)

[SHOPS ACT 1950]

STATUTORY DECLARATION BY AN APPLICANT (NOT BEING A PARTNERSHIP OR COMPANY) FOR REGISTRATION OF A SHOP OR PLACE UNDER SECTION 53 OF THE ACT

I, of , being a person of the Jewish religion [*or* a member of (*insert name of religious body to which the declarant belongs*)] do solemnly and sincerely declare that I conscientiously object on religious grounds to carrying on trade or business on the Jewish Sabbath, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Dated this day of 19 .

(*Signed*)

Declared before me at , this day of , 19 .

(*Signed*)

(A Commissioner for Oaths, Justice of the Peace, or other Officer authorised to receive a Statutory Declaration.)

V. *Form of Notice of making of Order under section* [54] *of the Act* (*Regulation* 5)

[SHOPS ACT 1950]

Notice is hereby given that the Common Council of the City of London [*or* London County Council] have, under section 54 of the above Act, made an Order of which a copy is annexed hereto, and have submitted the Order to the Secretary of State for confirmation.

A copy of the Order may be obtained on application at (*insert address*).

Any objection to the confirmation of the Order should be made in writing to the Under Secretary of State, Home Office, Whitehall, London, S.W.1, within four weeks from the date hereof, *i.e.* before the day of 19

Dated this day of 19 .

(*Signed*)

Clerk of the Council

(*Here set out Order*)

VI. *Form of Notice stating terms of Orders applying to Shop* (*Regulation* 7)

[SHOPS ACT 1950, s. 57]

ORDER(S) APPLYING TO THIS SHOP

(*Here set out the title(s) of the Order(s) and the terms of the Order(s) applying to the shop*)

VII. *Form of Record of Sunday Employment and Holidays* (*Regulation* 8)

[SHOPS ACT 1950, s. 22 (3)]

RECORD OF SUNDAY EMPLOYMENT AND OF HOLIDAYS IN RESPECT OF SUCH EMPLOYMENT

Name of Occupier Address of Shop [*or* Place]

Record for month of 19 .

Name of employed person.	Sunday (*insert date*).			Date of compensatory holiday.	The four preceding columns to be repeated for each Sunday in the month.
	Hour of commencing work.	Interval for meals and rest (if any).	Hour of ceasing work.		

(*Signed*)
(Occupier *or* Manager)

NOTES

1. Entries relating to employment on a Sunday and to the day of the compensatory holiday must be made respectively on that Sunday and on the day of the holiday, or in either case, if that is not reasonably practicable, on the following day.

2. The entries under the heading "Intervals for meals and rest" may be either (a) the actual times at which the intervals began and ended (*e.g.* 1 p.m.–2 p.m. and 5 p.m.–5.30 p.m.) or (b) the duration of the intervals (*e.g.* Dinner 1 hour, Tea ½ hour).

3. Where the record relates to persons employed in connection with retail trade or business carried on in a place other than a shop, the name of the person, partnership or company carrying on the trade or business and the address or description of the place where the trade or business is carried on should be stated.

THE SHOPS (PROCEDURE FOR JEWISH TRIBUNALS) REGULATIONS 1937

(S.R. & O. 1937 No. 1038)

Dated November 17, 1937, made by the Secretary of State under section 17 of the Shops Act 1912 and the Shops (Sunday Trading Restriction) Act 1936

General note. The Shops Act 1912 and the Shops (Sunday Trading Restriction) Act 1936 have been repealed by and consolidated in the Shops Act 1950, but Regulations made under the consolidated enactments are saved by s. 76 (2) of the 1950 Act. References in these Regulations to the 1936 Act have been correspondingly amended.

In pursuance of the powers conferred on me by Section 17 of the Shops Act 1912, and the Shops (Sunday Trading Restriction) Act 1936, I hereby make the following Regulations:—

Rules of Procedure for Jewish Tribunals in considering cases referred to them by local authorities under [*Section* 53 (7) *of the Shops Act* 1950]

1. On receiving particulars of a case from a local authority the Secretary of the Tribunal shall send to the person, partnership or company occupying the shop concerned (hereinafter called "the person affected") a copy of the particulars received from the local authority and shall notify the person affected that any statement it is desired to make on the said particulars should be submitted as soon as possible to the Tribunal. On receipt of any such statement the Secretary of the Tribunal shall forthwith make and send to the said local authority a copy thereof. The particulars above referred to shall contain the name and address of the person affected as given in the application form prescribed by Regulation 3 of, and the Schedule to, the Shops Regulations 1937. If the person affected is a partnership or company, the particulars shall contain the names of all the partners or directors as given in the statutory declaration accompanying the said application form specifying which of the partners or directors of the company are alleged not to hold genuinely a conscientious objection on religious grounds to carrying on business on the Jewish sabbath.

2. Upon the expiration of ten days after the despatch of the particulars to the person affected, the Secretary of the Tribunal shall, by registered letter, notify the person affected and the local authority of the time and place appointed for holding the inquiry.

3. The particulars referred to in Regulation 1 and the notice referred to in Regulation 2 shall be addressed to the person affected at the address specified in the particulars.

4. Notwithstanding anything contained in the Shops Regulations 1937, the Tribunal may sit in more than one Division at the same time. Each Division shall consist of not less than three members of the Tribunal. Each Division shall exercise all or any part of the jurisdiction vested in the Tribunal.

5. The Tribunal may at any time prior to the date of holding the inquiry, serve on the person affected or the local authority a notice in writing asking if either of them are prepared to admit in writing any material fact in order that the expense of calling a witness or witnesses to prove such facts may be obviated.

6. The whole or any part of the inquiry shall be held in private if the Tribunal think fit.

7. The local authority may be represented at the inquiry by Counsel or Solicitor or by any of their officers.

8. The person affected may be represented at the inquiry by Counsel or Solicitor or, in the case of a company, by a director or officer thereof, or in the case of partnership, by a partner, or with the leave of the Tribunal by any other person.

9. The Tribunal shall be at liberty to proceed with the inquiry on the appointed day in the absence of the person affected whether represented or not or in the absence of a representative of the local authority if they are of opinion that it is just and proper so to do.

10. The Tribunal may adjourn the inquiry from time to time as they think fit and may hold adjourned sittings at such time and place as may appear to them to be suitable or necessary for the purpose of the case.

11. The Tribunal may, if they are of opinion in any particular case that no injustice will result, receive such part of the evidence as they may think fit in writing. Provided that the Tribunal may, if at any time after they have admitted evidence in writing they should in their absolute discretion consider that by reason of all or any part of such evidence being tendered in writing instead of orally any injustice is likely to be done, admit such oral evidence as they think desirable to obviate such injustice.

12. All witnesses called before the Tribunal shall be subject to such examination by the members of the Tribunal or by any other person or persons as the Tribunal consider desirable to assist them in the performance of their duties.

13. The Tribunal may, if they think fit, examine or obtain the evidence of such witnesses as appear to them likely to afford evidence relevant and material to the due investigation of the case although not called or tendered by the person affected or by the local authority.

14. Subject to the provisions of the foregoing Regulations the proceedings at the inquiry shall be conducted in such a way as the Tribunal may direct.

15. At the conclusion of the inquiry the Tribunal shall as soon as may be determine whether they are satisfied

(a) that the person affected is not a person of the Jewish religion, or

(b) that a conscientious objection on religious grounds to carrying on business on the Jewish Sabbath is not genuinely held by the occupier of the shop or, in the case of a shop occupied by a partnership or company, by the majority of the partners or of the directors, as the case may be,

and shall report accordingly to the local authority.

16. These Regulations may be cited as the Shops (Procedure for Jewish Tribunals) Regulations 1937.

THE SHOPS REGULATIONS 1939

(S.R. & O. 1939 No. 1841)

Dated December 19, 1939, made by the Secretary of State, under section 17 of the Shops Act 1912 for the purposes of the Shops Act 1934, as amended by Part II of the Young Persons (Employment) Act 1938

General note. These Regulations are printed as amended by the Shops (Early Closing Days) Act 1965. The Shops Acts 1912 and 1934 and Part II of the Young Persons (Employment) Act 1938 have been repealed by and consolidated in the Shops Act 1950, but Regulations made under the consolidated enactments are saved by s. 76 (2) of the 1950 Act. References to the repealed Acts in these Regulations have been correspondingly amended.

Regulations in similar terms were enacted for Scotland; see S.R. & O. 1939 No. 1879 s. 130 (not printed in this book).

In pursuance of the powers conferred on me by the Shops Acts 1912 to 1938, I hereby make the following Regulations:—

Notice as to averaging of hours of young persons under the age of sixteen years at Christmas [*section 27 of the Shops Act* 1950]

1.—(1) The notice to be exhibited under section [27 of the Shops Act 1950], by the occupier of a shop in order to secure that the provisions of that section shall be applicable to the

shop shall be in the form marked Z in the Schedule to these Regulations.

(2) The notice shall be exhibited not later than noon on the Saturday preceding the date on which the period specified in the notice is to commence, and shall continue to be exhibited until the end of that period.

Notice as to averaging of hours of young persons in the catering trade [section 25 (1) of the Shops Act 1950]

2.—(1) The notice to be exhibited under subsection (1) of section [25 of the Shops Act 1950], by the occupier of a shop in which there is carried on the business of serving meals, intoxicating liquors or refreshments to customers for consumption on the premises, in order to secure that the provisions of that subsection shall be applicable to the shop, shall be in the form marked A in the Schedule to these Regulations.

(2) The notice shall be exhibited not later than noon on the Saturday preceding the date on which the period specified in the notice is to commence, and shall continue to be exhibited until the end of that period.

Notice as to overtime of young persons in the catering trade or in connection with the sale of accessories for aircraft, motor vehicles or cycles [sections 25 (2) and 26 (2) of the Shops Act 1950]

3.—(1) The notice to be given to the local authority under subsection (2) of section [25 of the Shops Act 1950], by the occupier of a shop in which there is carried on the business of serving meals, intoxicating liquors or refreshments to customers for consumption on the premises shall be in the form marked B (1) in the Schedule to these Regulations, and the notice withdrawing any such notice shall be in the form marked B (2) in the said Schedule.

(2) The notice to be given to the local authority under subsection (2) of section [26] of the said Act by the occupier of a shop in which there is carried on the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use shall be in the form marked C (1) in the said Schedule, and the notice withdrawing any such notice shall be in the form marked C (2) in the said Schedule.

(3) Any notice given in the forms B (1), B (2), C (1) or C (2) aforesaid shall be forwarded to the local authority not later than seven days before the commencement of any year, and shall take effect on the first day of that year; and a copy of the notice shall be exhibited in the shop for a period of at least seven days immediately preceding that date.

Notice as to averaging of hours of young persons in connection with the sale of accessories for aircraft, motor vehicles or cycles [*section* 26 (1) *of the Shops Act* 1950]

4.—(1) The notice to be given to the local authority under subsection (1) of section [26 of the Shops Act 1950], by the occupier of a shop in which there is carried on the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use, electing that the provisions of that subsection shall be applicable to the shop, shall be in the form marked D (1) in the Schedule to these Regulations, with such modifications in regard to the scheme of hours as may be appropriate.

(2) Where an occupier who has given a notice in the form D (1) aforesaid desires to vary the hours specified in the said notice, he shall give to the local authority a fresh notice in the form D (1) aforesaid specifying the new hours and withdrawing the previous notice.

(3) Where an occupier who has given a notice in the form D (1) aforesaid desires that the provisions of subsection (1) of section [26] of the said Act shall no longer be applicable to the shop, he shall give notice of withdrawal to the local authority in the form marked D (2) in the said Schedule.

(4) Any notice given in the forms D (1) or D (2) aforesaid shall be forwarded to the local authority not later than seven days before the date on which the notice is to take effect.

(5) A copy of any such notice as aforesaid shall be exhibited in the shop for a period of not less than seven days immediately preceding the date on which the notice takes effect and, in the case of a notice given in the form D (1) aforesaid, shall continue to be exhibited while the notice is in force.

(6) A notice given in the form D (1) aforesaid shall not be withdrawn (whether for the purpose of varying the scheme of hours or otherwise) by a subsequent notice until a period of at

least six months has elapsed from the date on which the notice took effect.

Records of hours of employment of young persons
[*section* 32 (1), (2) *of the Shops Act* 1950] (*a*)

5.—(1) The record to be kept by the occupier of a shop of hours worked by, and intervals allowed for rest and meals to every young person employed about the business of the shop shall be in the form marked E in the Schedule to these Regulations.

(2) Where an occupier elects to exhibit in the shop or any department thereof a notice specifying the daily hours to be worked by, and intervals for rest and meals to be allowed to young persons employed about the business of the shop or department, the notice shall be in the form marked F in the said Schedule. The notice shall be exhibited not later than noon on the Saturday preceding the first week in which it is to take effect, and shall continue to be exhibited while it is in force.

(3) Where an occupier has exhibited the notice referred to in the last foregoing paragraph he shall keep a record in the form marked G in the said Schedule in respect of any week in which any young person is employed outside the daily hours or during the intervals specified in the notice.

(4) In any record the entries relating to any day shall be made on the day to which they relate or, if that is not reasonably practicable, on the following day, and the entries relating to overtime shall be made not later than two days from the end of the week to which the record relates.

(5) The records relating to any year shall be preserved in the shop for a period of not less than six months from the end of that year.

(*a*) ***The Shops Act 1950, s. 32.*** In accordance with s. 33 of the Act the provisions of s. 32 as to records apply to the employment of young persons in connection with any retail trade or business carried on in any place not being a shop; and for this purpose references to employment about the business of a shop are deemed to include references to the above-mentioned employment, references to a shop are deemed to include references to the place in or from which such retail trade or business is carried on, and references to the occupier of a shop are deemed to include references to the person by whom the retail trade or business is carried on.

Notice setting forth certain provisions of the [*Shops Act* 1950]
[*section* 32 (3) *of the Shops Act* 1950]

6. The notice required to be exhibited in a shop by the occupier setting forth the number of hours during which young persons may, in accordance with the provisions of the [Shops Act 1950], be employed about the business of a shop, and such other particulars as may be prescribed, shall in the case of retail shops and warehouses occupied by retail traders be in the form marked H in the Schedule to these Regulations, and in the case of wholesale shops and warehouses occupied by wholesale dealers or merchants be in the form marked J in the said Schedule, and shall be kept constantly exhibited.

Notice as to seats for female shop assistants
[*section* 37 *of the Shops Act* 1950]

7. [*Section* 37 *of the Shops Act* 1950 *is repealed by the Offices, Shops and Railway Premises Act* 1963*; see now* ibid., *s.* 13.]

Exhibition of Notices

8. Any notice or copy of a notice required to be exhibited under these Regulations shall be kept exhibited in such a manner that it may be readily seen and read by any person whom it affects and shall be renewed whenever it becomes defaced or otherwise ceases to be clearly legible.

Citation, Commencement and Revocation

9. These Regulations may be cited as the Shops Regulations 1939 and shall come into force on the 31st December 1939, as from which date the Shops Regulations 1934, shall be revoked, except that paragraph (5) of Regulation 4 of those Regulations (which requires records kept in pursuance of that Regulation to be preserved for a period of not less than six months from the end of the year to which they relate) shall remain in force until the 30th June 1940:

Provided that any notice exhibited or given before the 31st December 1939 under Regulation 1, 2, 3 or 6 of those Regulations shall after that date be deemed to have been exhibited or given under Regulation 2, 3, 4 or 7, as the case may be, of these Regulations.

SCHEDULE

[SHOPS ACT 1950] Z.

EMPLOYMENT OF YOUNG PERSONS UNDER THE AGE OF 16 YEARS
AVERAGING OF HOURS AT CHRISTMAS

Notice of the application of the provisions of section [27] (3) *to a Shop*

Notice is hereby given that during the period of two consecutive weeks commencing Sunday, * December, 19 the provisions of section [27 of the Shops Act 1950], will apply to this shop.

(*Signed*)

(Occupier or Manager)

Address of Shop

Date

* Insert the date of the Sunday before Christmas or of the next preceding Sunday. (See Note 1.)

NOTES

1. The provisions of section 27 are only applicable in the week within which Christmas Day falls and *either* the week before *or* the week after that week.

2. This notice must be exhibited not later than noon on the Saturday preceding the date on which the period is to begin, and must continue to be exhibited during that period, in such a manner that it may be readily seen and read by any person whom it affects.

3. The effect of exhibiting this notice is that during the period of two consecutive weeks specified in the notice the hours of young persons under the age of 16 years employed about the business of the shop may be averaged over the period, subject to the conditions (a) that the number of hours worked in either week must not exceed 48, and (b) that the total number of hours worked during the fortnight must not exceed 88.

4. A week means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

A.

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS CATERING TRADE (AVERAGING OF HOURS)

Notice of the application of the provisions of section [25 (1)] *to a Shop*

Notice is hereby given that during the period of two consecutive weeks commencing * the provisions of subsection (1) of section [25 of the Shops Act 1950], will apply to this shop.

A notice under the above subsection has been exhibited in respect of † previous fortnightly periods beginning in the current calendar year.

(*Signed*)

(Occupier or Manager)

Address of shop

Date

* Insert date. (See Note 3.)

† Insert number of previous periods. (See Note 4.)

NOTES

1. This notice must be exhibited not later than noon on the Saturday preceding the date on which the period is to begin, and must continue to be exhibited during that period, in such a manner that it may be readily seen and read by any person whom it affects.

2. The effect of exhibiting this notice is that during the period of two consecutive weeks specified in the notice the hours of young persons *between the ages of* 16 *and* 18, whose employment is wholly or mainly in connection with the business of serving meals, intoxicating liquor or refreshments for consumption on the premises, may be averaged over the period, subject to the conditions (a) that the hours worked in either week must not exceed 60; (b) that the total hours worked during the fortnight must not exceed 96; and (c) that no overtime may be worked in addition to the fortnightly total.

3. A week means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

4. Averaging may not take place during more than twelve fortnightly periods beginning in any calendar year.

B (1).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

CATERING TRADE (OVERTIME)

Notice of Election that the provisions of section [25 (2)] *shall not be applicable to a shop*

To the Council of the { County / Borough / District } of

I/We

occupier(s) of a shop situated at
hereby elect that on and from * the provisions of sub-section (2) of section [25 of the Shops Act 1950], shall not be applicable to the said shop.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

NOTES

1. Where this notice has been given, the following conditions relating to the overtime of young persons between the ages of 16 and 18 will apply, viz.: (i) overtime employment of such young persons may not take place in more than six weeks in any year, but (ii) such young persons may be employed overtime up to a maximum of twelve working hours a week, provided that the limit of overtime of fifty working hours permissible for any individual young person in any year is not exceeded.

2. This notice must be forwarded to the local authority not later than seven days before the commencement of any year, and will take effect on the first day of that year. The notice cannot be given for part of a year.

A year for the purpose of the Act commences at midnight on the last Saturday night in the month of December.

3. A copy of this notice must be exhibited in the shop for at least seven days preceding the date on which it takes effect, in such a manner that it may be readily seen and read by any person whom it affects.

B (2).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

CATERING TRADE (OVERTIME)

Withdrawal of Notice of Election that the provisions of section [25 (2)] shall not be applicable to a Shop

To the Council of the {County / Borough / District} of

I/We

occupier(s) of a shop situated at
hereby give notice that I/we withdraw as from * the notice given on the * that the provisions of subsection (2) of section [25 of the Shops Act 1950], shall not be applicable to the said shop.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

NOTES

1. The effect of this notice of withdrawal is that the overtime employment of young persons between the ages of 16 and 18 wholly or mainly employed in connection with the business of serving meals, intoxicating liquors or refreshments for consumption on the premises, will be regulated by the special provisions of section 25 (2), and that any such young person may be employed overtime in any week of the year (except when a notice under section 25 (1) is in force) subject to the following conditions, viz.: he must not be employed overtime for more than eight working hours in any period of two consecutive weeks, or for more than fifty working hours in any year.

2. This notice must be forwarded to the local authority not later than seven days before the commencement of any year and will take effect on the first day of that year.

A year for the purpose of the Act commences at midnight on the last Saturday night in the month of December.

3. A copy of this notice must be exhibited in the shop for at least seven days immediately preceding the date on which it takes effect, in such manner that it may be readily seen and read by any person whom it affects.

C (1).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

SALE OF SUPPLIES OR ACCESSORIES FOR AIRCRAFT, MOTOR VEHICLES AND CYCLES (OVERTIME)

Notice of Election that the provisions of section [26 (2)] *shall not be applicable to a Shop*

To the Council of the { County / Borough / District } of

I/We

occupier(s) of a shop situated at
hereby elect that on and from * the provisions of sub-section (2) of section [26 of the Shops Act 1950], shall not be applicable to the said shop.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

NOTES

1. Where this notice has been given, the following conditions relating to the overtime of young persons between the ages of 16 and 18 will apply, viz.: (i) overtime employment of such young persons may not take place in more than six weeks in any year, but (ii) such young persons may be employed overtime up to a maximum of twelve working hours a week, provided that the limit of overtime of fifty working hours permissible for any individual young person in any year is not exceeded.

2. This notice must be forwarded to the local authority not later than seven days before the commencement of any year, and will take effect on the first day of that year. This notice cannot be given for part of a year.

A year for the purpose of the Act commences at midnight on the last Saturday night in the month of December.

3. A copy of this notice must be exhibited in the shop for at least seven days immediately preceding the date on which it takes effect, in such a manner that it may be readily seen and read by any person whom it affects.

C (2).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

SALE OF SUPPLIES OR ACCESSORIES FOR AIRCRAFT, MOTOR VEHICLES AND CYCLES (OVERTIME)

Withdrawal of Notice of Election that the provisions of section [26 (2)] shall not be applicable to a Shop

To the Council of the { County / Borough / District } of

I/We
occupier(s) of a shop situated at
hereby give notice that I/we withdraw as from * the notice given on the * that the provisions of subsection (2) of section [26 of the Shops Act 1950], shall not be applicable to the said shop.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

NOTES

1. The effect of this notice of withdrawal is that the overtime employment of young persons between the ages of 16 and 18 employed in connection with the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use is regulated by the special provisions of section 26 (2) and that any such young person may be employed overtime in any week of the year subject to the following conditions, viz., he must not be employed overtime for more than twelve working hours in any period of three consecutive weeks, or in any year for more than fifty working hours.

In the case of a shop in which the business of serving customers with the supplies and accessories as above is not the sole or principal retail trade or business carried on in the shop, the special provisions of section 26 (2) will apply only to young persons wholly or mainly employed in connection with that business.

2. This notice must be forwarded to the local authority not later than seven days before the commencement of any year, and will take effect on the first day of that year.

A year for the purpose of the Act commences at midnight on the last Saturday night in the month of December.

3. A copy of this notice must be exhibited in the shop for a period of at least seven days immediately preceding the date on which it takes effect, in such a manner that it may be readily seen and read by any person whom it affects.

D (1).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

SALE OF SUPPLIES OR ACCESSORIES FOR AIRCRAFT, MOTOR VEHICLES AND CYCLES (AVERAGING OF HOURS)

Notice of application of the provisions of section [26 (1)] *to a Shop*

To the Council of the {County / Borough / District} of

I/We

occupier(s) of a shop situated at
hereby elect that on and from * the provisions of subsection (1) of section [26 of the Shops Act 1950], shall be applicable to the said shop, and that the normal working hours of young persons between the ages of 16 and 18 † employed in connection with the business carried on in the said shop of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use shall be in accordance with the scheme set out below:—

Scheme of Hours

Young Persons Affected. (See Note 4.)	Number of Hours to be Worked.		
	First week.	Second week.	Third week.

(Where the space provided is not sufficient the scheme may be set out on a separate sheet attached to this notice.)

‡ The notice given under the said subsection (1) of section [26] on § is hereby withdrawn.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

† See Note 5.

‡ Strike out if inapplicable.

§ Insert date.

NOTES

1. This notice must be forwarded to the local authority not later than seven days before the date on which it is to take effect.

2. The hours to be specified in the notice are the total number of hours to be worked in each week, exclusive of intervals for rest and meals and exclusive of overtime.

The hours so specified must not exceed 54 in respect of any week; and the hours in any consecutive period of three weeks must not exceed 144.

3. A week means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

4. When the same hours are to apply to all the young persons, only the word "All" need be inserted in the column headed "Young Persons Affected." Where different sets of hours for different young persons or groups of young persons are specified in the notice, each such set should be distinguished by a letter (e.g. Set A First Week 45 hours, Second Week 45 hours, Third Week 54 hours. Set B First Week 54 hours, Second Week 45 hours, Third Week 45 hours).

5. Where the business of serving customers with supplies or accessories for aircraft, motor vehicles or cycles sold for immediate use is not the sole or principal retail trade or business carried on in the shop, the provisions of section 26 (1) apply only to young persons wholly or mainly employed in connection with the business of serving customers with such supplies and accessories. In such a case the words "wholly or mainly" should be inserted in the notice before the word "employed" in the first paragraph of the notice.

6. The last paragraph of the notice is for use only where it is desired to vary the hours specified in a previous notice.

7. This notice cannot be withdrawn (whether for the purpose of varying the scheme of hours or otherwise) until a period of at least six months has elapsed from the date on which the notice took effect.

8. A copy of this notice must be exhibited in the shop for a period of at least seven days immediately preceding the date on which the notice takes effect, and must continue to be exhibited while the notice is in force, in such a manner that it may be readily seen and read by any person whom it affects.

D (2).

[SHOPS ACT 1950]—EMPLOYMENT OF YOUNG PERSONS

SALE OF SUPPLIES OR ACCESSORIES FOR AIRCRAFT, MOTOR VEHICLES AND CYCLES (AVERAGING OF HOURS)

Withdrawal of Notice of application of the provisions of section [26 (1)] to a Shop

To the Council of the { County / Borough / District } of

I/We

occupier(s) of a shop situated at
hereby give notice that I/we withdraw as from * the notice given on the * electing that the provisions of subsection (1) of section [26 of the Shops Act 1950], shall be applicable to the said shop.

(*Signed*)

(Occupier(s) of shop)

Date

* Insert date.

NOTES

1. The effect of this notice of withdrawal is that as from the date on which the notice takes effect the normal maximum working hours of young persons between the ages of 16 and 18 will in each week be 48 working hours.

2. This notice must be forwarded to the local authority not later than seven days before the date on which it is to take effect.

3. A copy of this notice must be exhibited in the shop for a period of at least seven days immediately preceding the date on which it takes effect, in such a manner that it may be readily seen and read by any person whom it affects.

[SHOPS ACT 1950, s. 32 (1)] E.

RECORD OF HOURS OF EMPLOYMENT OF YOUNG PERSONS (Reg. 5 (1))

Name of Occupier

Address of Shop. (See Note 9)

Notice in force under section..... (See Note 7.)

Description of Department (if applicable)

Record for week ending Saturday,.....19...

Names of Young Person.	Age.	.....day.					Total hours worked during week.	OVERTIME.	
		Employment began.	Intervals for rest and meals.	Employment ended.	Hours worked.			Worked during week.	Previously worked during year.
						The four preceding columns to be repeated for each day of the week on which young persons are employed.			

Signed (Occupier or Manager)

Date

NOTES

1. The entries relating to each day must be made on that day or, if that is not reasonably practicable, on the day following.

2. The entries relating to overtime must be made within two days from the end of the week.

3. The entries under the heading "Intervals for rest and meals" may be either (a) the actual times at which the intervals began and ended (e.g. 1 p.m.–2 p.m. and 5 p.m.–5.30 p.m.), or (b) the duration of the intervals (e.g. Dinner 1 hour, Tea ½ hour).

4. "Hours worked" means the time during which the young persons are at the disposal of the employer exclusive of the intervals allowed for rest and meals.

5. "Total hours worked" means the total hours worked during the week *exclusive* of intervals for rest and meals but *inclusive* of overtime.

6. The maximum working hours for young persons under the age of 16 are 44, except when an averaging scheme is in force under section 1A for the Christmas fortnight. Overtime may not be worked by persons under the age of 16.

The normal maximum working hours for young persons between the ages of 16 and 18 are 48, except when an averaging scheme is in force under section 25 (1) in a catering business, or under section 26 (1) in connection with the sale of supplies or accessories for aircraft, motor vehicles and cycles. Hours worked during the week in excess of the normal maximum working hours must be recorded as overtime.

7. Where a notice is in force under section 27, section 25 (1) or section 26 (1), an entry should be made in the space provided for this purpose.

8. Where a notice in form D (1) under section 26 (1) is in force and specifies more than one set of hours, the particular set of hours applicable to each young person should be indicated in this record by placing the appropriate distinguishing letter against his name.

9. Where the record relates to the employment of young persons in connection with retail trade carried on elsewhere than in a shop, the address of the place in or from which the retail trade is carried on should be given.

[SHOPS ACT 1950, s. 32 (1) (2)] F.

DAILY HOURS TO BE WORKED BY YOUNG PERSONS AS FROM 19 . (Reg. 5 (2)).

Name of Occupier

Address of Shop
(See Note 7)
Description of Department
(if applicable)

Names of Young Persons. (See Note 5.)	Age.	.....day.			
		Employment to begin.	Intervals for rest and meals.	Employment to end.	
					The three preceding columns to be repeated for each day of the week on which young persons are to be employed.

Signed (Occupier or Manager)
Date

NOTES

1. This notice must be exhibited not later than noon on the Saturday preceding the first week in which it is to take effect, and must continue to be exhibited while it is in force, in such a manner that it may be readily seen and read by any person whom it affects.

2. "Hours to be worked" means the time during which the persons employed will be at the disposal of the employer, exclusive of any intervals for rest and meals.

3. The hours to be specified in this notice are the hours to be worked, exclusive of overtime.

4. The entries under the heading "Intervals for rest and meals" may be either (a) the actual times at which the intervals are to begin and end (e.g. 1 p.m.–2 p.m. and 5 p.m.–5.30 p.m.) or (b) the duration of the intervals (e.g. Dinner 1 hour, Tea $\frac{1}{2}$ hour).

5. When the same hours are to apply to all young persons under the age of 16, or to all young persons between the ages of 16 and 18, the word "All" may be inserted in the column headed "Names of Young Persons" and the words "under 16" or "16 to 18" as the case may be, in the column headed "Age."

6. In any week in which a young person is employed outside the daily hours or during the intervals specified in the notice, an entry must be made in the record in form G.

7. Where the notice relates to young persons employed in connection with retail trade carried on elsewhere than in a shop the address of the place in or from which the retail trade is carried on should be given.

G.

[SHOPS ACT 1950, s. 32 (1) (2)]

RECORD OF HOURS OF EMPLOYMENT OF YOUNG PERSONS

(Reg. 5 (3))

(To be used only where Form F. is exhibited)

Name of Occupier

Address of Shop
(See Note 5)
Description of Department
(if applicable)

Week ending Saturday.....19...

Names of Young Persons.	Age.	.....day.			OVERTIME	
		Time worked outside the hours or during the intervals specified in Form F.	Time not worked during specified hours.		Worked during week.	Previously worked during the year.
				The two preceding columns to be repeated for each day in respect of which an entry requires to be made.		

Signed (Occupier or Manager)
Date

NOTES

1. The necessary entries must be made on this form in any week in which any young person is employed on any day outside the daily hours or during the intervals specified in Form F.

2. Any time worked outside the daily hours or during the intervals specified in Form F must be entered in the first of the two daily columns. Such time must also be recorded at the end of the week as overtime in the column provided for that purpose, unless it was offset by an equivalent amount of time not worked within the specified hours during the same week, and the time not worked was duly recorded in the second of the two daily columns.

3. Entries relating to any day must be made on that day or, if that is not reasonably practicable, on the day following.

4. Overtime must be entered within two days from the end of the week.

5. Where the record relates to the employment of young persons in connection with retail trade carried on elsewhere than in a shop the address of the place in or from which the retail trade is carried on should be given.

H.

This notice must be exhibited in every retail shop or warehouse occupied by a retail trader, about the business of which young persons are employed (Reg. 6).

ABSTRACT OF PROVISIONS OF THE [SHOPS ACT 1950] RELATING TO THE EMPLOYMENT OF YOUNG PERSONS IN RETAIL SHOPS AND WAREHOUSES [SHOPS ACT 1950, SECTION 32 (3)]

1. *Young persons to whom the Act applies.*

The Act applies to young persons under the age of 18 (other than children of school age whose employment is regulated by the Children and Young Persons Act 1933) employed about the business of a shop, whether or not they receive any reward for their labour.

In the application of the Act to retail establishments,

(a) "Shop" means any premises in which any retail trade is carried on, and includes any warehouse occupied for the purpose of his trade by any person carrying on any retail trade or business;

(b) "Employment about the business of a shop" includes such employment both inside and outside the shop, and covers also employment by the occupier of a shop upon any work whether within the shop or outside it which is ancillary to the business carried on at the shop.

2. *Maximum working hours for young persons under the age of* 16.

No young person under the age of 16 may be employed about the business of a shop for more than 44 working hours in any week, except in one week during the Christmas season subject to the conditions described in paragraph 3.

3. *Averaging of hours of young persons under the age of* 16 *during the Christmas season.*

When a notice in the prescribed form has been exhibited in a shop, the weekly hours of young persons under the age of 16 may be averaged over a fortnight comprising the week in which Christmas Day falls and *either* the week before *or* the week after, subject to the conditions (i) that their working hours must not exceed 48 in either week, and (ii) that their total working hours for the fortnight must not exceed 88.

4. *Normal maximum working hours for young persons between the ages of* 16 *and* 18.

Subject to the exceptions described in paragraphs 5, 8 and 9, no young person between the ages of 16 and 18 may be employed about the business of a shop for more than 48 working hours in any week. These are the "normal maximum working hours" for these young persons.

5. *Overtime.*

On occasions of seasonal or exceptional pressure of work at any shop, young persons between the ages of 16 and 18 may be employed about the business of the shop overtime, i.e. in excess of the normal maximum working hours, subject to the following conditions:

(a) Overtime may not be worked in any shop in more than six weeks in a year;

(b) No individual young person may be employed overtime in any year for more than 50 working hours;

(c) No individual young person may be employed overtime in any week for more than 12 working hours.

Overtime may not be worked by any young person under the age of 16.

6. *Mixed employment.*

In determining the number of working hours in any week for which a young person has been employed about the business of any shop, any time worked in that week about the business of any other retail or wholesale shop or warehouse, or in a factory or in

any of the employments which are regulated by Part I of the Young Persons (Employment) Act 1938, must also be reckoned.

Where a young person has previously been employed in a factory on any day, he must not be employed about the business of a shop on the same day for a longer period than will, together with the hours worked in the factory, complete the daily number of hours permitted by the Factories Act 1937.

But except as above the Act does not apply to the employment in a factory of young persons whose hours of employment are regulated by the Factories Act 1937.

7. *Restrictions on night employment.*

Every young person employed about the business of a shop must be allowed an interval of at least eleven consecutive hours in every period of twenty-four hours between midday and midday, and this interval must include the hours between 10 p.m. and 6 a.m. (or 5 a.m. in the case of male young persons between the ages of 16 and 18 employed in connection with the collection or delivery of milk or bread or newspapers).

8. *Special provisions as to the catering trade.*

(1) The two following provisions apply only to young persons between the ages of 16 and 18 wholly or mainly employed in connection with the business of serving meals, intoxicating liquor or refreshments to customers for consumption on the premises.

(a) *Averaging of hours over a fortnight.*

When a notice in the prescribed form has been exhibited in a shop, the weekly hours of the young persons may be averaged over a fortnight, subject to the conditions (i) that their working hours must not exceed 60 in either week, (ii) that their total working hours for the fortnight must not exceed 96 hours, (iii) that no overtime may be worked during the fortnight, and (iv) that averaging may not take place in more than twelve fortnights beginning in any calendar year.

(b) *Special provision for overtime.*

The young persons may be employed overtime in any week in the year when an averaging arrangement is not in force, but the overtime in any period of two successive weeks must not exceed 8 working hours. The limitation of the annual amount of overtime to be worked by the individual young person (see paragraph 5 (b)) remains unaffected.

An occupier of a shop may, however, by giving the prescribed notice elect that, in lieu of this provision, the normal overtime provisions set out in paragraph 5 above shall apply to the young persons.

(2) *Night employment in connection with the service of meals.*

In the case of male young persons between the ages of 16 and 18 employed wholly or mainly in connection with the business of serving meals to customers for consumption on the premises, the restrictions on night employment set out in paragraph 7 are modified so as to permit employment for any period between 10 p.m. and midnight during which they are wholly employed in connection with the business of serving meals.

9. *Special provisions as to the sale of supplies or accessories for aircraft, motor vehicles or cycles.*

In the case of a shop where the business of selling such supplies or accessories for immediate use is the sole or principal retail business carried on in the shop, the following special provisions apply to young persons between the ages of 16 and 18 employed in connection with that business.

When it is not the principal retail business carried on in the shop, the special provisions apply to young persons between 16 and 18 who are wholly or mainly employed in connection with that business.

(a) *Averaging of hours.*

Where the prescribed notice has been given to the local authority, the hours of the young persons may be averaged, and the weekly hours specified in the scheme of hours set out in the notice (a copy of which must be exhibited in the shop) become the normal maximum working hours of the young persons, subject to the following conditions:—

(i) The hours worked in any week, including any overtime worked in excess of the hours specified, must not exceed 54 working hours.

(ii) The total working hours (excluding overtime) in any period of three consecutive weeks must not exceed 144.

(iii) No young person may be employed overtime in any period of three consecutive weeks for more than 12 working hours.

(b) *Special provision for overtime.*

The young persons may be employed overtime in any week in the year, whether or not an averaging system is in force, but no young person may be employed in any period of three consecutive weeks for more than 12 working hours.

The limitation of the annual amount of overtime to be worked by the individual young person (see paragraph 5 above) remains unaffected by either of the special provisions.

An occupier of a shop may by giving the prescribed notice elect that in lieu of the special provision relating to overtime the normal overtime provisions set out in paragraph 5 above shall apply to the young persons (except where an averaging scheme is in force).

10. *Early Closing Days.*

Every young person wholly or mainly employed about the business of a shop for more than 25 hours in any week must be allowed in that week the early closing days provided for shop assistants by section [17 of the Shops Act 1950], i.e. on at least one week day in each week the young person must not be employed about the business of the shop after 1.30 p.m. (1 p.m. if the [Shops Act 1950 is] applied to employment at the premises by the employer's election under Part I of the Young Persons (Employment) Act 1938).

11. *Meal intervals.*

Every young person wholly or mainly employed about the business of a shop must be allowed the intervals for meals prescribed for shop assistants by the [Third Schedule to the Shops Act 1950], except that, in the case of young persons, the period which may be worked without an interval is reduced. The intervals are as follows:—

(1) No young person may be employed for more than 5 hours (or 5½ hours on the day of his weekly half-holiday) without an interval of at least 20 minutes being allowed during the course thereof.

(2) Where a young person is employed during the hours from 11.30 a.m. to 2.30 p.m., an interval of not less than three-quarters of an hour (or one hour when the meal is not taken in the shop) must be allowed between those hours for dinner. In the case of young persons employed in the sale of refreshments, or the retail sale of intoxicating liquors, or in any shop on a market day, or the day of an annual fair, the dinner interval may end not earlier than 11.30 a.m. or commence not later than 2.30 p.m.

(3) Where a young person is employed during the hours from 4 p.m. to 7 p.m. an interval of not less than half an hour must be allowed between those hours for tea.

NOTE

The provisions as to meal intervals do not apply to a shop where the only persons employed are members of the occupier's family, maintained by him and dwelling in his house.

12. *Records.*

Every occupier of a shop who employs young persons about the business of his must

Either (a) keep a record in the prescribed form of the actual hours worked by, and the intervals for rest and meals allowed to, the young persons;

Or (b) exhibit in the shop a notice in the prescribed form specifying the daily hours to be worked by, and the intervals for rest and meals to be allowed to, the young persons. In that case he must record separately on the prescribed form any time worked outside the daily hours or during the intervals specified in the notice.

13. *Definitions.*

"Working hours" means the time during which the persons employed are at the disposal of the employer, exclusive of any intervals allowed for rest and meals.

"Week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

"Year" means the period between midnight on the last Saturday night in the month of December and midnight on the last Saturday night in the next month of December.

14. *Administration of the Act.*

The provisions of the Act relating to hours of young persons are administered by the local authorities responsible for the enforcement of the [Shops Act 1950]. Enquiries should accordingly be addressed in London before 1st April 1965 to the London County Council and after that date to the London borough, in the City of London to the Common Council, in Boroughs to the Town Council, in Urban or Rural Districts where the District Council is the shops authority, to that Council, and elsewhere to the County Council.

J.

This notice must be exhibited in every wholesale shop or warehouse occupied by any wholesale dealer or merchant, about the business of which young persons are employed.

ABSTRACT OF PROVISIONS OF THE [SHOPS ACT 1950] RELATING TO THE EMPLOYMENT OF YOUNG PERSONS IN WHOLESALE SHOPS AND WAREHOUSES [SHOPS ACT 1950, SECTION 32 (3)] (Reg. 6)

1. *Young persons to whom the Act applies.*

The Act applies to young persons under the age of 18 (other than children of school age whose employment is regulated by the

Children and Young Persons Act 1933) employed about the business of a wholesale shop or warehouse, whether or not they receive any reward for their labour.

In the application of the Act to wholesale establishments,

(i) a "wholesale shop" means any premises occupied by a wholesale dealer or merchant where goods are kept for sale wholesale to customers resorting to the premises; and a "warehouse" means any warehouse occupied for the purpose of his trade by any wholesale dealer or merchant;

(ii) "employment about the business of a wholesale shop or warehouse" includes (a) all such employment within the premises of the wholesale shop or warehouse, (b) employment outside the premises in the collection or delivery of goods, or in attendance upon customers or in carrying messages or running errands, (c) employment in the service of the occupier upon any work within the premises which is ancillary to the business carried on at the wholesale shop or warehouse.

2. *Maximum working hours for young persons under the age of* 16.

No young person under the age of 16 may be employed about the business of a wholesale shop or warehouse for more than 44 working hours in any week, except in one week during the Christmas season subject to the conditions described in paragraph 3.

3. *Averaging of hours of young persons under the age of* 16 *during the Christmas season.*

When a notice in the prescribed form has been exhibited in a wholesale shop or warehouse, the weekly hours of young persons under the age of 16 may be averaged over a fortnight comprising the week in which Christmas Day falls and *either* the week before *or* the week after, subject to the conditions (i) that their working hours must not exceed 48 in either week, and (ii) that their total working hours for the fortnight must not exceed 88.

4. *Normal maximum working hours for young persons between the ages of* 16 *and* 18.

Subject to the exception described in paragraph 5, no young person between the ages of 16 and 18 may be employed about the business of a wholesale shop or warehouse for more than 48 working hours in any week. These are the "normal maximum working hours" for these young persons.

5. *Overtime.*

On occasions of seasonal or exceptional pressure of work, young persons between the ages of 16 and 18 may be employed about the business of a wholesale shop or warehouse overtime, i.e. in excess of the normal maximum working hours, subject to the following conditions:—

(a) Overtime may not be worked in any wholesale shop or warehouse in more than six weeks in a year;

(b) No individual young person may be employed overtime in any year for more than 50 working hours;

(c) No individual young person may be employed overtime in any week for more than 12 working hours.

Overtime may not be worked by any young person under the age of 16.

6. *Mixed employment.*

In determining the number of working hours in any week for which a young person has been employed about the business of any wholesale shop or warehouse, any time worked in that week about the business of any other retail or wholesale shop or warehouse or in a factory or in any of the employments which are regulated by Part I of the Young Persons (Employment) Act 1938, must also be reckoned.

Where a young person has previously been employed in a factory on any day he must not be employed about the business of a wholesale shop or warehouse on the same day for a longer period than will, together with the hours worked in the factory, complete the daily number of hours permitted by the Factories Act 1937.

But except as above the Act does not apply to the employment in a factory of young persons whose hours of employment are regulated by the Factories Act 1937.

7. *Restrictions on night employment.*

Every young person employed about the business of a wholesale shop or warehouse must be allowed an interval of at least eleven consecutive hours in every period of twenty-four hours between midday and midday, and this interval must include the hours between 10 p.m. and 6 a.m. (or 5 a.m. in the case of male young person between the ages of 16 and 18 employed in connection with the collection or delivery of milk or bread or newspapers).

8. *Weekly half-holidays.*

Every young person wholly or mainly employed about the business of a wholesale shop or warehouse for more than 25 hours

in any week must be allowed in that week the weekly half-holiday provided for shop assistants by section [17 of the Shops Act 1950], i.e. on at least one week day in each week the young person must not be employed about the business of the wholesale shop or warehouse after 1.30 p.m. (1 p.m. if the Shops Acts are applied to employment at the premises by the employer's election under Part I of the Young Persons (Employment) Acts 1938).

9. *Meal intervals.*

Every young person wholly or mainly employed about the business of a wholesale shop or warehouse must be allowed the intervals for meals prescribed for shop assistants by the [Third Schedule to the Shops Act 1950], except that, in the case of young persons, the period which may be worked without an interval is reduced. The intervals are as follows:—

(1) No young person may be employed for more than 5 hours (or 5½ hours on the day of his weekly half-holiday) without an interval of at least 20 minutes being allowed during the course thereof.

(2) Where a young person is employed during the hours from 11.30 a.m. to 2.30 p.m., an interval of not less than three-quarters of an hour (or one hour when the meal is not taken in the shop) must be allowed between those hours for dinner.

(3) Where a young person is employed during the hours from 4 p.m. to 7 p.m. an interval of not less than half an hour must be allowed between those hours for tea.

The provisions as to meal intervals do not apply where the only persons employed in the wholesale shop or warehouse are members of the occupier's family, maintained by him and dwelling in his house.

10. *Records.*

Every occupier of a wholesale shop or warehouse who employs young persons about the business of his wholesale shop or warehouse must

Either (a) keep a record in the prescribed form of the actual hours worked by, and the intervals for rest and meals allowed to, the young persons;

Or (b) exhibit in the wholesale shop or warehouse a notice in the prescribed form specifying the daily hours to be worked by, and the intervals for rest and meals to be allowed to, the young persons. In that case he must

record separately on the prescribed form any time worked outside the daily hours or during the intervals specified in the notice.

11. *Definitions.*

"Working hours" means the time during which the persons employed are at the disposal of the employer, exclusive of any intervals allowed for rest and meals.

"Week" means the period between midnight on Saturday night and midnight on the succeeding Saturday night.

"Year" means the period between midnight on the last Saturday night in the month of December and midnight on the last Saturday night in the next month of December.

12. *Administration of the Act.*

The provisions of the Act relating to hours of young persons are administered by the local authorities responsible for the enforcement of the [Shops Act 1950]. Enquiries should accordingly be addressed in London outside the City to the London County Council, and the City of London to the Common Council, in Boroughs to the Town Council, in Urban or Rural Districts where the District Council is the shops authority, to that Council, and elsewhere to the County Council.

THE SHOPS REGULATIONS 1963

(S.I. 1963 No. 1716)

Dated October 14, 1963, made by the Secretary of State under section 69 of the Shops Act 1950

1. For paragraph (1) of Regulation 2 of the Shops Regulations 1937 (which relates to notice of the intention of a local authority to make certain orders relating to Sunday trading in shops) there shall be substituted the following paragraphs:—

"(1) Notice of the intention of the local authority to make a partial exemption order under section 48 of the Shops Act 1950 or an order in respect of the sale of meals or refreshments for consumption off the premises under section 49 of that Act or an order in respect of a holiday resort under section 51 of that Act or an order varying or revoking any such order shall be given in the form marked II in the Schedule to these Regulations and shall be—

(i) published in one or more local newspapers circulating in the area to which the order will apply, and

(ii) posted up in streets and public places in the area to which the order will apply in such positions and such manner that it is likely to be seen and can easily be read by persons interested.

(1A) A copy of any order proposed to be made as aforesaid shall, for a period of four weeks from the date of the publication of the notice of intention, be available for inspection at all reasonable times at the offices of the local authority and at such other places, if any, as may be specified in the notice."

2. For the form marked II in the Schedule to the Shops Regulations 1937 (being the prescribed form of notice of intention of a local authority to make certain orders relating to Sunday trading in shops) there shall be substituted the form set out in the Schedule to this Order.

3. These Regulations may be cited as the Shops Regulations 1963 and shall come into operation on 2nd December 1963.

SCHEDULE

Regulation 2

II. *Form of Notice of Intention to make an Order under section* 48, 49 *or* 51 *of the Shops Act* 1950 *or an Order varying or revoking such an Order* (*Regulation* 2).

SHOPS ACT 1950, PART IV (SUNDAY TRADING)

Notice is hereby given that the Council propose to make an Order (entitled), relating to (*specify class or classes of shop*) under (*specify section of the Act*) in (*specify area*) under which (*specify the effect of the Order*).

A copy of the proposed Order will be available for inspection at all reasonable times at the offices of the Council [and at] until the day of 19 .

Any objection to the proposed Order should be made in writing to the Clerk of the Council (*insert address*) before that date.

Dated this day of 19 .

(*Signed*)

Clerk of the Council.

THE SHOPS (AIRPORTS) ACT 1962

(10 & 11 Eliz. 2 c. 35)

An Act to exempt shops at certain airports, and the carrying on of any retail trade or business in connection with such shops, from the provisions of Part I of the Shops Act 1950 and for purposes connected therewith [19th July 1962]

1. Exemption of traders at certain airports from Part I of Shops Act 1950.—(1) The provisions of Part I of the Shops Act 1950 (which relate to hours of closing) shall not apply—

(a) to any shop (*a*) at a designated airport which is situated in a part of the airport to which this Act applies, or

(b) to the sale (otherwise than at a shop) of any goods at a designated airport, where the sale takes place in a part of the airport to which this Act applies, and is effected by or on behalf of a person carrying on a retail trade or business (*b*) at a shop situated in such a part of the airport.

(2) This Act applies to every part of a designated airport, except any part which is not ordinarily used by persons travelling by air to or from the airport; and in this Act "designated airport" means an airport designated for the purposes of this Act by an order made by the Minister of Aviation (*c*), as being an airport at which there appears to him to be a substantial amount of international passenger traffic.

(3) The power conferred by subsection (2) of this section to make orders shall include power to vary or revoke any order made thereunder by a subsequent order.

(4) Any power to make orders under this Act shall be exercisable by statutory instrument.

(5) Expressions used in this Act and in the Shops Act 1950 have the same meanings in this Act as in that Act.

(*a*) ***Shop.*** By virtue of sub-s. (5) of this section for definition see the Shops Act 1950, s. 74 (1).

(*b*) ***Retail trade or business.*** By virtue of sub-s. (5) of this section or definition see the Shops Act 1950, s. 74 (1).

(*c*) ***Minister of Aviation.*** The reference is now to a Secretary of State (S.I. 1966 No. 741; S.I. 1970 No. 1537). The following airports have been designated: London (Heathrow), London (Gatwick), Manchester, Prestwick, Liverpool, Birmingham, Stansted, Southend and Glasgow.

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2. Short title, citation and extent.—(1) This Act may be cited as the Shops (Airports) Act 1962; and the Shops Act 1950 and this Act may be cited together as the Shops Acts 1950 and 1962.

(2) This Act shall not extend to Northern Ireland.

PART III
AGRICULTURAL SAFETY

SUMMARY

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INTRODUCTION TO THE AGRICULTURAL SAFETY LEGISLATION

The two Acts which follow—the Agriculture (Poisonous Substances) Act 1952 and the Agriculture (Safety, Health and Welfare Provisions) Act 1956—stem directly from the Report of the Gowers Committee (Cmd. 7664) and together constitute for the first time a comprehensive safety, health and welfare code for the agricultural industry in England and Scotland. In the field of safety the 1956 Act contemplated the supersession of the only earlier legislation specifically directed towards safety in agriculture, the Threshing Machines Act 1878 and the Chaff-cutting Machines (Accidents) Act 1897, both of which Acts have now been repealed. The Factories Acts do not cover farming (*per* SOMERVILL, L.J., in *Hendon Corporation* v. *Stanger*, [1948] 1 All E.R. 377, at p. 380, so interpreting *Nash* v. *Hollinshead*, [1901] 1 K.B. 700, C.A.).

The scheme of the 1952 and 1956 Acts is the same—that is to say, both are primarily enabling Acts under which the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland are empowered to make regulations with regard to the specified purposes of each Act. The Ministers also have power, under s. 9 (2) of the Agriculture (Poisonous Substances) Act 1952, to extend the application of that Act by Order to substances other than those to which it originally applied.

The inspectorate provided for under both these Acts has been combined with that provided for under the Agricultural Wages Act 1948, so that there is now one body of inspectors with functions under all three Acts.

The Acts provide only for enforcement by criminal process, but we entertain no doubt that, so far as the whole of the 1952 Act, and ss. 1, 2 and 7 of the 1956 Act, are concerned, a breach of these provisions or of the regulations thereunder would enable a worker (or child in the case of a breach of s. 7 of the 1956 Act injured by the breach to bring a civil action

for damages on the grounds of breach of statutory duty. Ample authority for this view is to be found in *Groves* v. *Wimborne* (*Lord*), [1898] 2 Q.B. 402; *Britannic Merthyr Coal Co., Ltd.* v. *David*, [1910] A.C. 74; and *Black* v. *Fife Coal Co., Ltd.*, [1912] A.C. 149, in each of which cases an action for damages was held to lie for breach of statutory obligation where, on a consideration of the whole Act and the circumstances in which, and the purpose for which, it was passed, the obligation could be regarded as imposed for the benefit of a particular class of persons, rather than for the benefit of the public generally.

With regard to the remaining sections of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, which impose, or may by regulations impose, obligations upon employers or occupiers, namely, ss. 3, 4, 5 and 6, the question of civil liability is not, we think, wholly free from doubt, and a discussion of this topic is to be found in the General Introduction.

THE AGRICULTURE (POISONOUS SUBSTANCES) ACT 1952

(15 & 16 Geo. 6 & 1 Eliz. 2. c. 60)

ARRANGEMENT OF SECTIONS

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An Act to provide for the protection of employees against risks of poisoning by certain substances used in agriculture

[30th October 1952]

1. Protection of employees against risks of poisoning.—(1) Provision shall be made by regulations under this Act (*a*) for the purpose of protecting workers (*b*) against risks of poisoning by substances to which this Act applies (*c*) arising from their working—

(a) in connection with the use in agriculture (*d*) of such substances, or

(b) on land on which such substances are being or have been used in agriculture.

(2) Regulations under this Act (which may be either regulations applying to Great Britain (*e*) and made by the Minister of Agriculture and Fisheries (*f*) and the Secretary of State (*g*) jointly, or applying to England and Wales only and made by the said Minister, or applying to Scotland only and made by the Secretary of State) may make any such provision for the purpose mentioned in the preceding subsection as appears to them or him to be reasonably practicable and to meet the necessity of the case (*h*), and may impose obligations on employers (*i*) of workers employed to work as mentioned in the preceding subsection, on such workers themselves, and on others.

(3) Without prejudice to the generality of the last preceding subsection, regulations under this Act may provide for—

(a) imposing restrictions or conditions as to the purposes for which, the circumstances in which, or the methods or means by which, a substance may be used (including, in the case of a substance as to which it appears to the authority making the regulations necessary so to provide, restrictions or conditions involving a general prevention of the use thereof in agriculture);

(b) requiring the provision, and keeping available and in good order, of protective clothing and equipment, of facilities for washing and cleaning, and of other things needed for protecting persons, clothing, equipment and appliances from contamination or for removing sources of contamination therefrom;

(c) requiring the observance of precautions against poisoning, including the use of things provided in pursuance of the regulations, and including abstention from eating, drinking and smoking in circumstances involving risk of poisoning;

(d) securing intervals between, or limitation of, periods of exposure to risk of poisoning;

(e) requiring the observance of special precautions in the case of persons who, by reason of their state of health, age or other circumstances, are subject to particular risk of poisoning or of injury therefrom, or imposing in the case of persons so subject prohibitions (whether temporary or permanent), or restrictions, on employment for working as mentioned in subsection (1) of this section;

(f) measures for detecting and investigating cases in which poisoning has occurred, and cases falling within the preceding paragraph, including medical examinations, making of blood tests, and notification of absences from work in circumstances involving suspicion of poisoning;

(g) requiring the provision, and keeping available and in good order, and the use, of facilities for preventive and first aid treatment;

(h) requiring the provision of, and submission to, instruction and training in the use of things provided in pursuance of the regulations and in the observance of precautions;

(i) the keeping and inspection of records and the furnishing of returns and information.

(4) Regulations under this Act may make different provision to meet different circumstances and, in particular, differences in the composition of the substances dealt with and in their effect under different conditions of use and on different classes of persons.

(5) Regulations under this Act may provide for empowering an inspector (*j*) appointed under this Act to exempt (*k*) particular cases or particular persons from the operation of provisions of the regulations.

(6) When the Minister of Agriculture and Fisheries and the Secretary of State, or either of them, propose or proposes to make regulations under this Act, they or he shall before making the regulations consult with such organisations as appear to them or him (*l*) to represent the interests concerned.

(7) The power of making regulations under this Act shall be exercisable by statutory instrument (*m*) which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(*a*) ***Regulations under this Act.*** The Regulations at present in force are the Agriculture (Poisonous Substances) Regulations 1966 (S.I. 1966 No. 1063), as amended by the Agriculture (Poisonous Substances) (Amendment) Regulations 1969 (S.I. 1969 No. 843).

(*b*) ***Worker.*** For definition, see s. 10 (1).

(*c*) ***Substances to which this Act applies.*** For these substances, see s. 9 (1), and subordinate legislation made thereunder.

(*d*) ***Agriculture.*** For definition, see s. 10 (1).

(*e*) ***Great Britain.*** That is to say, England and Scotland; see the Union with Scotland Act 1706, art. 1. "England" includes Wales and Berwick-on-Tweed; see the Wales and Berwick Act 1746, s. 3, and see 7 Halsbury's Laws (3rd Edn.) 195.

(*f*) ***Minister of Agriculture and Fisheries.*** The Minister is now, by virtue of the Transfer of Functions (Ministry of Food) Order 1955 (S.I. 1955 No. 554), entitled the Minister of Agriculture, Fisheries and Food.

(*g*) ***Secretary of State.*** That is to say, "one of Her Majesty's Principal Secretaries of State for the time being"; see the Interpretation Act 1889, s. 12 (3), and see 7 Halsbury's Laws (3rd Edn.) 377.

(*h*) ***As appears . . . necessity of the case.*** The courts will not enquire into the questions whether the provisions made are in fact reasonably practicable and whether they in fact meet the necessity of the case, provided the Minister has acted *bona fide* and within his powers: *Robinson* v. *Sunderland Corporation*, [1899] 1 Q.B. 751, *per* CHANNELL, J., at pp. 756, 757; *Point of Ayr Collieries, Ltd.* v. *Lloyd-George*, [1943] 2 All E.R. 546, C.A.; *Re City of Plymouth (City Centre) Declaratory Order, 1946, Robinson* v. *Minister of Town and Country Planning*, [1947] K.B. 702; [1947] 1 All E.R. 851, C.A., *per* SOMERVELL, L.J., at p. 721; pp. 861, 862; *Thorneloe and Clarkson, Ltd.* v. *Board of Trade*, [1950] 2 All E.R. 245. See, further, 30 Halsbury's Laws (3rd Edn.), pp. 685–687.

(*i*) ***Employer.*** For definition, see s. 10 (1).

(*j*) ***Inspector.*** Provisions for the appointment of inspectors and for their powers are contained in s. 3. For provisions as to the taking of samples by inspectors, see s. 6.

(*k*) ***To exempt . . . regulations.*** Compare s. 1 (5) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956; and for an example of regulations under this Act which confer a power of exemption, see reg. 15 of the Agriculture (Poisonous Substances) Regulations 1966, p. 392.

(*l*) ***Such . . . appears to them or him.*** See note (*h*).

(*m*) ***Exercisable by statutory instrument.*** Where an Act confers power on a Minister of the Crown to make orders or regulations and the power is expressed to be exercisable by statutory instrument, any document by which that power is exercised is known as a "statutory instrument" and the provisions of the Statutory Instruments Act 1946 apply; see s. 1 (1) of that Act. For provisions as to annulment in pursuance of a resolution of either House of Parliament, see ss. 5 (1) and 7 (1) of that Act. See also the Laying of Documents before Parliament (Interpretation) Act 1948.

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2. Duties of employees.—(1) No worker employed (*a*) to work as mentioned in subsection (1) of section one of this Act shall—

(a) wilfully interfere with or misuse any appliance, clothing, equipment, facilities or other thing provided in pursuance of regulations under this Act (*b*); or

(b) wilfully and without reasonable cause do anything likely to cause risk of poisoning, by a substance to which this Act applies (*c*), to himself or others.

(2) Nothing in this section shall be taken as limiting the power conferred by section one of this Act to make by regulations any such provision as is therein mentioned, including further provision as to matters which are the subject of this section.

General note. This section may be compared with s. 13 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956 with s. 27 of the Office, Shops and Railway Premises Act 1963, p. 77, and with s. 143 of the Factories Act 1961. See the general note to s. 27 of the Offices, Shops and Railway Premises Act 1963.

(*a*) ***Worker employed.*** For definitions, see s. 10 (1).

(*b*) ***Regulations.*** See the Agriculture (Poisonous Substances) Regulations 1966, p. 381.

(*c*) ***Substance to which this Act applies.*** For these substances, see s. 9 (1) and subordinate legislation made thereunder.

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3. Appointment of inspectors and their powers.—(1) The appropriate Minister (*a*) may, with the approval of the Treasury as to numbers and salaries appoint such inspectors as he thinks necessary for the execution of this Act.

(2) An inspector appointed under this Act, for the purpose of the execution of this Act or of regulations thereunder and

on producing, if so required, some duly authenticated document showing his appointment, may enter at all reasonable hours any land or premises—

(a) on which a substance to which this Act applies (*b*) is being, or has recently been or is about to be, used in agriculture (*c*), or

(b) which is or are being used, or has or have recently been or is or are about to be, used for a purpose connected with the use in agriculture of a substance to which this Act applies, or

(c) on which things required by regulations under this Act to be provided or done are provided or done,

or which he has reasonable cause to believe (*d*) to be land or premises falling within any of the preceding paragraphs:

Provided that admission shall not be demanded under this subsection to a dwelling house, other than one in which there are, or are reasonably believed by the inspector to be, washing facilities or other things provided for persons not living in the house for whom such things are required by regulations under this Act to be provided, unless twenty-four hours' notice of the intended entry has been given to the occupier of the house.

(3) An inspector appointed under this Act shall have power to do all or any of the following things for the purpose of the execution of this Act or of regulations thereunder, that is to say—

(a) to require the production of, and to inspect, examine and copy, registers, records or other documents kept in pursuance of regulations under this Act;

(b) to make such examinations and inquiries as may be necessary to ascertain whether the provisions of this Act and of regulations thereunder are complied with;

(c) to require any person whom he finds on such land or premises as are mentioned in subsection (2) of this section to give such information as it is in his power to give as to who is the occupier thereof or the employer of workers (*e*) employed to work thereon;

(d) to examine, either alone or in the presence of any other person, as the inspector thinks fit, with respect to the observance of provisions of this Act or of regulations thereunder, any person whom he finds on such land

or premises as are mentioned in subsection (2) of this section or whom he has reasonable cause to believe (*d*) to be, or to have been within the preceding two months, employed to work thereon, and to require any such person to be so examined and to sign a declaration (*f*) of the truth of the matters respecting which he is so examined; so, however, that no one shall be required under this provision to answer any question or to give any evidence, tending to criminate himself (*g*);

(e) in the case of an inspector who is a duly qualified medical practitioner, to carry out medical examinations;

(f) to exercise such other powers as may be necessary for carrying this Act and regulations thereunder into effect.

(4) A person shall be deemed to obstruct (*h*) an inspector in the execution of his powers under this Act if he wilfully delays an inspector in the exercise of any power under this section, or fails to comply with any requirement of an inspector made in pursuance of this section, or conceals or prevents, or attempts to conceal or prevent, a person from appearing before or being examined by an inspector under this section.

General note. Compare the appointment and powers of inspectors under the Agriculture (Safety, Health and Welfare Provisions) Act 1956, s. 10. The inspectorate provided for under both Acts has been combined with that provided for under the Agricultural Wages Act 1948, so that there is now one body of inspectors with functions under all three Acts. The section is modified in its application to Scotland; see s. 11 (2).

(*a*) ***The appropriate Minister.*** For definition, see s. 10 (1).

(*b*) ***Substance to which this Act applies.*** For these substances, see s. 9 (1), and subordinate legislation made thereunder.

(*c*) ***Agriculture.*** For definition, see s. 10 (1).

(*d*) ***Reasonable cause to believe.*** It is submitted that since sub-s. (2) trenches on common law rights it will be strictly construed, and that therefore the words under consideration will be construed objectively, *i.e.*, there must be in fact reasonable cause to believe, etc., before the power of entry can lawfully be exercised. See *Nakkuda Ali* v. *Jayaratne*, [1951] A.C. 66, P.C., explaining and distinguishing *Liversidge* v. *Anderson*, [1942] A.C. 206; [1941] 3 All E.R. 338, H.L. The partial disapproval of *Nakkuda Ali* v. *Jayaratne*, *supra*, by Lord REID in *Ridge* v. *Baldwin*, [1964] A.C. 40; [1963] 2 All E.R. 66, H.L., does not touch this point.

(*e*) ***Employer of workers.*** For definitions, see s. 10 (1).

(*f*) ***Declaration.*** It is an offence under the Act wilfully to make or sign a false declaration: s. 4 (1) (d).

(*g*) ***Tending to criminate himself.*** As to the privilege against self-crimination, see Phipson on Evidence, 11th Edn., and 15 Halsbury's Laws of England (3rd Edn.), pp. 422, 423. It is to be noted that persons other than police officers charged with the duty of investigating offences or charging offenders must, so far as may be practicable, comply with the Judges' Rules (*ibid.*, Rule 6), which are set out in [1964] 1 All E.R. 237.

(*h*) ***Obstruct.*** By s. 4 (1) (c) it is an offence to obstruct an inspector in the execution of his powers or duties under the Act or regulations.

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4. Offences and punishment therefor.—(1) If a person (*a*)—

(a) contravenes (*b*) any provision of regulations under this Act;

(b) contravenes any provision of section two (*c*) of this Act;

(c) obstructs an inspector (*d*) appointed under this Act in the execution of his powers or duties under this Act or regulations thereunder; or

(d) wilfully makes a false entry in a register, record, return or other document kept or furnished in pursuance of regulations under this Act, or wilfully makes use of such a false entry, or wilfully makes or signs as being a declaration (*e*) required by an inspector in pursuance of this Act a declaration which is false;

he shall be guilty of an offence against this Act.

(2) A person guilty of an offence against this Act shall be liable on summary conviction to a fine not exceeding two hundred pounds (*f*), and, if a contravention of a provision of this Act or of regulations thereunder in respect of which a person has been convicted is continued by him after his conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding ten pounds for each day on which the contravention is so continued.

(3) Where a contravention of a provision of regulations under this Act consists in a failure to do anything at or within a time specified in the regulations, and the regulations provide that this subsection shall apply to a failure so to do it, the contravention shall be deemed to continue until that thing is done.

(4) Where an offence against this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance (*g*) of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection, the expression "director", in relation to any body corporate which is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that body.

General note. By sub-s. (4), the executives of a body corporate may also be prosecuted in certain circumstances. An identical provision is to be found in s. 14 (3) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956. See s. 5 of the present Act for the provision of a defence in certain circumstances where another person is responsible for the contravention.

(*a*) ***Person.*** This term includes any body of persons corporate or unincorporate; see the Interpretation Act 1889, s. 19.

(*b*) ***Contravenes.*** By s. 10 (2) "contravention" of any provision includes a failure to comply with that provision.

(*c*) ***Section two.*** This deals with the duties of employees.

(*d*) ***Inspector.*** For the appointment and powers of inspectors, see s. 3. As to what constitutes obstruction, see s. 3 (4).

(*e*) ***Declaration.*** See s. 3 (3) (d).

(*f*) ***Two hundred pounds.*** Substituted for £50, in respect of offences committed after 9th August 1972, by s. 14 of the Agriculture (Miscellaneous Provisions) Act 1972.

(*g*) ***Connivance.*** There is no direct authority on the construction of this term as used in the present context and in other similar statutory provisions. It is submitted, however, that the expression "connivance" so used connotes a specific mental state not amounting to actual consent to the act or default in question, concomitant with a failure to prevent that act or default. The mental state referred to is that which is sometimes termed "wilful blindness", that is to say, an intentional shutting of the eyes to events of which in his own interests the percipient would prefer to remain unaware. This construction of the expression "connivance" accords both with its philology (the derivation is from the Latin "connivere", literally "to wink" and figuratively "to wink at") and with the use made of it by the courts in expounding the common law aspects of the concept of *mens rea* (see *Roper* v. *Taylor's Central Garages* (*Exeter*), [1951] 2 T.L.R. 284, D.C.). It accords also with the

construction of the same word in connection with matrimonial offences (see *Gipps* v. *Gipps* (1864), 11 H.L.Cas. 1, *per* Lord WESTBURY at p. 14; *Manning* v. *Manning*, [1950] 1 All E.R. 602, C.A.).

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5. Defence available in certain circumstances to person charged where some other person is responsible. —(1) A person (*a*) against whom proceedings are brought under this Act (*b*) shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice (*c*) of his intention, be entitled to have brought before the court (*d*) in the proceedings any person to whose act or default (*e*) he alleges that the contravention (*f*) of the provision in question was due, and, if after the contravention has been proved (*g*) the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves—

(a) that he has used all due diligence (*h*) to secure that the provision in question was complied with, and

(b) that the said other person's act or default was without his consent, connivance (*i*) or wilful default,

he shall be acquitted of the offence (*j*).

(2) Where a defendant seeks to avail himself of the preceding subsection—

(a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine the defendant, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(3) Where it appears to the appropriate Minister (*k*) that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the said Minister is reasonably satisfied that the offence of which the complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1) of this section, he may cause

proceedings to be taken (*l*) against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

General note. A third party procedure is introduced into the Act by this section. Such a procedure has become a common feature in modern welfare legislation, and similar provisions occur in s. 113 of the Food and Drugs Act 1955 and s. 161 of the Factories Act 1961, for which see Redgrave's Factories Acts, 22nd Edn., pp. 425 *et seq.* The words "any person" clearly include the servants or agents of the person against whom proceedings are brought. The wording of the section makes it clear that it applies only to criminal proceedings; it has no application to civil actions based on breach of statutory duty (*Potts (or Riddell)* v. *Reid*, [1943] A.C. 1; [1942] 2 All E.R. 161, H.L.). The section also, by sub-s. (3), enables proceedings to be taken directly against the person really at fault without first taking proceedings against the person or persons who could rely on the defence provided by sub-s. (1).

Where an original defendant lays information against someone else, that does not exhaust the section, for that person may lay an information against yet another person, and so on back to the true offender, and where this is done all the cases may properly come before the court on the same occasion; see *British Fermentation Products, Ltd.* v. *British Italian Trading Co., Ltd.*, [1942] 2 K.B. 145; [1942] 2 All E.R. 256. There is only one set of proceedings, and, therefore, in the event of an appeal by a second or remoter defendant in the chain, he must give formal notice of appeal to the original prosecutor and to any intervening defendants who are necessarily parties to any appeal; *Oxo, Ltd.* v. *Chappell and Tunner*, [1966] 2 Q.B. 228; [1966] 3 All E.R. 168, D.C. Where a case is stated against a defendant who has taken advantage of this section, the prosecution must join the third party if the result may be a remission to the justices for re-hearing or with a direction to convict, for otherwise the defendant would lose his right of establishing his defence; see *Elkington* v. *Kesley*, [1948] 1 All E.R. 786. Where the proceedings are based upon sampling and analysis,the original defendant is the only one to whom a part of a sample must be delivered pursuant to s. 6 of this Act; see *Cummings* v. *British Fermentation Products, Ltd.*, [1942] 2 K.B. 108; [1942] 2 All E.R. 271; *British Fermentation Products, Ltd.* v. *Teal*, [1943] 1 All E.R. 331.

The third party procedure provided by this section applies where proceedings are "brought under this Act." By s. 4 (1) (a), a contravention of any provisions of regulations under this Act is made an offence against the Act. It is therefore submitted that this procedure is open to a person charged with an offence arising out of a contravention of a regulation made under the Act, whether or not the provisions of the section have been specifically applied and incorporated in the subordinate legislation in question. The position under s. 113 of the Food

and Drugs Act 1955, is otherwise (see *United Dairies (London), Ltd.* v. *Beckenham Corporation*, [1963] 1 Q.B. 434; [1961] 1 All E.R. 579, D.C.).

This section does not apply to Scotland; see s. 11 (3), which substitutes other provisions.

(*a*) ***Person.*** This term includes any body of persons corporate or unincorporate; see the Interpretation Act 1889, s. 19.

(*b*) ***Brought under this Act.*** See the general note, *supra*.

(*c*) ***Information; notice.*** The information under sub-s. (1), should, as that under sub-s. (3), *supra*, must, make plain that proceedings are taken under this section, at least by reference to it; see *Atterton* v. *Browne*, [1945] K.B. 122. There is authority for saying not only that the notice must be given, but also that the information must be laid, three clear days before the proceedings are heard; see *Malcolm* v. *Cheek*, [1947] 2 All E.R. 881, at p. 882, *per* Lord GODDARD, C.J.

(*d*) ***Entitled to have . . . brought before the court.*** If the original defendant carries out all his obligations under sub-s. (1), he is not deprived of his defence because the person cited by him is not brought before the court owing to the impossibility of serving the summons on him; see *Malcolm* v. *Cheek*, [1948] 1 K.B. 400; [1947] 2 All E.R. 881. As to who may be "any other person", see *Tesco Supermarkets, Ltd.* v. *Nattrass*, [1972] A.C. 153; [1971] 2 All E.R. 127, H.L.

(*e*) ***Act or default.*** This means wrongful act or default; see *Noss Farm Products, Ltd.* v. *Lilico*, [1945] 2 All E.R. 609, and *Lamb* v. *Sunderland and District Creamery, Ltd.*, [1951] 1 All E.R. 923. Accordingly, the fact that what the other person did subsequently became unlawful is not sufficient to bring the section into operation; see *Noss Farm Products, Ltd.* v. *Lilico, supra*. *Mens rea* or negligence need not be proved if the original offence is constituted without proof of *mens rea* or negligence, as the case may be; see *Lindley* v. *George W. Horner & Co., Ltd.*, [1950] 1 All E.R. 234; *Lamb* v. *Sunderland & District Creamery, Ltd., supra*; *Lester* v. *Balfour Williamson Merchant Shippers, Ltd.*, [1953] 2 Q.B. 168; [1953] 1 All E.R. 1146 and *Fisher* v. *Barrett & Pomeroy (Bakers), Ltd.*, [1954] 1 All E.R. 249. The original defendant must, to secure an acquittal, prove not only that the contravention was due to the act or default of the other party, but also that he had used due diligence to secure compliance with the provisions of the Act; see *Moore* v. *Ray*, [1951] 1 K.B. 58; [1950] 2 All E.R. 561. Moreover, a person who merely sells as agent for a disclosed principal cannot be said to have committed an act or default by selling; see *Lester* v. *Balfour Williamson Merchant Shippers, Ltd., supra*.

(*f*) ***Contravention.*** By s. 10 (2), "contravention" of any provision includes a failure to comply with that provision.

(*g*) ***After . . . proved.*** These words, and the provisions of sub-s. (2), indicate that the case against the original defendant, and his case against the third party, are separate proceedings, each begun by a separate information, and each requiring a separate adjudication. The third party proceedings only arise "after" the commission of the offence is proved against the original defendant, and this might seem to require that the proceedings be not only juridically, but also chronologically, successive. It is submitted that this is not the case, and that the

justices have a discretion to hear the two informations together if they so desire. Often this will effect a saving of time, and will prevent a third party, who wishes to contend that the original defendant was guiltless, from being faced with a *fait accompli*. No guidance on the proper procedure to be followed in such cases as this has been given by the Divisional Court, which, in *United Dairies (London), Ltd.* v. *Beckenham Corporation*, *supra*, declined an invitation to express an opinion on the matter (see [1961] 1 All E.R. at p. 585).

(*h*) ***Used all due diligence.*** Whether the defendant has or has not used all due diligence is a question of fact, but on a case stated the High Court will interfere if there was no evidence to support a finding on this point; see *Hammett (R. C.), Ltd.* v. *Crabb*, [1931] All E.R. Rep. 70. See also *Rogers* v. *Barlow & Son* (1906), 94 L.T. 519; *Hammett (R. C.), Ltd.* v. *London County Council* (1933), 97 J.P. 105; *Pearce* v. *Cullen* (1952), 96 Sol. Jo. 132; *Tesco Supermarkets* v. *Nattrass*, [1972] A.C. 153; [1971] 2 All E.R. 127, H.L.

(*i*) ***Connivance.*** See note (*f*) to s. 4.

(*j*) ***Acquitted of the offence.*** If the original defendant proves the matters set out in sub-s. (1) (a) and (b) he must be acquitted, despite the fact that, *ex hypothesi*, the offence has been proved against him. The original defendant has no right of appeal against the acquittal of the other person although his own defence fails unless the latter's guilt is established; see *Walkling, Ltd.* v. *Robinson* (1930), 99 L.J.K.B. 171 (criticised on other grounds in *Melias, Ltd.* v. *Preston*, [1957] 2 Q.B. 380; [1957] 2 All E.R. 449).

(*k*) ***Appropriate Minister.*** For definition, see s. 10 (1).

(*l*) ***May cause proceedings to be taken.*** The discretion to proceed by the shortened procedure of sub-s. (3), belongs solely to the prosecuting authority, and its exercise can neither be demanded by the original defendant, who has his rights under sub-s. (1), nor be questioned by the magistrates' court or the High Court. Proceedings under sub-s. (3), cannot be taken while proceedings against the original defendant are pending; see *Fisher* v. *Santovin, Ltd.*, [1953] 2 All E.R. 713.

An information under sub-s. (3) which does not refer to this section is bad as misleading; see *Atterton* v. *Browne*, [1945] K.B. 122. Moreover, the information, in the words of Lord GODDARD, C.J., in *Challand* v. *Bartlett*, [1953] 2 All E.R. 832, at p. 834 "should set out the facts and state that the . . . authority are reasonably satisfied that the offence of which complaint was made was due to the act or default of the person proceeded against . . ." If this is not done, the proceedings are, it appears, not taken in proper form and accordingly are defective.

The date from which the time limit under s. 104 of the Magistrates' Courts Act 1952 runs for any prosecution under sub-s. (3), is the date of the offence with which the person who has been passed over might have been charged, and not the original act or default of the actual defendant; see *Concentrated Foods, Ltd.* v. *Champ*, [1944] 1 K.B. 342; [1944] 1 All E.R. 272.

6. Provisions as to samples.—(1) An inspector (*a*) appointed under this Act may take for analysis a sample of any substance or thing which in his opinion may be or contain a substance to which this Act applies (*b*), and which he finds on, or has reasonable cause to believe (*c*) to be in transit to or from, such land or premises as are mentioned in subsection (2) of section three of this Act.

(2) An inspector taking a sample under the preceding subsection with the intention of having it analysed shall, if practicable, forthwith after taking it give information of his intention to the employer (*d*) of any person then working as mentioned in subsection (1) of section one of this Act on the land or premises in question, and shall then and there divide the sample (*e*) into parts, each part to be marked, and sealed or fastened up, in such manner as its nature will permit, and shall—

(a) if required so to do by an employer so informed, deliver one part to him;

(b) retain one part for future comparison; and

(c) if the inspector thinks fit to have an analysis made, submit one part to an analyst approved by the appropriate Minister for the purposes of this Act.

(3) Where it is not practicable for the inspector to give information of his intention as mentioned in the last preceding subsection to an employer, the inspector shall, if he intends to have the sample analysed and if he can ascertain the name and address of the employer, forward one part of the sample to him by registered post or otherwise, together with a notice informing him that he intends to have the sample analysed.

(4) A document purporting to be a certificate by an analyst approved by the appropriate Minister for the purposes of this Act as to the result of an analysis of a sample shall in proceedings under this Act be admissible as evidence (*f*) of the matters stated therein, but either party may require the person by whom the analysis was made to be called as a witness.

(5) In any proceedings under this Act in which the prosecutor intends to rely on evidence relating to a sample taken under this section, the summons shall not be made returnable less than fourteen days from the day on which it is served, and

a copy of any certificate of analysis obtained on behalf of the prosecutor shall be served with the summons.

(6) In any proceedings under this Act in which the prosecutor relies on evidence relating to a sample taken under this section, the part of the sample retained by the inspector for future comparison shall be produced (*g*) at the hearing.

(7) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under the last preceding subsection to be sent to the Government Chemist (*h*) who shall make an analysis, and transmit to the court a certificate of the result thereof, and the cost of the analysis shall be paid by the prosecutor or the defendant as the court may order.

If, in a case where an appeal is brought, no action has been taken under the preceding provisions of this subsecton, those provisions shall apply also in relation to the court by which the appeal is heard.

General note. This section is modified in its application to Scotland; see s. 11 (4), (5).

(*a*) ***Inspector.*** For the appointment and powers of inspectors, see s. 3.

(*b*) ***Substance to which this Act applies.*** For these substances, see s. 9 (1), and subordinate legislation made thereunder.

(*c*) ***Reasonable cause to believe.*** See note (*d*) to s. 3.

(*d*) ***Employer.*** For definition, see s. 10 (1).

(*e*) ***Divide the sample.*** Compare para. 1 of the Seventh Schedule to the Food and Drugs Act 1955, and see 17 Halsbury's Laws (3rd Edn.) 474, 475.

The division must be such that each of the three parts may be sufficient for analysis; see *Lowery* v. *Hallard*, [1906] 1 K.B. 398 (a decision on s. 14 of the Food and Drugs Act 1875 (repealed)).

(*f*) ***Evidence.*** Compare s. 110 (1) of the Food and Drugs Act 1955 and s. 10 of the Road Traffic Act 1972. The effect of this subsection is to make the contents of the certificate admissible despite the hearsay rule. The subsection does not state that the certificate shall be "sufficient" evidence of its contents (cf. s. 110 (1) of the Food and Drugs Act 1955), but none the less it is conceived that its effect is the same, so that if the certificate is the only evidence tendered on the issue the court is bound to accept it (cf. *Preston* v. *Fennell*, [1951] 1 K.B. 16; [1950] 1 All E.R. 1099, decided on s. 81 (1) of the Food and Drugs Act 1938 (repealed)). If evidence is called to rebut the certificate, the court must then weigh the whole evidence in arriving at a conclusion (cf. *Hewitt* v. *Taylor*, [1896] 1 Q.B. 287; decided on s. 21 of the Sale of Food and Drugs Act 1875). Sub-s. (4) of the present Act is modified in its application to Scotland; see s. 11 (4).

(*g*) ***Produced.*** Compare s. 108 (4) of the Food and Drugs Act 1955, and see 17 Halsbury's Laws (3rd Edn.) 596.

(*h*) ***Government Chemist.*** Compare s. 112 (1), (2) of the Food and Drugs Act 1955 and see 17 Halsbury's Laws (3rd Edn.) 596, 597.

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7. Application to the Crown.—This Act and regulations thereunder shall bind the Crown, but regulations under this Act may provide for modifications or exceptions in the application of this Act or such regulations to, or in relation to, the Crown.

General note. The Crown is not amenable to criminal proceedings, but this section, together with the Crown Proceedings Act 1947, s. 2 (2), makes the Crown civilly liable for breach of a duty imposed by the Act or regulations to the same extent as a private individual of full age and capacity. The power to modify this Act in its application to the Crown by regulations has not yet been exercised. Compare s. 22 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956. For proceedings against the Crown generally, see Halsbury's Laws of England, 3rd Edn., Vol. 11, pp. 8 *et seq.*

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8. Expenses.—Any expenses incurred by the Minister of Agriculture and Fisheries (*a*) or the Secretary of State in carrying out this Act shall be paid out of moneys provided by Parliament.

(*a*) ***Minister of Agriculture and Fisheries.*** The style and title of the Minister is now the Minister of Agriculture, Fisheries and Food; see note (*f*) to s. 1.

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9. Substances to which this Act applies.—(1) The substances to which this Act applies are—

(a) dinitro-phenols and their salts;

(b) dinitro-substituted phenols and their salts;

(c) organo-phosphorus compounds;

(d) preparations or mixtures containing any of the substances mentioned in the preceding paragraphs;

(e) substances to which this Act for the time being applies by virtue of an exercise of powers conferred by the succeeding provisions of this section.

(2) If the Minister of Agriculture and Fisheries (*a*) and the Secretary of State (*b*) are satisfied as to a substance not being one to which this Act for the time being applies that its use in agriculture (*c*) involves, or that if used in agriculture its use therein would be likely to involve, substantial risk of poisoning to workers (*d*) employed to work as mentioned in subsection (1) of section one of this Act, the said Minister and the Secretary of State may by order (*e*) direct that this Act shall apply to that substance.

(3) An order under this section may be varied or revoked by a subsequent order made by the said Minister and the Secretary of State.

(4) The power of making orders under this section shall be exercisable by statutory instrument (*f*) which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(*a*) ***Minister of Agriculture and Fisheries.*** The style and title of the Minister is now the Minister of Agriculture, Fisheries and Food; see note (*f*) to s. 1.

(*b*) ***Secretary of State.*** See note (*g*) to s. 1.

(*c*) ***Agriculture.*** For definition, see s. 10 (1).

(*d*) ***Workers.*** For definition, see s. 10 (1).

(*e*) ***Order.*** The orders in force are the Agriculture (Poisonous Substances) (Extension) Orders 1960 to 1966 (S.I. 1960 No. 398; S.I. 1965 No. 1395; S.I. 1966 No. 645) which extend the application of the Act to:

Substances the molecular structure of which consists of a bridged six-membered ring with substituents in the ring;
Organo-mercury compounds;
Arsenical compounds;
Fluoracetic acid and its derivatives;
Organo-tin compounds;
Nicotine and its salts;
Sulphuric acid.

(*f*) ***Statutory instrument.*** See note (*m*) to s. 1.

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10. Interpretation.—(1) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say—

"agriculture" (*a*) includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or

business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds;

"consumable produce" (*b*) means produce grown for consumption or for other use after severance from the land on which it is grown;

"the appropriate Minister" means, for the purposes of the application of this Act to England and Wales, the Minister of Agriculture and Fisheries (*c*), and, for the purposes of the application thereof to Scotland, the Secretary of State (*d*);

"worker" (*e*) means a person employed under a contract of service or apprenticeship, and "employer" and "employed" have corresponding meanings.

(2) Any references in this Act to a contravention of any provision shall include a reference to a failure to comply with that provision.

(*a*) ***Agriculture.*** This definition differs from that in the Agriculture Act 1947, s. 109 (3) and the Agricultural Holdings Act 1948, s. 94 (1) (as to which, see 1 Halsbury's Laws (3rd Edn.) 624, 625) but is identical with that in the Agriculture (Safety, Health and Welfare Provisions) Act 1956, s. 24 (1).

(*b*) ***Consumable produce.*** This definition is identical with that in the Agriculture (Safety, Health and Welfare Provisions) Act 1956, s. 24 (1).

(*c*) ***Minister.*** For the present style and title of the Minister of Agriculture and Fisheries, see note (*f*) to s. 1.

(*d*) ***Secretary of State.*** See note (*g*) to s. 1.

(*e*) ***Worker . . . contract of service.*** See note (*i*) to s. 24 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

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11. Application to Scotland.—(1) The provisions of this section shall have effect for the purposes of the application of this Act to Scotland.

(2) Nothing in section three shall be construed as authorising an inspector to institute proceedings in any court in Scotland for an offence against this Act.

(3) Section five shall not apply, but—

(a) where a contravention (*a*) of any provision of this Act or of regulations thereunder for which any person on

conviction would be liable to a penalty under this Act was due to an act or default of any other person, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with and convicted of the contravention and shall be liable on conviction to the same punishment as might have been inflicted on the first-mentioned person if he had been convicted of the contravention; and

(b) where a person who is charged with a contravention of any provision of this Act or of regulations thereunder proves to the satisfaction of the court that he has used all due diligence to secure that the provision in question was complied with, he shall be acquitted of the contravention.

(4) For the purposes of any proceedings under this Act a certificate which is admitted as evidence under subsection (4) of section six shall be sufficient evidence (*b*) of the matters stated therein unless a party requires the person by whom the analysis in question was made to be called as a witness, and in the latter event any evidence given by that person as to the result of the analysis shall be sufficient evidence of that result.

(5) In the application of section six the expression "defendant" means accused; the expression "hearing" means trial; any reference to a summons shall be construed as a reference to a complaint; and for references to the day on which a summons is served and to the day on which it is returnable there shall be substituted respectively references to the day on which a complaint is served and to the day on which the prosecution thereon proceeds to trial.

(*a*) ***Contravention.*** By s. 10 (2) "contravention" of any provision includes a failure to comply with that provision.

(*b*) ***Sufficient evidence.*** See the note to s. 6 (4).

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12. Short title and extent.—(1) This Act may be cited as the Agriculture (Poisonous Substances) Act 1952.

(2) This Act shall not extend to Northern Ireland (*a*).

(*a*) ***Northern Ireland.*** The Agriculture (Poisonous Substances) (Northern Ireland) Act 1954 is in similar terms to the Agriculture (Poisonous Substances) Act 1952.

THE AGRICULTURE (POISONOUS SUBSTANCES) REGULATIONS 1966

(S.I. 1966 No. 1063)

Dated 11*th August* 1966, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland under section* 1 *of the Agriculture* (*Poisonous Substances*) *Act* 1952 (*as extended by the Agriculture* (*Poisonous Substances*) (*Extension*) *Orders* 1960 *and* 1965) *and all other enabling powers, printed as amended by S.I.* 1967 *No.* 1860 *and S.I.* 1969 *No.* 843.

Citation, extent and commencement

1. These regulations, which may be cited as the Agriculture (Poisonous Substances) Regulations 1966, apply to Great Britain and shall come into operation on 26th August 1966.

Revocation and savings

2.—(1) The regulations mentioned in Schedule 3 to these regulations are hereby revoked.

(2) Nothing in these regulations shall affect any approval or notice given, register kept, certificate granted, or any other thing done under any regulations previously made under *the Act*, but any such approval, notice, register, certificate, or thing done shall if in force on the coming into operation of these regulations, continue in force as if it had been given, kept, granted, or done under the corresponding provision of these regulations, and in the case of an approval, had been given for the purpose of that provision.

Interpretation

3.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them:—

"the Act" means the Agriculture (Poisonous Substances) Act 1952;

"aerosol" means a spray the majority of the particles of which are less than 80 microns in diameter, and "aerosol dispenser" means a spraying apparatus so constructed as to release an aerosol;

"agriculture" has the meaning assigned to it by section 10 of the Act and "agricultural" shall be construed accordingly;

"agricultural unit" means land which is occupied as a unit for agricultural purposes;

"granule placement" means the process whereby a *specified substance* in granular form is deposited on or in the soil or on plants, and "granule placement apparatus" includes any apparatus or device through or by means of which granule placement is carried out;

"greenhouse" includes any enclosed building or erection in which *plants* are grown;

"ground-crop" means any crop grown in the ground and includes the *plant* on which the crop is grown, but does not include bushes, climbing *plants* (including hops) or trees, or the crops grown thereon;

"inspector" means an inspector (*a*) appointed by *the Minister* for the execution of the Act;

"the Minister" means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food, and as respects Scotland, the Secretary of State;

"plant" includes any form of vegetable life;

"protective clothing" means the clothing and equipment required by these regulations to be worn, and references in these regulations to articles of protective clothing of which there are definitions in paragraph 1 of Part I of Schedule 1 hereto shall be construed as references to the protective clothing so defined;

"scheduled operations" has the meaning assigned to it by regulation 4 of these regulations;

"smoke-generator" includes any device by means of which a specified substance is thermally distributed by a heater composition;

"smoke shreds" means shreds of combustible material, chemically treated to promote burning and impregnated with a specified substance;

"soil-application" means the process whereby a *specified substance* is discharged or released in unbroken liquid form directly onto or into the soil for absorption by the roots of *plants* grown therein, and "soil-application apparatus" includes any apparatus or device through or by means of which soil-application is carried out;

"specified substance" means any substance specified in column 2 of Schedule 2 hereto to which the Act applies, and any preparation or mixture containing such a substance, except—

(a) a preparation or mixture used exclusively as an insecticide where the only such substance contained in it is not more than 5 per cent. by weight of dinoseb or DNOC;

(b) a preparation or mixture where the only such substance contained in it is not more than 7·5 per cent. by weight of nicotine;

(c) an aerosol where the only such substance contained in it is not more than [0·5] per cent. by weight of dichlorvos; and

(d) an impregnated resin strip or an impregnated pellet of polyvinyl chloride where the only such substance contained in it is not more than 20 per cent. by weight of dichlorvos;

"specified substance in capsule form" means a *specified substance* prepared in such manner approved by the *Minister* that it is completely isolated by some substance that is not poisonous from a person handling the capsule;

"specified substance in granular form" means a preparation—

(a) which consists of absorbent mineral or synthetic solid particles impregnated with a *specified substance*, the size of the particles being such that not more than 4 per cent. by weight of the preparation is capable of passing a sieve with a mesh of 250 microns, and not more than 1 per cent. a sieve with a mesh of 150 microns;

(b) which has an apparent density of not less than 0·4 grammes per millilitre if compacted without pressure; and

(c) not more than 12 per cent. of which by weight consists of a *specified svbstance*;

"spraying" does not include *soil-application* or the use of a *specified substance* in capsule or granular form, but save as aforesaid includes any process whereby *plants* are

treated with a *specified substance* and in relation to any *plants* includes the spraying of the soil in which the *plants* are being or are to be grown, and "spraying apparatus" includes any apparatus or device through or by means of which spraying is carried out;

"wetter" means a chemical agent which when added to a *specified substance* promotes on the surface of a solid (including rubber) the formation of a continuous liquid film;

"worker" means a person employed under a contract of service (*b*) or apprenticeship—

(a) in connection with the use in *agriculture* of a *specified substance*; or

(b) on land on which a *specified substance* is being or has been used in *agriculture*;

and "employer" means the employer of such a person.

(2) The expression "ground-marker" used in Part II of Schedule 1 to these regulations has the meaning assigned to it by paragraph 2 of Part I thereof.

(3) In these regulations the common name (if any) of a *specified substance* as mentioned in column 1 of the said Schedule 2 means the *specified substance* mentioned opposite thereto in column 2 thereof.

(4) References in these regulations to dinoseb, DNOC or nicotine include references to the respective salts thereof.

(5) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament, and as if these regulations and the regulations hereby revoked were Acts of Parliament.

(*a*) ***Inspection.*** See s. 3.

(*b*) ***Worker . . . contract of service.*** See note (*i*) to s. 24 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

Operations prohibited except when protective clothing is worn

4.—(1) A *worker* shall not and his *employer* shall not cause or permit him to carry out any such operations as are mentioned in column 1 of Part II of Schedule 1 to these regulations (in these regulations referred to as "*scheduled operations*") in relation to a substance mentioned in column 2 of the said Part

II unless he is wearing the *protective clothing* respectively set forth opposite the said column 2 in column 3 thereof.

(2) In the foregoing paragraph "operations" includes operations which a *worker* carries out, either—

(a) as the principal or only *worker* engaged in carrying them out; or

(b) as a member of a team of persons engaged in carrying them out, if he is in risk of being poisoned by the *specified substance* that is used.

(3) Nothing in sub-paragraph (b) of the last foregoing paragraph shall operate so as to include a person principally engaged as a tractor-driver in connection with *soil-application* operations (not being operations carried out with *soil-application* apparatus mounted on a tractor) so long as such person is engaged exclusively in tractor-driving.

Greenhouses

5.—(1) A *worker* shall not and his *employer* shall not cause or permit him to enter or be present in a *greenhouse* in which a *specified substance* has been used unless he is wearing the *protective clothing* required by this regulation to be worn.

(2) Such *protective clothing* shall where the apparatus used was an *aerosol* dispenser or a *smoke-generator* or where *smoke shreds* have been used consist of that mentioned opposite item 9 in column 3 of Part II of the said Schedule 1, and in all other cases shall consist of that mentioned opposite item 8 therein as the appropriate *protective clothing* in relation to the substance that has been used.

(3) The foregoing paragraphs shall not apply where—

(a) a period of 6 hours has elapsed since the *specified substance* was used, and a sufficient number of windows in the *greenhouse* have been open for at least 1 hour after the expiration of that period to ensure ventilation; or

(b) a period of 12 hours has elapsed since the *specified substance* was used.

(4) Where a *specified substance* has been used in a *greenhouse* and the occupier of the *agricultural unit* comprising the *greenhouse* employs persons who work in such unit, the occupier shall immediately after the *specified substance* has been so used cause notices to be affixed on all doors of the *greenhouse*

warning such persons of the *specified substance* which has been used in the *greenhouse* and of the effect of paragraphs (1), (2) and (3) of this regulation.

(5) This regulation shall not apply to the use in a *greenhouse* of a *specified substance in capsule form*.

Provision and maintenance of protective clothing

6.—(1) An *employer* of a *worker* who carries out *scheduled operations* shall—

(a) provide (*a*) the *worker* with the *protective clothing* required by or under these regulations and, where such *protective clothing* includes a respirator or dust-mask, provide an adequate supply of filters for replacement of those used;

(b) maintain or cause to be maintained all *protective clothing* in good and serviceable condition; and

(c) provide accommodation for the keeping of—

(i) *protective clothing*, and

(ii) the *worker*'s personal clothing not worn during working hours.

(2) The accommodation provided under paragraph (1) (*c*) hereof shall be such as to ensure ventilation and that the worker's personal clothing does not become contaminated by a *specified substance* whether from *protective clothing* or otherwise.

(*a*) ***Provide***. The meaning of this term as used in s. 49 of the Factories Act 1937 (now s. 65 of the Factories Act 1961) which requires the provision of goggles or effective screens where a worker is engaged on processes involving risk to the eyes, was discussed in *Finch* v. *Telegraph Construction and Maintenance Co., Ltd.*, [1949] 1 All E.R. 452. It was there held by DEVLIN, J., that "in order to 'provide' [the goggles] within the meaning of the Act it would be necessary either that they should be put in a place where they come easily and obviously to the hand of the workman who is about to grind, or, at the very least, that he should be given clear directions where he is to get them" (p. 454). See, further, *Nolan* v. *Dental Manufacturing Co., Ltd.*, [1958] 2 All E.R. 449. This case also decided that in order to establish that his injury was caused by the failure to use protective clothing the plaintiff must prove not only that no such clothing was provided within the meaning of the statute, but also that had it been provided he would have worn it, and in this respect it has been confirmed by *Cummings (or McWilliams)* v. *Sir William Arrol & Co., Ltd.*, [1962] 1 All E.R. 623, H.L. and *Wigley* v. *British Vinegars, Ltd.*, [1962] 3 All E.R. 161, H.L. For a case in which the plaintiff succeeded on the issue of causation, see *Ross* v. *Associated Portland Cement Manufacturers, Ltd.*, [1964] 2 All E.R. 452, H.L. This

regulation envisages only the provision, maintenance and accommodation of protective clothing, and not the taking of steps to see that it is worn, once provided (see *Norris* v. *Syndic Manufacturing Co., Ltd.*, [1952] 2 Q.B. 135; [1952] 1 All E.R. 935, in which the Court of Appeal discussed the meaning of "provided" in what is now s. 143 (1) of the Factories Act 1961). It is submitted that like interpretations apply here. For the master's common law duty to supply protective clothing, see *Haynes* v. *Qualcast (Wolverhampton) Ltd.*, [1958] 1 All E.R. 441, C.A., and *Nolan's Case*, *supra*. In considering reg. 6 it must not of course be forgotten that under reg. 4 (1), an employer is under a duty not to cause or permit a worker to carry out scheduled operations in relation to certain substances unless he is wearing the protective clothing prescribed.

Miscellaneous obligations relating to employers

7.—(1) The *employer* of a *worker* who carries out *scheduled operations* shall—

(a) at a place which is conveniently accessible but outside the area in which the *worker* might be in risk of poisoning by any *specified substance* that has been used provide (*a*) adequate and suitable washing facilities including soap and clean towels and either a supply of piped running water or clean water in containers (clearly marked "Personal washing only") for the personal use of the *worker*;

(b) provide (*a*) a supply of wholesome drinking water, clean drinking vessels, and suitable facilities for keeping any food or drink intended for the *worker's* consumption free from risk of contamination by a *specified substance*;

(c) (except where a supply of piped running water is available) provide (*a*) clean water in a container for the washing or cleaning of the *protective clothing* (other than overalls, hoods, respirators or dust-masks) which the *worker* has worn;

(d) at the end of each day's operations cause to be thoroughly washed with water (or where appropriate with water and a suitable *wetter*) all *protective clothing* (other than overalls, hoods, respirators or dust-masks) which the *worker* has worn during the day's operations in connection with the use of a *specified substance*, and in the case of—

(i) rubber gloves, cause the insides as well as the outsides to be so washed, and

(ii) respirators and dust-masks, cause them to be both cleaned and ventilated;

(e) keep all *spraying* apparatus, *soil-application* apparatus, *granule placement* apparatus and the exterior of all tanks and containers which contain or have contained a *specified substance* free from contamination by any such substance, so far as it is practicable so to do;

(f) keep the openings of all tanks and containers in which a *specified substance* is stored, when not in use, securely closed or covered over; and

(g) cause every overall and hood which has been worn in connection with the use of a *specified substance* to be thoroughly washed with soap (or other suitable detergent) and water at least once in every 6 days in which it has been so worn and also whenever by reason of the presence of stains of a *specified substance* thereon there are reasonable grounds for apprehending (*b*) that a worker may be in risk of poisoning.

(2) For the purpose of paragraph (1) (a) of this regulation, in considering whether a place is conveniently accessible account may be taken of any transport provided for *workers* at appropriate times; and in considering whether washing facilities are adequate and suitable at any time and place regard shall be had to the number of *workers* for whom such facilities are required at that time and place.

(*a*) ***Provide.*** See note (*a*) to reg. 6.

(*b*) ***Reasonable grounds for apprehending.*** See note (*a*) to reg. 12.

Miscellaneous prohibitions and obligations relating to workers

8.—(1) A *worker* who carried out *scheduled operations* shall not—

(a) at any time blow, suck or apply his mouth to any jet, sprinkler, nozzle or other *spraying* apparatus or *soil-application* apparatus which contains or has contained a *specified substance* whether for the purpose of removing any obstruction or otherwise;

(b) make use of any container marked "Personal washing only" for the washing of protective clothing, or of any container not so marked for personal washing;

(c) make use of any drinking vessel provided by his *employer* otherwise than to drink from; or

(d) eat, drink or smoke unless he has removed all *protective clothing* (other than any overall or rubber boots), has washed his hands and face, and is outside an area in which he might be poisoned by any *specified substance* that has been, is being, or is about to be used, or by any *protective clothing* that has been worn in connection with the use of a *specified substance*.

(2) A *worker* who carried out *scheduled operations* shall—

(a) deposit his personal clothing not worn during working hours in the accommodation provided by his *employer* in accordance with regulation 6 hereof; and

(b) at the end of each day's operations forthwith—

(i) remove all *protective clothing* worn by him and deposit it in such accommodation as aforesaid; and

(ii) wash his hands, face and neck.

Repair of apparatus

9. (1) A *worker* shall not and his *employer* shall not cause or permit him to repair any *spraying* apparatus, *soil-application* apparatus or *granule placement* apparatus that has been, is being, or is about to be used for *spraying*, for *soil-application* or for *granule placement* unless such apparatus or so much thereof as requires repair is first thoroughly washed with water (or where appropriate with water and a suitable *wetter*).

(2) The foregoing paragraph shall not apply to repairs carried out in the course of the operations of *spraying*, *soil-application* or *granule placement* if the *worker* is wearing the *protective clothing* required by these regulations to be worn when carrying out such operations.

Keeping of a register

10.—(1) Subject to paragraph (3) hereof an *employer* shall keep a register containing particulars of—

(a) the name and address of every *worker* employed by him who carries out *scheduled operations*;

(b) the number of hours worked on such operations by any such *worker* on each day;

(c) the *specified substances* in connection with which the *worker* has worked as aforesaid;

(d) any matters which the *employer* is required to notify to an *inspector* in accordance with regulation 12 hereof; and

(e) any matters required to be entered in the register as a condition of granting a certificate of exemption under regulation 15 hereof.

(2) An *employer* shall preserve the register required to be kept by this regulation for at least a year after the date of the last entry therein.

(3) The foregoing paragraphs shall not apply in the case of an *employer* who is the occupier of an *agricultural unit* as respects *workers* employed in that unit, where *scheduled operations* are carried out—

(a) on any *ground-crops* in that unit and the total area of *ground-crops* in that unit does not exceed 150 acres;

(b) on any bushes, climbing plants (including hops) or trees in that unit and the total area of any land so cultivated by him in that unit does not exceed 50 acres;

(c) in a *greenhouse* in that unit and the aggregate superficial area of all *greenhouses* in that unit does not exceed 2 acres:

Provided that any exemption created by this paragraph from the obligation to keep a register shall be limited to the operations and conditions in respect of which the exemption applies.

(4) An *employer* shall give to a *worker* who ceases to be employed by him a copy of any particulars contained in the register kept by the employer in accordance with this regulation, so far as such particulars relate to that worker during the last 6 months of his employment, and the *worker*, on entering the employment of any other *employer* at any time within 6

months of so ceasing to be employed, shall give to that *employer* any such copy as aforesaid.

Restriction on hours of work

11. A *worker* shall not work on *scheduled operations* and his *employer* shall not cause or permit him so to work, for more than—

(a) 10 hours on any day;

(b) 60 hours in any period of 7 consecutive days; or

(c) 120 hours in any period of 21 consecutive days.

Notification of sickness and of absence

12.—(1) If at any time there are reasonable grounds for an *employer* to apprehend (*a*) that a *worker* may be suffering from poisoning from a *specified substance*, the employer shall forthwith notify an inspector thereof.

(2) Without prejudice to paragraph (1) hereof, if a *worker* absents himself from duty for more than 3 days—

(a) otherwise than for a reason known to his *employer* not to be caused by poisoning from *dinoseb* or *DNOC*, and within 14 days immediately preceding such absence the *worker* has worked for more than 60 hours in connection with the use in agriculture of *dinoseb* or *DNOC*; or

(b) otherwise than for a reason known to his *employer* not to be caused by poisoning from any other *specified substance*, and within 28 days immediately preceding such absence the *worker* has worked for more than 60 hours in connection with the use in *agriculture* of any other such *specified substance*;

the *employer* shall forthwith notify an *inspector* of such absence.

(*a*) ***Reasonable grounds . . . apprehend.*** Although whether or not there are reasonable grounds is a question of fact, it is submitted that the duty to notify does not arise until the employer has actual knowledge of the facts constituting the grounds for apprehension; see *Harding* v. *Price*, [1948] 1 All E.R. 283 in which Lord GODDARD, C.J., said, at p. 285, "unless a man knows that the event has happened, how how can he carry out the duty imposed? If the duty be to report he cannot report something of which he has no knowledge".

Training and supervision of workers

13.—(1) An *employer* shall not cause or permit a *worker* to work on *scheduled operations* unless the *worker* has been thoroughly trained in the precautions to be observed, and is under adequate supervision.

(2) Nothing in the foregoing paragraph shall release a *worker* from any obligation or prohibition imposed on him by *the Act* or by these regulations.

Prohibition of employment of persons under eighteen years

14. No person under the age of 18 years shall in any circumstances be employed to *work* on *scheduled operations*, or on any other operations involving the use in *agriculture* of a *smoke-generator*.

Certificates of exemption

15.—(1) If the *employer* of a *worker* satisfies an *inspector* that—

(a) any of the provisions of these regulations could reasonably be dispensed with if alternative conditions to protect the *worker* from the risk of poisoning by a *specified substance* were observed; or

(b) by reason of exceptional circumstances, or of the small extent of the operations carried out, or for any other reason, any of the provisions of these regulations are unnecessary for the protection of a *worker*;

and the *inspector* certifies accordingly, then the *employer* and the *worker* to whom the certificate applies shall be exempt from such of the provisions of these regulations to which each of them would otherwise respectively be subject as are specified in the certificate.

(2) Any such certificate shall in addition specify the conditions (if any) subject to the observance of which the *employer* and the *worker* are to be exempted as aforesaid, and so long as the certificate remains in force the *employer* and the *worker* shall comply with those conditions.

(3) Any such certificate may at any time be revoked by notice in writing to the person to whom it was granted.

Regulations 3, 4 and 5 SCHEDULE 1

PART I

1. In Part II of this Schedule, and also where mentioned elsewhere in these regulations, the following expressions relating to articles of *protective clothing* have the meanings hereby respectively assigned to them:—

"dust-mask" means a filtering apparatus of a type that—

(a) is so designed as to eliminate so far as practicable the risk of pollution, by liquid and solid particles containing a *specified substance*, of the air breathed by the person wearing it, and

(b) has been approved for that purpose by *the Minister*;

"eye-shield" means a shield so designed as to protect the eyes from being splashed by a *specified substance*;

"face-shield" means a shield covering the whole of the forehead and face, so designed as to protect the forehead and face from being splashed by a *specified substance*;

"hood" means a hat or other covering to the head, so designed as to protect the forehead, and back and sides of the neck, and, when required by these regulations to be worn in connection with the use of a *specified substance* containing *dinoseb* or *DNOC*, not so coloured that the presence of the stains thereof is not clearly visible;

"mackintosh" means a waterproof coat covering the whole of the body except the head, the hands and below the knees, and when required by these regulations to be worn in connection with the use of a *specified substance in granular form*, having all external pockets covered;

"overall" means an overall with fastenings at the neck and wrists covering all clothing other than headgear, footwear and gloves, and when required by these regulations to be worn in connection with the use of—

(a) a *specified substance* containing *dinoseb* or *DNOC*, not so coloured that the presence of the stains thereof is not clearly visible;

(b) a *specified substance in granular form*, having all external pockets covered;

"respirator" means a filtering apparatus of a type that—

(a) is so designed as to eliminate so far as practicable the risk of pollution, by gas and liquid and solid particles containing a *specified substance*, of the air breathed by the person wearing it, and

(b) has been approved for that purpose by *the Minister*;

"rubber" includes synthetic rubber, oilskin, and other substances or materials impermeable in the circumstances in which they are used to liquids and gases;

"rubber apron" means a *rubber* apron covering the front and sides of the body from immediately below the shoulders to at least 3 inches below the knees;

"rubber boots" means *rubber* boots extending from the feet upwards to at least immediately below the knees;

"rubber coat" means a *rubber* coat covering the whole of the body except the head, the hands, and below the knees;

"rubber gauntlet gloves" means *rubber* gloves not less than 12 inches in length measured from the tip of the second finger to the edge of the cuff;

"rubber gloves" means *rubber* gloves which completely cover the hands and wrists;

"sou'wester" means a *rubber* hat or other covering which completely covers the head (other than the face) and is so shaped as to protect the back of the neck from falling spray.

2. In Part II of this Schedule "ground-marker" means a person who by means of any visual signal indicates to the pilot of an aircraft while airborne where *spraying* or *granule placement* therefrom is to be effected.

PART II

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
1. Except where items 2 or 3 or 3A hereof apply or where the *specified substance is in capsule form*:— (*a*) opening a container containing a *specified substance*; or (b) diluting or mixing a *specified substance*, or transferring it from one container to another.	Any substance mentioned in Part I of Schedule 2.	*Rubber gloves*, *rubber boots*, *respirator*, and either— (a) an *overall* and *rubber apron*; or (b) a *mackintosh*.
	Any substance mentioned in Part II of Schedule 2.	*Rubber gloves*, *rubber boots*, *face-shield*, and *either*— (a) an *overall* and *rubber apron*; or (*b*) a *mackintosh*.
	Any substance mentioned in Part III of Schedule 2.	*Rubber gloves* and *face-shield*.
2. The like operations where either of the substances mentioned opposite this item in column 2 is to be used exclusively as an insecticide.	*Dinoseb* or *DNOC*.	*Rubber gloves*, and either a *face-shield* or *eye-shield*.
3. Opening a container containing a *specified substance in granular form* or transferring the contents from one container to another.	Any substance mentioned in Part I of Schedule 2.	*Rubber gauntlet gloves*, *rubber boots*, *respirator* and either— (a) an *overall* and *rubber apron*; or (b) a *mackintosh*; with the sleeves worn over the cuffs of the *rubber gauntlet gloves*

PART II—*continued*

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
	Any substance mentioned in Part II of Schedule 2.	*Rubber gauntlet gloves* and either an *overall* or *mackintosh*, with the sleeves worn over the cuffs of the *rubber gauntlet gloves*.
	Any substance mentioned in Part III of Schedule 2.	*Rubber gloves*.
3A. Opening a container containing *smoke shreds* which contain not more than 40 per cent. by weight of the substance specified in Column 2 or transferring the contents from one container to another.	*Nicotine*	*Rubber gloves*.
4. Washing or cleansing *spraying* apparatus, *soil-application* apparatus or *granule placement* apparatus that has been used with a *specified substance*.	Any substance mentioned in Parts I and II of Schedule 2.	*Rubber boots*, *face-shield*, and either— (a) an *overall* and *rubber apron*; or (b) a *mackintosh*.
5. *Spraying* any *ground-crop* except where carried out— (a) from aircraft; or (b) in a *greenhouse*.	Any substance mentioned in Part I of Schedule 2.	*Overall*, *hood*, *rubber gloves*, *rubber boots* and *respirator*.
	Any substance mentioned in Part II of Schedule 2.	*Overall*, *hood*, *rubber gloves*, *rubber boots* and either a *face-shield* or a *dust-mask*.

PART II—*continued*

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
6. *Spraying* bushes, climbing *plants* (other than hops) or trees.	Any substance mentioned in Part I of Schedule 2.	*Rubber coat, rubber gloves, rubber boots, sou'wester and respirator.*
	Any substance mentioned in Part II of Schedule 2.	*Rubber coat, rubber gloves, rubber boots, sou'wester* and *face-shield.*
7. *Spraying* hops.	Any substance mentioned in Part I of Schedule 2.	*Rubber coat, rubber gloves, sou'wester* and *respirator.*
	Any substance mentioned in Part II of Schedule 2.	*Rubber coat, rubber gloves, sou'wester* and *face-shield.*
8. *Spraying* in a *greenhouse* (except where an *aerosol* dispenser or *smoke-generator* is used).	Any substance mentioned in Part I of Schedule 2.	*Rubber gloves, rubber boots, hood, respirator* and either an *overall* or *mackintosh.*
	Any substance mentioned in Part II of Schedule 2.	*Rubber gloves, rubber boots, hood, face-shield* and either an *overall* or *mackintosh.*
9. *Spraying* in a *greenhouse* where an *aerosol sol* dispenser is used.	Any substance mentioned in Schedule 2.	*Overall, hood, rubber gloves* and *respirator.*
10. *Granule placement* by hand or by means of hand-operated *granule placement* apparatus.	Any substance mentioned in Part I of Schedule 2.	*Overall, hood, rubber gauntlet gloves, rubber boots* and *respirator*, with the sleeves of the *overall* worn over the cuffs of the *rubber gauntlet gloves.*

PART II—*continued*

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
	Any substance mentioned in Part II of Schedule 2.	*Rubber gauntlet gloves* and either an *overall* or a *mackintosh*, with the sleeves worn over the cuffs of the *rubber gauntlet gloves*.
11. *Granule placement* (except where carried out from aircraft) by means of *granule placement* apparatus operated otherwise than by hand, or, where such apparatus is being used for the purpose mounted on or drawn either directly or indirectly by a tractor, operating any other apparatus mounted on or so drawn by the tractor.	Any substance mentioned in Part I of Schedule 2.	*Overall, hood, rubber gauntlet gloves, rubber boots* and *respirator*, with the sleeves of the *overall* worn over the cuffs of the *rubber gauntlet gloves*.
	Any substance mentioned in Part II of Schedule 2.	Either an *overall* or a *mackintosh*.
12. Handling hops which have been sprayed—		
(a) within the previous 24 hours;	TEPP or mevinphos.	*Rubber gloves*.
(b) within the previous 4 days.	Any substance mentioned in Part I of Schedule 2 or in Part II thereof (other than TEPP and mevinphos).	*Rubber gloves*.

PART II—*continued*

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
13. Handling potato *plants* which have been sprayed within the previous 10 days.	Potassium arsenite or sodium arsenite.	*Overall, rubber gloves, rubber boots* and *dust-mask.*
14. Acting as a ground-marker in connection with the *spraying* of *ground-crops* from aircraft.	Any substance mentioned in Part I of Schedule 2.	*Overall, hood, rubber gloves, rubber boots* and *respirator.*
	Any substance mentioned in Part II of Schedule 2.	*Overall, hood, rubber gloves, rubber boots* and *face-shield.*
15. Acting as a ground-marker in connection with *granule placement* from aircraft.	Any substance mentioned in Part I of Schedule 2.	*Overall, hood, rubber gauntlet gloves, rubber boots* and *respirator*, with the sleeves of the *overall* worn over the cuffs of the *rubber gauntlet gloves.*
	Any substance mentioned in Part II of Schedule 2.	*Hood, face-shield* and either an *overall* or *mackintosh.*
16. *Soil*-application other than in a *greenhouse*) when carried out by—		
(a) the driver of— (i) tractor-mounted application apparatus; or	Any substance mentioned in Parts I and II of Schedule 2.	*Overall, rubber gloves* and *rubber boots.*

PART II—*continued*

Column 1 Operations prohibited except when *protective clothing* is worn	Column 2 Substances in relation to which operations are carried out	Column 3 *Protective clothing* required to be worn
(ii) tractor - drawn *soil-application* apparatus (if the driver is unaccompanied);		
(b) any operator on foot (including a person principally engaged as a tractor-driver whilst not engaged in tractor-driving).	Any substance mentioned in Parts 1 and II of Schedule 2.	*Overall, rubber apron, rubber gloves,* and *rubber boots.*
17. *Soil application* in a *greenhouse.*	Any substance mentioned in Part I of Schedule 2.	*Overall, rubber apron, rubber gloves, rubber boots* and *respirator.*
	Any substance mentioned in Part II of Schedule 2.	*Overall, rubber apron, rubber gloves* and *rubber boots.*
18. Bulb dipping, bulb steeping, handling bulbs when wet from dipping or steeping, disposing of the solution and washing the apparatus used for dipping or steeping.	Thionazin.	*Rubber gauntlet gloves, rubber boots,* an *overall* and *rubber apron.*

Regulation 3
Schedule 1

SCHEDULE 2

Column 1 Common name and Classification		Column 2 Substance
		PART I
demeton	(b)	Any mixture of demeton-O [diethyl 2-(ethylthio)ethyl phosphorothionate] and demeton-S [diethyl*S*-[2-(ethylthio)ethyl] phosphorothiolate].
dimefox	(b)	*NNN′N′*-tetramethylphosphorodiamidic fluoride.
mazidox	(b)	*NNN′N′*-tetramethylphosphorodiamidic azide.
		PART II
amiton	(b)	*S*-(2-diethylaminoethyl) diethyl phosphorothiolate.
	(b)	The salts of the last mentioned substance.
dinoseb	(a)	2-(1-methyl-n-propyl)-4,6-dinitrophenol.
	(a)	The salts of the last mentioned substance.
disulfoton	(b)	diethyl *S*-[2-(ethylthio)ethyl] phosphorothiolothionate.
DNOC	(a)	2-methyl-4,6-dinitrophenol.
	(a)	The salts of the last mentioned substance.
endosulfan	(c)	6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-6, 9-methano-2,4,3-benzo[*e*]-dioxathiepin 3-oxide.
endothal	(c)	7-oxabicyclo[2,2,1]heptane-2,3-dicarboxylic acid.
	(c)	The salts of the last mentioned substance.
endrin	(c)	1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-*exo*-1,4-*exo*-5,8-dimethanonaphthalene.
—	(e)	fluoroacetamide.
mevinphos	(b)	*cis*-2-methoxycarbonyl-1-methylvinyl dimethyl phosphate.

Regulation 3
Schedule I

SCHEDULE 2—*continued*

Column 1 Common name and Classification		Column 2 Substance
mipafox	(b)	*NN′*-di-isopropylphosphorodiamidic fluoride.
parathion	(b)	diethyl 4-nitrophenyl phosphorothionate.
phorate	(b)	diethyl *S*-(ethylthiomethyl) phosphorothiolothionate
—	(d)	potassium arsenite.
schradan	(b)	bis-*NNN′N′*-tetramethylphosphorodiamidic anhydride.
—	(d)	sodium arsenite.
sulfotep	(b)	bis-*OO*-diethylphosphorothionic anhydride.
TEPP	(b)	bis-*OO*-diethylphosphoric anhydride.
thionazin	(b)	diethyl *O*-2-pyrazinyl phosphorothionate.
Medinoterb	(a)	2,4-dinitro-3-methyl-6-t-butylphenol
	(a)	The salts of the last mentioned substance.
		PART III
azinphos-ethyl	(b)	*S*-(3,4-dihydro-4-oxobenzo[*d*]-[1,2,3]-triazin-3-ylmethyl) diethyl phosphorothiolothionate.
azinphos-methyl	(b)	*S*-(3,4-dihydro-4-oxobenzo[*d*]-[1,2,3]-triazin-3-ylmethyl) dimethyl phosphorothiolothionate.
chlorfenvinphos	(b)	2-chloro-1-(2,4-dichlorophenyl)vinyl diethyl phosphate.
demeton-methyl	(b)	Any mixture of demeton-O-methyl [2-(ethylthio)ethyl dimethyl phosphorothionate] and demeton-S-methyl [*S*-[2-(ethylthio)ethyl] dimethyl phosphorothiolate].
demeton-S-methyl	(b)	*S*-[2-(ethylthio)ethyl] dimethyl phosphorothiolate.
dichlorvos	(b)	2,2-dichlorovinyl dimethyl phosphate.
ethion	(b)	tetraethyl *SS′*-methylene bis-(phosphorothiolothionate).
fentin acetate	(f)	triphenyltin acetate.
fentin hydroxide	(f)	triphenyltin hydroxide.

Regulation 3
Schedule I

SCHEDULE 2—*continued*

Column 1 Common name and Classification		Column 2 Substance
mecarbam	(b)	*S*-(*N*-ethoxycarbonyl-*N*-methylcarbamoyimethyl) diethyl phosphorothiolothionate.
nicotine		nicotine. The salts of nicotine.
oxydemeton-methyl	(b)	*S*-[2-(ethylsulphinyl)ethyl] dimethyl phosphorothiolate.
phenkapton	(b)	*S*-(2,5-dichlorophenylthiomethyl) diethyl phosphorothiolothionate.
phosphamidon	(b)	2-chloro-2-diethylcarbamoyl-1-methylviny ldimethyl phosphate.
vamidothion	(b)	dimethyl *S*-[2-(1-methylcarbamoylethylthio)ethyl]phosphorothiolate.
(a) demephion	(b)	Any mixture of demephion-0 [dimethyl 2-(methylthio) ethyl phosphorothionate] and demephion-*S* [dimethyl *S*-[2-(methylthio)ethyl] phosphorothiolate]
(b) demeton-S-methyl sulphone	(b)	[*S*-[2-(ethyl-sulphonyl)ethyl]dimethyl phosphorothiolate]
		PART IV
		Any organo-mercury compound.

Key to the classification in Schedule 2

(a) Dinitro-substituted phenols and their salts.

(b) Organo-phosphorus compounds.

(c) Substances the molecular structure of which consists of a bridged six-membered ring with substituents in the ring.

(d) Arsenical compounds.

(e) Fluoroacetic acid and its derivatives.

(f) Organo-tin compounds.

THE AGRICULTURE (SAFETY, HEALTH AND WELFARE PROVISIONS) ACT 1956

(4 & 5 Eliz. 2 c. 49)

ARRANGEMENT OF SECTIONS

Safety, Health and Welfare of Employees

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An Act to provide for securing the safety, health and welfare of persons employed in agriculture and certain other occupations and the avoidance of accidents to children arising out of the use, in connection with agriculture, of vehicles, machinery or implements; and for purposes connected with the matters aforesaid [5th July 1956]

Safety, Health and Welfare of Employees

1. Regulations for securing safety and health of employees.—(1) Provision may be made by regulations under this section (*a*) for protecting workers employed (*b*) in agriculture (*c*) against risks of bodily injury or injury to health arising out of the use of any machinery, plant, equipment or appliance, the carrying on of any operation, the use of any process or the management of animals, for securing to such workers safe places to work in and safe means of access thereto and for protecting them against risks of bodily injury arising out of their falling through apertures in floors or walls, or from their workplaces, or while ascending or descending staircases or ladders.

(2) Regulations under this section may make any such provision for any of the purposes mentioned in the foregoing subsection as appears to the authority by whom the regulations are made to meet the necessity of the case as far as is reasonably practicable (*d*), and may impose obligations, restrictions and prohibitions on employers of workers employed (*b*) in agriculture (*c*) on such workers themselves, and on others.

(3) Without prejudice to the generality of the last foregoing subsection, regulations under this section may provide for—

(a) regulating or prohibiting the use of any machinery, plant, equipment or appliance, the carrying on of any operation or the use of any process;

(b) imposing requirements with respect to the construction, installation, examination, repair, maintenance, alteration, adjustment and testing of machinery, plant, equipment or appliances and the safeguarding of dangerous parts thereof and prohibiting the sale or

letting on hire of any machinery, plant, equipment or appliance which does not comply with requirements of the regulations;

(c) requiring the observance of precautions in connection with the management of animals and imposing requirements with respect to the construction of enclosures in which animals are kept;

(d) requiring the giving of instructions with respect to the proper manner of using any machinery, plant, equipment or appliance, carrying on any operation, using any process or managing animals;

(e) prohibiting the employment in work of any kind prescribed by the regulations of persons who have not attained the age of eighteen (*e*), either absolutely or except upon the condition of their having received a sufficient training in work of that kind or being subject to such supervision as may be so prescribed;

(f) imposing requirements with respect to the fencing of apertures in floors or walls, the construction and maintenance of staircases and the provision in connection therewith of handrails and other safeguards and the construction and maintenance of ladders;

(g) requiring the taking of such steps as may be prescribed by the regulations for the purpose of bringing provisions of the regulations to the notice of workers employed (*b*) in agriculture (*c*); and

(h) any incidental, supplementary or consequential matters for which it appears to the authority by whom the regulations are made requisite or expedient to provide for the purposes of the regulations.

(4) Regulations under this section may make different provision to meet different circumstances.

(5) Regulations under this section may provide for empowering the appropriate Minister (*f*) to grant certificates exempting (*g*) (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of provisions of the regulations.

(6) A person who contravenes (*h*) any provision of regulations under this section shall be guilty of an offence.

(7) The Threshing Machines Act 1878 (*i*), shall be repealed on such day as may be appointed for that purpose by order made by the Minister of Agriculture, Fisheries and Food by statutory instrument, and the Chaff-Cutting Machines (Accidents) Act 1897 (*j*), shall be repealed—

(a) as respects England and Wales, on such day as may be appointed for that purpose by order made as aforesaid;

(b) as respects Scotland, on such day as may be appointed for that purpose by order made by the Secretary of State by statutory instrument.

(*a*) ***Regulations under this section.*** The regulations at present in force are the Agriculture (Ladders) Regulations 1957 (S.I. 1957 No. 1385) (see p. 443), the Agriculture (Power Take-off) Regulations 1957 (S.I. 1957 No. 1386) (see p. 447), the Agriculture (Circular Saws) Regulations 1959 (S.I. 1959 No. 427) (see p. 454), the Agriculture (Safeguarding of Work-places) Regulations 1959 (S.I. 1959 No. 428) (see p. 461), the Agriculture (Stationary Machinery) Regulations 1959) (S.I. 1959 No. 1216) (see p. 468), the Agriculture (Threshers and Balers) Regulations 1960 (S.I. 1960 No. 1199) see p. 475), the Agriculture (Field Machinery) Regulations 1962 (S.I. 1962 No. 1472) (p. 484) and the Agriculture (Tractor Cabs) Regulations 1967 (S.I. 1967 No. 1072) (see p. 500). As to the exercise of the regulation-making power, see s. 17 (4).

(*b*) ***Workers employed.*** For definitions, see s. 24 (1).

(*c*) ***Agriculture.*** For definition, see s. 24 (1).

(*d*) ***Reasonably practicable.*** See note (*f*) to s. 6 of the Offices, Shops and Railway Premises Act 1963.

(*e*) ***Age of eighteen.*** The lifting of excessive weights by young persons is prohibited by s. 2 (1). For the power to make regulations prohibiting children from riding on or driving vehicles or machines, or from riding on implements used in agriculture, see s. 7.

(*f*) ***Appropriate Minister.*** For definition, see s. 24 (1).

(*g*) ***Certificate exempting.*** Compare s. 1 (5) of the Agriculture (Poisonous Substances) Act 1952. For an example of regulations under this Act which confer a power of exemption, see reg. 5 of the Agriculture (Safeguarding of Workplaces) Regulations 1959, p. 462.

(*h*) ***Contravenes.*** A contravention of a provision includes a failure to comply with that provision (s. 24 (2).

(*i*) ***Threshing Machines Act 1878.*** This Act was repealed on 1st August 1961 (S.I. 1961 No. 1109, made under s. 1 (7) of the 1956 Act).

(*j*) ***Chaff-Cutting Machines (Accidents) Act 1897.*** This Act was repealed on 14th July 1961 (S.I. 1961 No. 1108, made under s. 1 (7) of the 1956 Act).

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2. Lifting excessive weights.—(1) A young person (*a*) shall not be employed as a worker (*b*) in agriculture (*c*) to lift, carry or move a load so heavy as to be likely to cause injury to him.

(2) Regulations (*d*) may be made for prescribing the maximum weights which may be lifted. carried or moved by workers employed (*b*) in agriculture (*c*); and any such regulations may prescribe different weights in different circumstances and may relate either to workers generally or to any class of workers or to workers employed in work of any class.

(3) In the event of a contravention (*e*), in the case of any worker, of the provisions of subsection (1) of this section or of regulations made under subsection (2) thereof, his employer shall be guilty of an offence (*f*).

General note. Compare the similar provisions of s. 72 of the Factories Act 1961 which, however, are not confined to the protection of young persons (see Redgrave's Factories Acts, 22nd Edn., pp. 229, 230). In regard to children (*i.e.*, persons not over compulsory school age; Education Act 1944, s. 58), provisions similar to those in sub-s. (1) are contained in the Children and Young Persons Act 1933, s. 18 (1) (*f*), and the Children and Young Persons (Scotland) Act 1937, s. 28 (1) (*f*). For restrictions on child employment generally, see 21 Halsbury's Laws of England (3rd Edn.), pp. 299 *et seq.*

(*a*) ***Young person.*** For definition, see s. 24 (1).

(*b*) ***Employed as a worker.*** For definitions, see s. 24 (1).

(*c*) ***Agriculture.*** For definition, see s. 24 (1)).

(*d*) ***Regulations.*** Regulations made under this section are set out below.

(*e*) ***Contravention.*** A contravention of a provision includes a failure to comply with that provision (s. 24 (2)).

(*f*) ***Offence.*** See ss. 14 to 16.

THE AGRICULTURE (LIFTING OF HEAVY WEIGHTS) REGULATIONS 1959

(S.I. 1959 No. 2120)

Dated 14th December 1959, made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland under section 2 (2) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and all other enabling powers.

Citation, extent and commencement

1. These regulations, which may be cited as the Agriculture (Lifting of Heavy Weights) Regulations 1959, shall apply to Great Britain (*a*) and shall come into operation on the 1st day of July, 1965.

Interpretation

2.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"agriculture", "worker" and "employed" have the meanings respectively assigned to them, as respects England and Wales (*a*), by subsection (1) of section 24 of the Act, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of the Act.

(2) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Maximum Weight of Sacks and Contents

3. Without prejudice to the provisions of subsection (1) of section 2 of the Act (which provides that a young person shall not be employed as a worker in agriculture to lift, carry or move a load so heavy as to be likely to cause injury to him) the maximum weight of any load consisting of a sack or bag, together with its contents, which may be lifted or carried by a worker employed in agriculture, unaided, shall be 180 lb.

(*a*) ***Great Britain*; *England and Wales.*** For the meaning of these terms, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act.

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3. General provisions as to sanitary conveniences and washing facilities.—(1) If it appears (*a*) to a sanitary authority (*b*) that an agricultural unit (*c*) within their district on which workers are employed (*d*) in agriculture (*e*) is without suitable and sufficient sanitary conveniences (*f*) available for the use of workers so employed, the authority shall, by notice (*g*) to the appropriate person (*h*), require him, within such time as may be specified in the notice, to execute such works or take such other steps for the purpose of providing the unit with suitable and sufficient sanitary conveniences available for the use of workers employed thereon in agriculture as may be specified in the notice.

(2) If it appears (*a*) to the appropriate Minister (*i*) that an agricultural unit on which workers are employed in agriculture is without suitable and sufficient washing facilities available

for the use of workers so employed, the appropriate Minister shall, by notice (*g*) to the appropriate person (*h*), require him, within such time as may be specified in the notice, to execute such works or take such other steps for the purpose of providing the unit with suitable and sufficient washing facilities available for the use of workers employed thereon in agriculture as may be specified in the notice.

(3) In considering, for the purposes of this section, whether an agricultural unit is or is not without suitable and sufficient sanitary conveniences available for the use of workers employed on the unit in agriculture or, as the case may be, is or is not without suitable and sufficient washing facilities for the use of workers so employed, regard shall be had to the number and sex of the workers so employed, the location and duration of their work and all other relevant circumstances.

(4) A notice under this section requiring the execution of works involving the provision of fixed equipment (*j*) must specify the place where the works are to be executed.

(5) Neither a sanitary authority nor the appropriate Minister shall serve a notice under this section requiring the execution of works involving the provision of fixed equipment unless they are, or he is, satisfied (*k*) that special circumstances exist which render requisite the provision of such equipment, and no such notice shall be of any effect unless it states that the authority are, or (as the case may be) that the Minister is, so satisfied and what those circumstances are.

(6) For the purposes of this section the expression "appropriate person" means—

(a) in the case of a notice requiring the execution, on land comprised in an agricultural holding (*l*), of works involving the provision of fixed equipment, the landlord of the holding;

(b) in any other case, the occupier of the unit to which the notice relates.

(7) A person aggrieved by a notice (*m*) under this section requiring him to execute works involving the provision of fixed equipment may, within twenty-eight days from the service of the notice, appeal (*n*) to a magistrates' court on any of the

following grounds which are appropriate to the circumstances of the case, namely—

(a) that the authority or Minister by whom the notice was served have, or has, refused unreasonably to approve the execution of alternative works, or that the works required by the notice to be executed are otherwise unreasonable in character or extent, or are unnecessary;

(b) that it is unreasonable to require the execution of the works at the place specified in the notice;

(c) that the time within which the works are to be executed is not reasonable for the purpose;

and the court may make such order either confirming or quashing or varying the notice as it thinks fit.

(8) A person aggrieved by a decision (*o*) of a magistrates' court under this section may appeal to a court of quarter sessions (*p*).

(9) Subject to the rights of appeal conferred by the foregoing provisions of this section and (where an appeal is brought in exercise of any such right) to any order made by the court on the appeal, a person upon whom a notice is served under this section who fails to comply with the requirements of the notice shall be guilty of an offence (*q*):

Provided that, in any proceedings under this sub-section for an offence consisting in a failure to comply with the requirements of a notice other than one to which subsection (7) of this section applies, it shall be open to the defendant to question the reasonableness of the requirements of the notice.

(10) Section nine of the Agricultural Holdings Act 1948 (*r*) (which provides for increasing the rent of an agricultural holding upon which the landlord has executed improvements in the circumstances mentioned in subsection (1) of that section) shall have effect as if, in that subsection, the reference to works for the supply of water to the holding included a reference to works executed thereon for the purpose of complying with the requirements of a notice under this section.

General note. This section is modified in its application to Scotland: see s. 25 (3).

(*a*) ***Appears.*** Regard must be had to the matters specified in sub-s. (3) and, where fixed equipment is required, to the matters specified in sub-s. (5). Provided that those matters are taken into account, and that the sanitary authority or the Minister (as the case may be) acts *bona fide* and *intra vires*, the courts will not enquire into the correctness of this decision to give a notice under the section; see the authorities cited in note (*h*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

(*b*) ***Sanitary authority.*** For definition, see s. 24 (1).

(*c*) ***Agricultural unit.*** For definition, see s. 24 (1).

(*d*) ***Workers are employed.*** For definitions, see s. 24 (1).

(*e*) ***Agriculture.*** For definition, see s. 24 (1).

(*f*) ***Sanitary conveniences.*** For power to require the provision of conveniences by agricultural contractors, see s. 4; for power to secure the maintenance and cleanliness of conveniences, see s. 5.

(*g*) ***Notice.*** The form and mode of service of notices are specified by s. 20; see also sub-ss. (4) and (5) of the present section.

(*h*) ***Appropriate person.*** For definition, see sub-s. (6).

(*i*) ***Appropriate Minister.*** For definition, see s. 24 (1).

(*j*) ***Fixed equipment.*** For definition, see s. 24 (1).

(*k*) ***Satisfied.*** See note (*a*).

(*l*) ***Agricultural holding.*** For definition, see s. 24 (1).

(*m*) ***Persons aggrieved by a notice.*** This refers to the person required to execute the works. He does not, it is submitted, have to show that he is a "person aggrieved" within the technical sense discussed in note (*o*), *infra*, in order to appeal, although the appeal will fail unless he can prove one of the grounds specified in sub-s. (7).

(*n*) ***Appeal.*** The appeal is by way of complaint for an order; see rule 30 of the Magistrates' Court Rules 1968 (S.I. 1968 No. 1920). The magistrates may therefore award costs as provided in s. 55 of the Magistrates' Courts Act 1952.

(*o*) ***Person aggrieved by a decision.*** Many statutes confer a right of appeal upon a "perons aggrieved", but it is often far from clear what the legislature means when it uses this phrase (see the judgment of SALMON, J., in *Buxton* v. *Minister of Housing and Local Government*, [1961] 1 Q.B. 278; [1960] 3 All E.R. 408 at p. 282; p. 411). The determination of the question involves a consideration of what is meant by the word "person" and by the word "aggrieved". By s. 19 of the Interpretation Act 1889, "the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate". The Minister, in s. 3 (8) of the present Act, is clearly a "person" and may, if "aggrieved" within the meaning of the decisions cited later in this note, appeal under this section. A sanitary authority is, however, referred to as such throughout this Act and in similar circumstances under other Acts a public authority has been held not to be a "person" on the grounds that a contrary intention appears from

the wording of the Act (see *R.* v. *London Quarter Sessions, Ex parte Westminster Corporation*, [1951] 2 K.B. 508; [1951] 1 All E.R. 1032 (a case upon the meaning of the phrase "person aggrieved" in s. 65 of the London County Council (General Powers) Act 1947) and *R.* v. *Dorset Quarter Sessions Appeals Committee, Ex parte Weymouth Corporation*, [1960] 2 Q.B. 230; [1960] 2 All E.R. 410 (a case upon the meaning of that phrase in s. 23 (5) of the Town and Country Planning Act, 1947)). If this be so, the sanitary authority can in no circumstances appeal.

The meaning of the word "aggrieved" in similar enactments has many times been considered by the courts, and is discussed in Halsbury's Laws of England, 3rd Edn., Vol. 25, p. 293. In *A.-G. of Gambia* v. *N'Jie*, [1961] A.C. 617; [1961] 2 All E.R. 504, the Privy Council said (at p. 634; p. 511):

> "The words 'person aggrieved' are of wide import and should not be subject to a restrictive interpretation. They do not include, of course, a mere busybody who is interfering in things which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests".

In this case, the court referred to a passage in the judgment of JAMES, L.J., in *Re Sidebotham, Ex parte Sidebotham*, (1880) 14 Ch. D. 458 at p. 465, which had until then been generally accepted as authoritatively defining the phrase (see, for example, *per* SALMON, J., in *Buxton* v. *Minister of Housing*, *supra*, at p. 285; pp. 412, 413). JAMES, L.J., had said:

> ". . . the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something".

The Privy Council, however, in *A.-G. of Gambia* v. *N'Jie*, *supra*, at p. 634; pp. 510, 511, held that the definition of JAMES, L.J., was not to be regarded as exhaustive as, indeed, had been pointed out by Lord ESHER, M.R., in *Re Reed, Bowen & Co., Ex parte Official Receiver* (1887), 19 Q.B.D. 174 at p. 178. What persons, then, can be said to have a genuine grievance because an order has been made which prejudicially affects their interests? Certainly, a person against whom an order for costs has been made is a "person aggrieved" (*Jennings* v. *Kelly* (1939), 4 All E.R. 464, H.L.; *R.* v. *Surrey Quarter Sessions, Ex parte Lilley*, [1951] 2 K.B. 749; [1951] 2 All E.R. 659). However, a public body which has been frustrated in the performance of a public duty is not thereby a "person aggrieved" (*Ealing Borough Council* v. *Jones*, [1959] 1 Q.B. 384; [1959] 1 All E.R. 286); there must, it seems, be more than the mere variation or quashing of the notice, such as the throwing of a burden upon the authority or the Minister (*R.* v. *Surrey Quarter Sessions, Ex parte Lilley*, *supra*; *R.* v. *Nottingham Quarter Sessions, Ex parte Harlow*, [1952] 2 Q.B. 601; [1952] 2 All E.R. 78; *R.* v. *Dorset Quarter Sessions Appeals Committee, Ex parte Weymouth Corporation*, *supra*). In

these circumstances, it is submitted that neither the Minister nor the sanitary authority (if that body is a "person") is "aggrieved" if a notice under s. 3 of the present Act is quashed or varied without an adverse award of costs.

(*p*) ***Quarter Sessions.*** The jurisdiction of quarter sessions was transferred to the Crown Court by the Courts Act 1971, s. 8 and Sch. 1.

(*q*) ***Offence.*** See ss. 14 to 16, *post*.

(*r*) ***Agricultural Holdings Act 1948.*** See 1 Halsbury's Laws of England (4th Edn.), pp. 564, 565.

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4. Power to require provision of sanitary conveniences by agricultural contractors.—(1) Regulations (*a*) may be made for requiring, in such circumstances as may be prescribed by the regulations, the provision, by the employer of workers employed in agriculture (*b*) on land which is not occupied by him, of such sanitary conveniences for the use of those workers as may be so prescribed.

(2) Regulations under this section may make different provision to meet different circumstances.

(3) A person who contravenes (*c*) any provision of regulations under this section shall be guilty of an offence (*d*).

(*a*) ***Regulations.*** No regulations have yet been made under this section.

(*b*) ***Workers employed in agriculture.*** For definitions, see s. 24 (1).

(*c*) ***Contravenes.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2)).

(*d*) ***Offence.*** See ss. 14 to 16.

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5. Power of sanitary authority to secure maintenance and cleanliness of sanitary conveniences.—(1) If it appears to a sanitary authority (*a*) that a sanitary convenience (*b*) provided for the use of workers employed in agriculture (*c*) on an agricultural unit (*d*) within their district (being a convenience provided on the unit or provided in pursuance of regulations under the last foregoing section elsewhere) is not being properly maintained or is not being kept clean, they shall, by notice (*e*) to the occupier of the unit (or, where the convenience is provided in pursuance of such regulations as aforesaid, to the person who provided it) require him, as the case may be, to take, within such time as may be specified in the notice, such steps for the purpose of securing the

proper maintenance of the convenience as may be so specified or to cleanse the convenience forthwith.

(2) A person who fails to comply with the requirements of a notice under this section shall be guilty of an offence (*f*):

Provided that, in any proceedings under this subsection for an offence consisting in a failure to comply with the requirements of a notice requiring the taking of steps for the purpose of securing the proper maintenance of a convenience, it shall be open to the defendant to question the reasonableness of the requirements of the notice.

(*a*) ***Sanitary authority.*** For definition, see s. 24 (1).

(*b*) ***Sanitary convenience.*** Sanitary authorities have power under s. 3 (1) to require the provision of suitable and sufficient sanitary conveniences, on agricultural units, for workers in agriculture, and under s. 4, the appropriate Minister has power to make regulations requiring other persons employing workers in agriculture, *e.g.*, agricultural contractors, to provide sanitary conveniences for their workers.

(*c*) ***Workers employed in agriculture.*** For definitions, see s. 24 (1).

(*d*) ***Agricultural unit.*** For definition, see s. 24 (1).

(*e*) ***Notice.*** The form and mode of service of notices are specified in s. 20.

(*f*) ***Offence.*** See ss. 14 to 16.

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6. First aid.—(1) A worker employed in agriculture (*a*) shall not be employed to work on an agricultural unit (*b*) unless there is provided thereon a first aid box or cupboard which—

(a) contains first aid requisites and appliances of such descriptions and in such quantities as may be prescribed by regulations applicable to the part of Great Britain in which the unit is situate;

(b) contains no articles other than first aid requisites or appliances;

(c) is conspicuously marked on the outside with the words "First Aid"; and

(d) is accessible to him.

(2) Regulations (*c*) may be made for requiring the provision, at such places on an agricultural unit on which workers are employed in agriculture as may be prescribed by the regulations, and either at all times or at such times as may be so prescribed, of containers containing first-aid requisites and appliances of such descriptions and in such quantities as may

be so prescribed, being containers complying with such requirements (if any) as may be so prescribed with respect to the form thereof and the marking thereof for the purpose of indicating the nature of the contents thereof, but nothing in any such regulation shall be construed as derogating from subsection (1) of this section.

(3) Regulations under this section may make different provision to meet different circumstances.

(4) In the event of a contravention (*d*) of the provisions of subsection (1) of this section in the case of a worker, his employer shall be guilty of an offence, and a person who contravenes any provision of regulations under subsection (2) of this section shall be guilty of an offence (*e*).

(*a*) ***Worker employed in agriculture.*** For definitions, see s. 24 (1).

(*b*) ***Agricultural unit.*** For definition, see s. 24 (1).

(*c*) ***Regulations.*** See the Agriculture (First Aid) Regulations 1957 (S.I. 1957 No. 940), which are set out at pp. 439 *et seq.*

(*d*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2)).

(*e*) ***Offence.*** See ss. 14 to 16.

Measures for Avoiding Accidents to Children

7. Power to prohibit children from riding on or driving vehicles, machinery or implements used in agriculture. —(1) Regulations (*a*) may be made for prohibiting children who have not attained the age (*b*) at which their employment ceases to be prohibited under paragraph (a) of subsection (1) of section eighteen of the Children and Young Persons Act 1933 (*c*), from riding on or driving vehicles or machines of prescribed classes while the vehicles or machines are being used in the course of agricultural (*d*) operations or are going to or from the site of such operations or from riding on agricultural implements of prescribed classes while the implements are being towed or propelled (whether by vehicles, machines or animals).

(2) A prohibition imposed by regulations under this section may be absolute or may be limited by reference to particular circumstances, and in this section the expression "prescribed" means prescribed by regulations thereunder.

(3) A person who causes (*e*) or permits a child, in contravention (*f*) of the provisions of regulations under this section, to

ride on or drive a vehicle or machine or, as the case may be, to ride on an agricultural implement, shall be guilty of an offence (*g*).

General note. For the law relating to the employment of children, see Halsbury's Laws of England, 3rd Edn., Vol. 21, pp. 299 *et seq.*

(*a*) ***Regulations.*** See the Agriculture (Avoidance of Accidents to Children) Regulations 1958 (S.I. 1958 No. 366), which are set out at pp. 451 *et seq.*

(*b*) ***Age.*** The age in question is thirteen years. A person attains a given age at the commencement of the relevant anniversary of his birth (Family Law Reform Act, 1969, s.9).

(*c*) ***Children and Young Persons Act 1933, s. 18 (1) (a).*** In the case of Scotland, the reference is to s. 28 of the Children and Young Persons (Scotland) Act, 1937; see s. 25 (7).

(*d*) ***Agricultural.*** For definition, see s. 24 (1).

(*e*) ***Causes.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

(*f*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2)).

(*g*) ***Offence.*** See ss. 14 to 16, *post.*

Notification and Investigation of Accidents and Diseases

8. Notification of, and keeping of records as to, accidents and diseases.—(1) Regulations (*a*) may be made for requiring—

(a) the notification, to such person and in such form and manner as may be prescribed by the regulations, of the occurrence, in the course of agricultural (*b*) operations, of accidents of such classes as may be so prescribed and of the contraction by persons engaged in agriculture (*b*) (whether as workers or not) of such diseases as may be so prescribed;

(b) the keeping, by an employer of workers employed in agriculture (*c*), of records (*d*) of the occurrence, in the course of agricultural operations, of accidents of such classes as may be prescribed by the regulations, being accidents whereby bodily injury is caused to workers so employed by that employer, and of the contraction by workers so employed by that employer of such diseases as may be so prescribed (whether or not notice of the occurrence of accidents of those classes or, as the case may be, the contraction by persons of

those diseases is required to be given by virtue of the foregoing paragraph);

and any such regulations may include provision for requiring a notice or record to be given or made in pursuance of the regulations to be accompanied by or, as the case may be, to include such particulars with respect to the matter notified or recorded as may be prescribed by the regulations.

(2) A person who contravenes (*e*) any provision of regulations under this section shall be guilty of an offence (*f*);

Provided that, in any proceedings taken for a contravention of a provision of such regulations consisting in a failure to give notice or make a record of the occurrence of an accident or the contraction by a person of a disease, it shall be a defence for the person charged to prove (*g*) that he was not aware that the accident had occurred or, as the case may be, that the first-mentioned person had contracted the disease.

General note. For the provisions of the Factories Act 1961 relating to the keeping of an accident register, see *ibid.*, s. 140 and Redgrave's Factories Acts, 22nd Edn., pp. 398 *et seq.* For the provisions relating to the notification of accidents under that Act, see *ibid.*, s. 80 and *op. cit.*, pp. 241 *et seq.* By *ibid.*, s. 81 there is power to extend to dangerous occurrences provisions as to notice of accidents, and by *ibid.*, s. 82 (3) notice of certain cases of poisoning or anthrax occurring in a factory must be given. For the non-application of the Factories Act 1961, to farming, see note (*a*) to s. 19.

(*a*) ***Regulations.*** No regulations have yet been made under this section.

(*b*) ***Agriculture.*** For definition, see s. 24 (1).

(*c*) ***Workers employed in agriculture.*** For definitions, see s. 24 (1).

(*d*) ***Records.*** An inspector has the power to require the production of, and to inspect, examine and copy records, etc., kept in pursuance of regulations made under this Act; see s. 10 (3) (a). Wilfully to make a false entry in a register, etc., or wilfully to make use of such an entry, is an offence; see s. 12.

(*e*) ***Contravenes.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2)).

(*f*) ***Offence.*** See ss. 14 to 16.

(*g*) ***Prove.*** This proviso expresses what otherwise would be implied: see *Nichols* v. *Hall* (1873), L.R. 8 C.P. 322; *Harding* v. *Price*, [1948] 1 K.B. 695; [1948] 1 All E.R. 283. The defendant must affirmatively prove lack of knowledge, but the burden resting upon him is lighter than that which rests upon the prosecution, since he discharges it if he proves the relevant matters on an even balance of probabilities (*R.* v. *Carr-Briant*, [1943] K.B. 607; [1943] 2 All E.R. 156).

9. Inquest in case of death by accident.—(1) Where a coroner (*a*) holds an inquest (*b*) on the body of a person whose death may have been caused by an accident occurring in the course of agricultural (*c*) operations, the coroner shall adjourn the inquest unless an inspector (*d*) or some other person on behalf of the appropriate Minister (*e*) is present to watch the proceedings, and shall, at least four days before holding the adjourned inquest, give to an inspector notice (*f*) of the time and place of holding the adjourned inquest:

Provided that—

(a) the coroner, before the adjournment, may take evidence to identify the body and may order the interment (*g*) thereof; and

(b) if the inquest relates to the death of not more than one person, the coroner shall not be bound to adjourn the inquest in pursuance of this section if, not less than twenty-four hours before it is held, he informed an inspector of the time and place of the holding thereof.

(2) Where evidence is given at any such inquest at which an inspector is not present of any neglect as having caused or contributed to the accident, or of any defect in any building, structure, machinery, plant, equipment or appliance appearing to the coroner or jury (*h*) to require a remedy, the coroner shall give to an inspector notice (*f*) of the neglect or defect.

(*a*) ***Coroner.*** For the appointment and powers of coroners, see the Coroners Acts 1887 to 1954, and 8 Halsbury's Laws of England (3rd Edn.) pp. 459 *et seq.*

(*b*) ***Inquest.*** The holding of and procedure at coroners' inquests is governed by the Coroners Rules, 1953 (S.I. 1953 No. 205), as amended.

It may be noted that this section does not contain provisions such as those in the Factories Act 1961, s. 83 (2) (*b*) (see Redgrave's Factorsie Acts, 22nd Edn., pp. 248 *et seq.*), which entitle an inspector, any relation of the deceased, the occupier of a factory, or a person appointed in writing by the majority of the workers at the factory, by a trade union or a friendly society to which the deceased belonged, or by an employers' association to question any witness, either personally or by counsel or solicitor, subject to the coroner's powers to disallow any improper question.

(*c*) ***Agriculture.*** For definition, see s. 24 (1).

(*d*) ***Inspector.*** For definition, see s. 241 (1).

(*e*) ***Appropriate Minister.*** For definition, see s. 24 (1).

(*f*) ***Notice.*** For the form, and mode of service of notices, see s. 20.

(*g*) ***Interment.*** A body must not be disposed of before a certificate of the registrar of births, deaths and marriages or an order of the coroner has been delivered to the person affecting the disposal; see the Births and Deaths Registration Act 1926, s. 1 (1) and the Births and Deaths Registration Act, 1953, s. 43 (1) and First Schedule, para. 2.

(*h*) ***Jury.*** If a death was caused by an accident, poisoning or disease, notice of which must be given to a government department or to any inspector or other officer of a government department, a coroner cannot sit without a jury; see the Coroners (Amendment) Act, 1926, s. 13 (2) (*c*).

This section does not contain provisions such as those of the Factories Act 1961, s. 83 (2) (*a*), which prohibit any person having a personal interest in or employed in or about or in the management of any factory in which the accident took place from serving on the jury. By rule 26 of the Coroners' Rules 1953 (S.I. 1953 No. 205), as amended, the proceedings and evidence at an inquest must be directed solely to ascertaining "(*a*) who the deceased was; (*b*) how, when and where the deceased came by his death; (*c*) the persons, if any, to be charged with murder, manslaughter, or infanticide, or of being accessory before the fact should the jury find that the deceased came by his death by murder, manslaughter or infanticide; and (*d*) the particulars for the time being required by the Registration Acts to be registered concerning the death" (see now the Births and Deaths Registration Act 1953, s. 15). By rule 27, "Neither the Coroner nor the jury shall express any opinion on any matters other than those referred to in the last foregoing Rule: Provided that nothing in this Rule shall preclude the coroner or the jury from making a recommendation designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held". By rule 33, "No verdict shall be framed in such a way as to appear to determine any question of civil liability". By rule 34, "The coroner shall not record any rider unless the rider is, in the opinion of the coroner, designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held".

Supplementary Provisions

10. Appointment of inspectors and their powers.— (1) The appropriate Minister (*a*) may, with the approval of the Treasury as to numbers, appoint such inspectors (*b*) as he thinks necessary for the execution of this Act and may pay them such salaries as he may, with the approval of the Treasury, determine.

(2) An inspector (*b*) may, for the purpose of the execution of this Act or regulations thereunder and on producing, if so required, some duly authenticated document showing his appointment, enter at all reasonable hours any land which is being used for agriculture (*c*) or which he has reasonable cause to believe (*d*) to be such land as aforesaid:

Provided that admission shall not be demanded under this subsection to a dwelling-house unless twenty-four hours' notice (*e*) of the intended entry has been given to the occupier of the house.

(3) An inspector (*b*) shall have power to do all or any of the following things for the purpose of the execution of this Act or regulations thereunder, that is to say:—

(a) to require the production of, and to inspect, examine and copy, registers, records or other documents kept in pursuance of regulations under this Act;

(b) to make such examinations and inquiries as may be necessary to ascertain whether the provisions of this Act and of regulations thereunder are complied with and, in particular, for that purpose to require any person whom he finds on such land as is mentioned in subsection (2) of this section or whom he has reasonable cause to believe (*a*) to be, or to have been within the preceding two months, employed to work (*f*) thereon to answer such questions as the inspector thinks fit to ask, so, however, that no one shall be required under this provision to answer any question tending to criminate himself (*g*);

(c) to require any person whom he finds on such land as is mentioned in subsection (2) of this section to give such information as it is in his power to give as to who is the occupier thereof or the employer of workers employed to work thereon.

(4) Where an inspector (*b*) believes that an offence under this Act has been committed and proposes, in exercise of the powers conferred by paragraph (b) of the last foregoing subsection, to ask questions of a person for the purpose of verifying the inspector's belief or of ascertaining particulars of the offence, it shall be his duty, before asking the questions, to inform that person of his right to refuse to answer a question tending to criminate him (*g*).

(5) A person who—

(a) fails to comply with any requirement imposed by an inspector (*b*) under this section; or

(b) in purported compliance with a requirement so imposed to answer any question or give any information makes

a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular; or

(c) prevents, or attempts to prevent, any other person from appearing before an inspector (*b*) or from answering any question to which an inspector may, by virtue of this section, require an answer; or

(d) obstructs an inspector (*b*) in the exercise or performance of his powers or duties;

shall be guilty of an offence (*h*).

(*a*) ***Appropriate Minister.*** For definition, see s. 24 (1).

(*b*) ***Inspectors.*** The term "inspector" is defined by s. 24 (1), to mean an inspector appointed under the Act. The inspectorate is drawn from the staffs of the agricultural committees, who carry out inspections under the Agricultural Wages Act 1948 and the Agriculture (Poisonous Substances) Act 1952; see the General Note to s. 3 of that Act.

(*c*) ***Agriculture.*** For definition, see s. 24 (1).

(*d*) ***Reasonable cause to believe.*** See note (*d*) to s. 3 of the Agriculture (Poisonous Substances) Act 1952.

(*e*) ***Notice.*** For the form, and mode of service, of notices, see s. 20.

(*f*) ***Employed to work.*** For definitions, see s. 24 (1).

(*g*) ***Tending to criminate himself.*** See note (*g*) to s. 3 of the Agriculture (Poisonous Substances) Act 1952.

(*h*) ***Offence.*** See ss. 14 to 16.

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11. Inspections by sanitary authority.—(1) A person duly authorised in writing by a sanitary authority (*a*) may, on producing, if so required, evidence of his authority, enter at all reasonable hours any land for the purpose of determining

(a) whether, and if so, in what manner, the power conferred by subsection (1) of section three (*b*) of this Act is to be exercised as respects that land or whether there has been a failure to comply, as respects that land, with the requirements of a notice under that subsection; or

(b) whether, and if so, in what manner, the power conferred by section five (*c*) of this Act is to be exercised as respects a sanitary convenience on that land, or whether there has been a failure to comply, as respects a sanitary convenience on that land, with the requirements of a notice under that section:

Provided that admission shall not be demanded under this subsection to a dwelling-house unless twenty-four hours' notice (*d*) of the intended entry has been given to the occupier of the house.

(2) A person who obstructs a person acting in the exercise of his powers under this section shall be guilty of an offence (*e*).

(*a*) ***Sanitary authority.*** For definition, see s. 24 (1).

(*b*) ***Section 3 (1).*** This confers power to require the provision of sanitary conveniences for workers.

(*c*) ***Section 5.*** This confers power to secure the maintenance and cleanliness of sanitary conveniences.

(*d*) ***Notice.*** For the form, and mode of service of notices, see s. 20.

(*e*) ***Offence.*** See ss. 14 to 16.

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12. Falsification of records, &c.—A person who wilfully makes a false entry in a register, record, return (*a*) or other document kept or furnished in pursuance of regulations under this Act, or wilfully makes use of such a false entry, shall be guilty of an offence (*b*).

(*a*) ***Register . . . return.*** Provision is made by s. 8, for the making of regulations in connection with the notification of, and keeping of records as to, accidents and diseases.

(*b*) ***Offence.*** See ss. 14 to 16.

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13. Duties of employees.—(1) A worker employed in agriculture (*a*) who wilfully interferes with, or misuses, any equipment, appliance, facilities or other thing provided in pursuance of this Act or regulations thereunder shall be guilty of an offence (*b*).

(2) Nothing in this section shall be taken as limiting the power conferred by section one of this Act to make by regulations any such provision as is therein mentioned, including further provision as to matters which are the subject of this section.

General note. See the General Note to s. 2 of the Agriculture (Poisonous Substances) Act 1952.

(*a*) ***Worker . . . agriculture.*** For definitions, see s. 24 (1).

(*b*) ***Offence.*** See ss. 14 to 16.

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14. Punishment of offences.—(1) A person (*a*) guilty of an offence (*b*) under this Act shall be liable, on summary conviction (*c*), to a fine not exceeding [two hundred] pounds (*d*).

(2) Where a contravention (*e*) of a provision of regulations under this Act consists in a failure to do anything at or within a time specified in the regulations, and the regulations provide that this subsection shall apply to a failure so to do it, the contravention shall be deemed to continue until that thing is done.

(3) Where an offence (*b*) under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance (*f*) of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection, the expression "director", in relation to any body corporate which is established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking and whose affairs are managed by the members thereof, means a member of that body.

(*a*) ***Person.*** By s. 19 of the Interpretation Act 1889, "the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

(*b*) ***Offence.*** See, further, ss. 15 and 16.

(*c*) ***Summary conviction.*** See, generally, as to summary conviction and procedure the Magistrates' Courts Act 1952, the Magistrates' Courts Act 1957, the Magistrates' Courts Rules 1968 (S.I. 1968 No. 1920) and 25 Halsbury's Laws of England (3rd Edn.), pp. 99 *et seq.*

(*d*) ***Two hundred pounds.*** Substituted for £50, in respect of offences committed after 9th August 1972, by s. 14 of the Agriculture (Miscellaneous Provisions) Act 1972.

(*e*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2).

(*f*) ***Connivance.*** There is no direct authority on the construction of this term as used in the present context and in other similar statutory provisions. It is submitted, however, that the expression "connivance" so used connotes a specific mental state not amounting to actual consent to the act or default in question, concomitant with a failure to prevent that act or default. The mental state referred to is that which is sometimes termed "wilful blindness", that is to say, an intentional shutting of the eyes to events of which in his own interests the percipient would

prefer to remain unaware. This construction of the expression "connivance" accords both with its philology (the derivation is from the Latin "connivere", literally "to wink" and figuratively "to wink at") and with the use made of it by the courts in expounding the common law aspects of the concept of *mens rea* (see *Roper* v. *Taylor's Central Garages* (*Exeter*), [1951] 2 T.L.R. 284, D.C.). It accords also with the construction of the same word in connection with matrimonial offences (see *Gipps* v. *Gipps* (1864), 11 H.L. Cas. 1, *per* Lord WESTBURY at p. 14; *Manning* v. *Manning*, [1950] 1 All E.R. 602, C.A.).

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15. Penalty on persons actually committing offences for which others are liable.—Where a contravention (*a*) of a provision of this Act or of regulations thereunder for which a person is, by virtue of the last foregoing section, liable on conviction to a penalty was due to an act or default (*b*) of another person, then, whether proceedings are or are not taken against the first-mentioned person, that other person may be charged with, and convicted of, the contravention, and shall, on conviction, be liable to the same punishment (*c*) as that to which the first-mentioned person is, on conviction, liable.

General note. This section provides that a person whose act or default caused a contravention of the Act or regulations for which another is liable may himself be charged with and convicted of the contravention. This is a "short-circuit" procedure, as compared with the "third-party" procedure used in s. 5 (1), (2) of the Agriculture (Poisonous Substances) Act 1952, and in s. 161 of the Factories Act 1961. In this respect it resembles s. 5 (3) of the Agriculture (Poisonous Substances) Act 1952, and s. 66 of the Offices, Shops and Railway Premises Act 1963.

(*a*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2).

(*b*) ***Act or default.*** See the note to s. 5 of the Agriculture (Poisonous Substances) Act 1952. In view of s. 16, the only consequence of interpreting the words "act or default" as excluding negligence is to place the burden of proving diligence upon the person charged. It is further submitted that if an offence requires *mens rea* (*e.g.*, wilfulness) then the act or default relied on must be wrongful in the sense that it is accompanied by the *mens rea* appropriate to the offence concerned. If this were not so, then an innocent agent who, for example, made a false entry under s. 12 at the dictation of another who knew of the falsity (and who, therefore, "wilfully made a false entry") would be chargeable equally with his principal, and the necessity for *mens rea* in s. 12 would be circumvented.

(*c*) ***Same punishment.*** That is to say, a fine not exceeding £200; see s. 14 (1).

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16. Defence available to persons charged with offences.—It shall be a defence (*a*) for a person (*b*) charged with a contravention (*c*) of a provision of this Act or of regulations thereunder to prove (*d*) that he used all due diligence (*e*) to secure compliance with that provision.

General note. There is no similar provision in the Agriculture (Poisonous Substances) Act 1952, or in the Factories Act 1961, but an identical provision is to be found in s. 67 of the Offices, Shops and Railway Premises Act 1963.

(*a*) ***Defence.*** The section is only concerned with criminal liability and does not provide a defence to a civil action: *Yelland* v. *Powell Duffryn Associated Collieries, Ltd.*, [1941] 1 K.B. 154; [1941] 1 All E.R. 278, C.A.; *Potts* (*or Riddell*) v. *Reid*, [1943] A.C. 1; [1942] 2 All E.R. 161, H.L. and *Gallagher* v. *Dorman, Long & Co., Ltd.*, [1947] 2 All E.R. 38, C.A.

(*b*) ***Person.*** See note (*a*) to s. 14.

(*c*) ***Contravention.*** A contravention of any provision includes a failure to comply with that provision (s. 24 (2)).

(*d*) ***Prove.*** The burden of proof laid on the defendant is less onerous than that resting on the prosecutor as regards proving the offence, and may be discharged by satisfying the court of the probability of what the defendant is called on to prove; see *R.* v. *Carr-Briant*, [1943] K.B. 607; [1943] 2 All E.R. 156, C.C.A., and *R.* v. *Dunbar*, [1958] 1 Q.B. 1; [1957] 3 All E.R. 737, C.C.A.

(*e*) ***Due diligence.*** Whether the defendant has or has not used all due diligence is a question of fact, but on a case stated the High Court will interfere if there was no evidence to support a finding on this point; see *R. C. Hammett, Ltd.* v. *Crabb* (1931), 145 L.T. 638.

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17. Provisions as to exercise of regulation-making powers.—(1) Regulations under any provision of this Act may be either regulations applying to Great Britain (*a*) and made by the Minister of Agriculture, Fisheries and Food and the Secretary of State (*b*) jointly, or regulations applying to England and Wales (*c*) only and made by the said Minister, or regulations applying to Scotland only and made by the Secretary of State.

(2) When the Minister of Agriculture, Fisheries and Food and the Secretary of State, or either of them, propose or proposes to make regulations under this Act, they or he shall, before making the regulations, consult (*d*) with such organisations as appear to them or him to represent the interests concerned.

(3) The powers conferred by this Act to make regulations shall be exercisable by statutory instrument (*e*).

(4) No regulations shall be made under section one of this Act unless a draft thereof has been laid before Parliament and approved by resolution of each House of Parliament (*f*).

(5) A statutory instrument containing regulations made under any provision of this Act (other than section one) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

(*b*) ***Secretary of State.*** That is to say, one of Her Majesty's Principal Secretaries of State for the time being; see the Interpretation Act 1889, s. 12 (3).

(*c*) ***England and Wales.*** The town of Berwick-upon-Tweed is included; see the Wales and Berwick Act 1746, s. 3.

(*d*) ***Consult.*** On what constitutes consultation, see especially *Rollo* v. *Minister of Town and Country Planning*, [1948] 1 All E.R. 13, C.A., and *Re Union of Whippingham and East Cowes Benefices, Derham* v. *Church Comrs. of England*, [1954] A.C. 245; [1954] 2 All E.R. 22, P.C.

(*e*) ***Statutory instrument.*** For provisions as to statutory instruments generally, see the Statutory Instruments Act 1946 (36 Statutes Supp. 95). For provisions as to annulment, see ss. 5 (1) and 7 (1) of that Act; and see also the Laying of Documents before Parliament (Interpretation) Act 1948.

(*f*) ***Approved . . . Parliament.*** Compare s. 1 (7) of the Agriculture (Poisonous Substances) Act 1952. Whereas that subsection provides that all regulations made under that Act are effective unless annulled in pursuance of a resolution of either House of Parliament, this subsection provides that, in so far as regulations made under s. 1 of this Act are concerned they shall not be effective until a draft has been laid before Parliament and they have been approved by a resolution of both Houses. In so far as regulations made under any section of this Act other than s. 1 are concerned, they are, by virtue of sub-s. (5) effective unless annulled by a resolution of either House of Parliament.

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18. Power to extend Act to certain persons employed otherwise than in agriculture.—(1) This Act may by order be extended (subject to such exceptions, adaptations and modifications, if any, as may be specified in the order) to such class of persons employed otherwise than in agriculture as may be so specified, being a class of persons whose work is done in conditions appearing to the authority by whom the

order is made to be similar to those in which the work of persons employed in agriculture is done.

(2) An order under this section may be either one extending this Act in its application to Great Britain (*a*) and made by the Minister of Agriculture, Fisheries and Food and the Secretary of State (*b*) jointly, or one extending this Act in its application to England and Wales (*c*) only and made by the said Minister, or one extending this Act in its application to Scotland only and made by the Secretary of State.

(3) An order under this section may be varied or revoked by a subsequent order thereunder made by the authority who made the original order.

(4) The powers conferred by this section shall be exercisable by statutory instrument (*d*) and no order shall be made under this section unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament (*e*).

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.
(*b*) ***Secretary of State.*** See note (*b*) to s. 17.
(*c*) ***England and Wales.*** See note (*c*) to s. 17.
(*d*) ***Statutory instrument.*** See note (*e*) to s. 17.
(*e*) ***Approved . . . Parliament.*** See note (*f*) to s. 17.

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19. Power to exclude operation of provisions of the Factories Acts 1937 and 1948.—(1) Provision may be made by order for directing that such of the provisions of the Factories Acts 1937 and 1948 (*a*) as may be specified in the order shall not apply, or shall not apply to such extent as may be so specified, to—

(a) any premises occupied for agricultural (*b*) purposes;

(b) any premises whereon there is carried on work in which are employed persons of a class to which this Act extends by virtue of an order under the last foregoing section.

(2) An order under this section may be either one relating to premises in any part of Great Britain (*c*) and made by the Minister of Agriculture, Fisheries and Food, the Secretary of State (*d*) and the Minister of Labour and National Service (*e*)

jointly, or one relating to premises in England and Wales (*f*) only and made by the Minister of Agriculture, Fisheries and Food and the Minister of Labour and National Service jointly or one relating to premises in Scotland only and made by the Secretary of State and the Minister of Labour and National Service jointly.

(3) An order under this section may be varied or revoked by a subsequent order thereunder made by the authority who made the original order.

(4) The powers conferred by this section shall be exercisable by statutory instrument (*g*) and no order shall be made under this section unless a draft thereof has been laid before Parliament and has been approved by resolution of each House of Parliament (*h*).

(*a*) ***Factories Acts 1937 and 1948.*** These Acts were repealed and replaced by the Factories Act 1961, which is expounded in Redgrave's Factories Acts (22nd Edn.). The Factories Acts do not cover farming (*per* SOMERVELL, L.J., in *Hendon Corporation* v. *Stanger*, [1948] 1 All E.R. 377, at p. 380, so interpreting *Nash* v. *Hollinshead*, [1901] 1 K.B. 700). The power to make an order under sub-s. (1) (a) would therefore appear necessary only if *Nash* v. *Hollinshead* (which was decided by the Court of Appeal) were overruled by the House of Lords.

(*b*) ***Agricultural.*** For definition, see s. 24 (1).

(*c*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

(*d*) ***Secretary of State.*** See note (*b*) to s. 17.

(*e*) ***Minister of Labour and National Service.*** Now the Secretary of State for Employment.

(*f*) ***England and Wales.*** See note (*c*) to s. 17.

(*g*) ***Statutory instrument.*** See note (*e*) to s. 17.

(*h*) ***Approved . . . Parliament.*** See note (*f*) to s. 17.

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20. Form, and mode of service, of notices.—A notice under this Act must be in writing (*a*) and may be served on the person to whom it is to be given either by delivering it to him or by sending it by post (*b*) addressed to him at his usual or last known place of abode (*c*).

(*a*) ***Writing.*** This includes printing, lithography, photography and other modes of representing and reproducing words in a visible form; see the Interpretation Act 1889, s. 20.

(*b*) ***Sending it by post.*** Service is deemed to be effected if a letter containing the document is properly addressed, prepaid and posted, and, unless the contrary is proved, it is deemed to have been effected at the

time when the letter would have been delivered in the ordinary course of post; see the Interpretation Act 1889, s. 26 (24 Halsbury's Statutes (2nd Edn.) 224). In *Sandland* v. *Neale*, [1956] 1 Q.B. 241; [1955] 3 All E.R. 571, it was held that a notice sent by registered post to the defendant's residence, where his wife was residing, was properly addressed even though it was known that he was in hospital as the result of an accident; but in *R.* v. *Appeal Committee of County of London Quarter Sessions, Ex parte Rossi*, [1956] 1 Q.B. 682; [1956] 1 All E.R. 670, C.A.; which was followed in *Beer* v. *Davies*, [1958] 2 Q.B. 187; [1958] 2 All E.R. 255, it was held that a notice sent in a registered letter, which was returned to the sender undelivered, had not been properly served. See, further, *Moody v. Godstone R.D.C.*, [1966] 2 All E.R. 696; [1966] 1 W.L.R. 1085 and *Maltglade, Ltd. v. St. Albans R.D.C.* [1972] 3 All E.R. 129. There must be a delivery accepted by the person to be served or by someone authorised to accept the delivery of letters on his behalf: *Layton* v. *Shires*, [1958] 2 Q.B. 294; [1959] 3 All E.R. 587; *Hosier* v. *Goodall*, [1962] 2 Q.B. 401; [1962] 1 All E.R. 30.

(*c*) ***Place of abode.*** A place of business is a "place of abode"; see *Mason* v. *Bibby* (1864), 2 H. & C. 881, *per* POLLOCK, C.B., at p. 888; but a man may have two "places of abode", one where he abides by night and another where he abides by day; see *per* MARTIN, B., in the same case, at p. 888.

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21. Annual reports.—(1) The Minister of Agriculture, Fisheries and Food shall make an annual report to Parliament of his proceedings under this Act.

(2) The Secretary of State (*a*) shall include in the annual report made in pursuance of subsection (2) of section four of the Small Landholders (Scotland) Act 1911, a report of his proceedings under this Act.

(*a*) ***Secretary of State.*** See note (*b*) to s. 17.

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22. Application to the Crown.—Sections one, two and six of this Act and regulations under any of those sections shall, in so far as they impose duties failure to comply with which might give rise to a liability in tort, be binding upon the Crown.

General note. The Crown is not amenable to criminal proceedings, but this section, together with the Crown Proceedings Act 1947, s. 2 (2), makes the Crown civilly liable for breach of a duty imposed by ss. 1, 2 and 6 and by regulations under those sections, to the same extent as a private individual of full age and capacity. For proceedings against the Crown generally, see 11 Halsbury's Laws of England, 3rd Edn., pp. 8 *et seq.*

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23. Expenses.—Any expenses incurred by the Minister of Agriculture, Fisheries and Food or the Secretary of State in carrying out this Act shall be defrayed out of moneys provided by Parliament.

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24. Interpretation.—(1) In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

"agriculture" includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds, and "agricultural" shall be construed accordingly (*a*);

"agricultural holding" (*b*), "fixed equipment" (*c*) and "landlord" (*d*) have the same meanings as in the Agricultural Holdings Act 1948;

"agricultural unit" means land which is occupied as a unit for agricultural purposes (*a*);

"the appropriate Minister" means, for the purposes of the application of this Act or regulations thereunder to England and Wales, the Minister of Agriculture, Fisheries and Food, and, for the purposes of the application of this Act or regulations thereunder to Scotland, the Secretary of State (*e*);

"consumable produce" means produce grown for consumption or for other use after severance from the land on which it is grown;

"inspector" (*f*) means an inspector appointed under this Act;

"sanitary authority" means, save as respects the administrative county of London (*g*), the council of a borough or urban or rural district and, as respects the administrative county of London, a sanitary authority for the purposes of the Public Health (London) Act 1936 (*h*);

"worker" means a person employed under a contract of service (*i*) or apprenticeship and "employer" and "employed" have corresponding meanings;

"young person" means a person who is over compulsory school age for the purposes of the Education Act 1944, but has not attained the age of eighteen (*j*).

(2) Any reference in this Act to a contravention of any provision shall include a reference to a failure to comply with that provision.

(3) For the purposes of this Act an agricultural unit which is situate within the districts of two or more sanitary authorities shall be deemed to be wholly situate within the district of that one of them within whose district the greater or, as the case may be, the greatest part of the unit is situate.

(4) Any reference in this Act to any other enactment shall be construed as a reference to that enactment as amended by any subsequent enactment.

(*a*) ***Agriculture; agricultural unit.*** The definitions in this section are not identical with those in s. 109 (2), (3) of the Agriculture Act 1947, nor with those in s. 94 (1) of the Agricultural Holdings Act 1948.

(*b*) ***Agricultural holding.*** This expression is defined in ss. 94 (1) and 1 (1) of the Agricultural Holdings Act 1948. By s. 1 (1) of that Act "the expression 'agricultural holding' means the aggregate of the agricultural land comprised in a contract of tenancy, not being a contract under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord".

(*c*) ***Fixed equipment.*** See s. 94 (1) of the Agricultural Holdings Act, 1948, which provides: "'fixed equipment' includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or of produce thereof, or amenity, and any reference to fixed equipment on land shall be construed accordingly".

(*d*) ***Landlord.*** See s. 94 (1) of the Agricultural Holdings Act 1948, which provides: "'landlord' means any person for the time being entitled to receive the rents and profits of any land".

(*e*) ***Secretary of State.*** See note (*b*) to s. 17.

(*f*) ***Inspector.*** For the appointment of inspectors and for their powers, see s. 10.

(*g*) ***Administrative County of London.*** This was abolished by s. 3 (1) (*b*) of the London Government Act 1963, and by *ibid.*, s. 4 (4), references in existing enactments to the Administrative County of London have effect as references to Greater London other than the outer London boroughs.

(*h*) ***Public Health (London) Act 1936.*** By s. 1 (2) of the Public Health (London) Act 1936: "without prejudice to the provisions of this Act relating to the port health authority, the sanitary authorities for the purposes of this Act shall be—(*a*) as respects the city, the common

council, (*b*) as respects the Inner Temple and the Middle Temple, the respective overseers thereof, and (*c*) as respects a borough, the council of the borough . . .".

(*i*) ***Worker . . . contract of service.*** This definition of the term "worker" requires examination in two respects. In the first place, a "worker" must be in contractual relations with his employer (see *O'Sullivan* v. *Thompson–Cook* (1973), 14 K.I.R. 108, D.C.—relief worker supplied to farmer by agency held not to have contracted with farmer). In view of the statement in the Gowers Committee Report (Cmd. 7664), para. 123, that "two-thirds of the country's agricultural undertakings consist of small units where a substantial part of the necessary labour is supplied by the farmer himself and his family" it is clearly of importance to decide in any given case whether a person working on a farm is working under an arrangement which is enforceable in law as a contract, or whether he is not. For there to be a contract there must be consideration moving from the employer (which need not be a money consideration) and possibly also an intention on each side to create legal relations, although this latter requirement is the subject of controversy (see 8 Halsbury's Laws of England, 3rd Edn., p. 54). In the second place, the contract must be one of service, and not one for services (see *O'Sullivan* v. *Thompson–Cook*, *supra*). This is the distinction drawn, principally in the law of tort, between a servant and an independent contractor. The nature of the difference is generally said to reside in this, that a master has a right to control his servant in respect of the manner in which the work is to be done, whereas an employer contracts with his independent contractor for the doing of the work but must leave the mode of performance to the latter. There are indications that this traditional test is proving inadequate to modern conditions but in the context of agricultural relations it would appear to be a valid and useful test.

(*j*) ***Young person . . . eighteen.*** Section 35 of the Education Act 1944 provides that a person shall be deemed to be over compulsory school age as soon as he has attained the age of fifteen years but, pursuant to the proviso to that section, the age has been raised to sixteen years with effect from 1st September 1972 (Raising of the School Leaving Age Order 1972 (S.I. 1972 No. 444)).

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25. Application to Scotland.—(1) The provisions of this section shall have effect for the application of this Act to Scotland.

(2) Any regulations under section one of this Act providing for imposing requirements with respect to the execution of works of the nature of fixed equipment shall provide for imposing such requirements in relation to any land being an agricultural holding on the landlord of the holding.

(3) For section three of this Act there shall be substituted the following section—

"3.—(1) If it appears (*a*) to a local authority that an agricultural unit in their district on which workers are

employed in agriculture is without suitable and sufficient sanitary conveniences or washing facilities available for the use of workers so employed, the authority shall, by notice (*b*) served on the appropriate person (*c*), require him, within such time as may be specified in the notice, to execute such works or take such other steps for the purpose of providing the unit with suitable and sufficient sanitary conveniences or washing facilities, as the case may be, available for the use of workers employed thereon in agriculture as may be specified in the notice.

(2) In considering, for the purposes of this section, whether an agricultural unit is without suitable and sufficient sanitary conveniences or washing facilities available for the use of workers employed on the unit in agriculture, regard shall be had to the number and sex of the workers so employed, the location and duration of their work and to all other relevant circumstances.

(3) A local authority shall not serve a notice under this section requiring the execution of works of the nature of fixed equipment unless they are satisfied that special circumstances exist which render requisite the execution of such works, and no such notice shall be of any effect unless it states that the authority are so satisfied and what those circumstances are.

(4) For the purposes of this section the expression "appropriate person" means—

(a) in the case of a notice requiring the execution, on land being an agricultural holding, of works of the nature of fixed equipment, the landlord of the holding;

(b) in the case of a notice requiring the execution, on land in the occupation of the owner thereof, of works of the nature aforesaid, the owner of the land;

(c) in the case of a notice requiring the execution of works other than works of the nature of fixed equipment, or the taking of other steps, the occupier of the unit to which the notice relates.

(5) Any person aggrieved by a notice under this section may appeal to the sheriff by giving notice of appeal within twenty-

one days after the date of the service of the notice; and the sheriff may either confirm the notice or, if he is satisfied that the works required to be executed or the steps required to be taken are unnecessary or are unreasonable in character or extent, or are not reasonably practicable, or that the local authority have refused unreasonably to approve the execution of alternative works or the taking of alternative steps, or that for any other reason the notice should be disallowed or varied, may disallow the notice or may confirm the notice subject to the expenses of the appeal as he may think equitable.

The decision of the sheriff shall be final and shall be binding both on the authority and on the person on whom the notice is served.

(6) Subject to the right of appeal conferred by the last foregoing subsection and to any order made by the sheriff on such appeal, a person on whom a notice is served under this section who fails to comply with the requirements of the notice shall be guilty of an offence (*d*)."

(4) Where by virtue of any regulations made under section one of this Act or of a notice served under section three thereof any works of the nature of fixed equipment are required to be executed on any land being an agricultural holding, the provisions of subsections (2), (3) and (5) of section five of the Agricultural Holdings (Scotland) Act 1949 (which defines the respective liabilities of landlord and tenant for the provision and maintenance of fixed equipment) and section eighteen of that Act (which empowers the landlord of a holding to enter thereon for the purpose of providing fixed equipment) shall apply in relation to such works as aforesaid as they apply in relation to fixed equipment within the meaning of that Act.

(5) Where the landlord of an agricultural holding has executed thereon works of the nature of fixed equipment which are required to be executed as mentioned in the last foregoing subsection or has executed similar works at the request of, or in agreement with, the tenant, section eight of the Agricultural Holdings (Scotland) Act 1949 (which provides for increases of rent in respect of improvements carried out by the landlord) shall have effect as if the works so executed were such an improvement as is mentioned in subsection (1) of that section.

(6) For section five there shall be substituted the following section—

"(1) Any sanitary convenience and any washing facilities available for the use of workers employed on an agricultural unit in agriculture and any sanitary convenience provided in pursuance of regulations under section four of this Act shall be kept properly cleansed.

(2) In the event of a contravention of the provisions of this section in relation to a sanitary convenience provided in pursuance of regulations under the said section four, the employer by whom it was provided, and in any other case the occupier of the agricultural unit, shall be guilty of an offence" (*d*).

(7) In section seven for the reference to section eighteen of the Children and Young Persons Act 1933 there shall be substituted a reference to section twenty-eight of the Children and Young Persons (Scotland) Act 1937 (*e*).

(8) In section eleven for paragraph (b) of subsection (1) there shall be substituted the following paragraph—

"(b) whether there has been a failure to comply, as respects a sanitary convenience or any washing facilities on that land, with the requirements of section five of this Act".

(9) For any reference to a sanitary authority there shall be substituted a reference to a local authority.

(10) In this Act the following expressions have the meanings hereby assigned to them respectively, that is to say—

"agricultural holding" (*f*), "fixed equipment" (*g*) and "landlord" (*h*) have the like meanings as in the Agricultural Holdings (Scotland) Act 1949;

"owner" (*i*) has the like meaning as in the Public Health (Scotland) Act 1897, and in the case of an agricultural unit occupied by a landholder within the meaning of the Small Landholders (Scotland) Acts 1886 to 1931, or a crofter within the meaning of the Crofters (Scotland) Act 1955, means that landholder or crofter;

"local authority" means a county or town council;

"tort" means delict or quasi-delict;

"worker" means a person employed under a contract of service or apprenticeship or a person employed in accordance with the provisions of Part III of the Children and Young Persons (Scotland) Act 1937 (*j*), and the

Education (Exemptions) (Scotland) Act 1947 (*k*), and "employer" and "employed" have corresponding meanings;

"young person" means a person who is over school age (*l*) for the purposes of the Education (Scotland) Act 1946, but who has not attained the age of eighteen;

and subsection (1) of section twenty-four shall have effect as if the definitions of "agricultural holding", "fixed equipment", "landlord", "sanitary authority", "worker" and "young person" were omitted.

(*a*) ***Appears.*** The local authority must have regard "to the number and sex of the workers so employed, the location and duration of their work and to all other relevant circumstances" (s. 3 (2), as modified).

(*b*) ***Notice.*** The form and mode of service are specified in s. 20.

(*c*) ***Appropriate person.*** See s. 3 (4) as modified.

(*d*) ***Offence.*** For penalty, see s. 14 (1).

(*e*) ***Children and Young Persons (Scotland) Act 1937.*** See note (*j*), *infra*.

(*f*) ***Agricultural holding.*** See s. 1 (1) of the Agricultural Holdings (Scotland) Act 1949, which provides: "the expression 'agricultural holding' means the aggregate of the agricultural land comprised in a lease, not being a lease under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord".

(*g*) ***Fixed equipment.*** See s. 93 (1) of the Agricultural Holdings (Scotland) Act 1949, which provides: "'fixed equipment' includes any building or structure affixed to land and any works on, in, over or under land, and also includes anything grown on land for a purpose other than use after severance from the land, consumption of the thing grown or produce thereof, or amenity, and, without prejudice to the foregoing generality, includes the following things, that is to say—

(a) all permanent buildings, including farm houses and farm cottages, necessary for the proper conduct of the agricultural holding;

(b) all permanent fences, including hedges, stone dykes, gate posts, and gates;

(c) all ditches, open drains and tile drains, conduits and culverts, ponds, sluices, flood banks and main water courses;

(d) stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding;

(e) farm access or service roads, bridges, and fords;

(f) water and sewerage systems;

(g) electrical installations including generating plant, fixed motors, wiring systems, switches and plug sockets;

(h) shelter belts;

and references to fixed equipment on land shall be construed accordingly".

(*h*) ***Landlord.*** See s. 93 (1) of the Agricultural Holdings (Scotland) Act 1949, which provides: "'landlord' means any person for the time being entitled to receive the rents and profits or to take possession of any agricultural holding, and includes the executor, administrator, assignee, heir-at-law, legatee, disponee, next-of-kin, guardian, curator bonis or trustee in bankruptcy, of a landlord".

(*i*) ***Owner.*** See s. 3 of the Public Health (Scotland) Act 1897, which provides: "The word 'owner' means the person for the time entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the premises, and includes a trustee, factor, tutor, or curator, and in the case of a public or municipal property applies to the persons to whom the management thereof is entrusted".

The meaning of the word "landholder" for the purposes of the Small Landholders (Scotland) Acts 1886 to 1931 is stated in s. 2 (2) of the Small Landholders (Scotland) Act 1911 to be: "every existing crofter, every existing yearly tenant, every qualified leaseholder, and every new holder, and the successors of every such person in the holding being his heirs or legatees".

The meaning of the word "crofter" for the purposes of the Crofters (Scotland) Act 1955, is (by s. 3 (2)) "the tenant of a croft". The word "croft" is defined in s. 3 (1) to mean:

"(a) as from the commencement of this Act, every holding (whether occupied by a landholder or not) situate in the crofting counties which was, immediately before the commencement of this Act, a holding to which any of the provisions of the Landholders Acts relating to landholders applied;

(b) as from the commencement of this Act, every holding situate as aforesaid which was, immediately before the commencement of this Act, a holding to which the provisions of the Landholders Acts relating to statutory small tenants applied;

(c) as from the date of registration, every holding situate as aforesaid which is constituted a croft by the registration of the tenant thereof as a crofter under section four of this Act".

(*j*) ***Children and Young Persons (Scotland) Act 1937, Part III.*** This Part places restrictions upon the employment of children (see ss. 28 to 37, as amended). The effect of s. 28 (1) (a) of the Act, as amended by the Education (Scotland) Act 1949 and the Children and Young Persons Act 1963, is to prohibit the employment of children under the age of fourteen.

(*k*) ***Education (Exemptions) (Scotland) Act 1947.*** This Act made temporary provision for the exemption of children from attendance at school to enable their employment in gathering the potato crop. It is no longer in force.

(*l*) ***Over school age.*** By s. 32 (1) of the Education (Scotland) Act 1962 a person is deemed to be over school age if he has attained the age of fifteen years, though this age may, by regulations under s. 32 (3) of that Act, be raised to sixteen, a power which has been exercised, with effect from 1st September 1972, by the Raising of the School Leaving Age (Scotland) Regulations 1972 (S.I. 1972 No. 59).

26. Short title and extent.—(1) This Act may be cited as the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

(2) This Act shall not extend to Northern Ireland.

THE AGRICULTURE (FIRST AID) REGULATIONS 1957

(S.I. 1957 No. 940)

Dated 30th May 1957, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland under section* 6 (1)–(3) *of the Agriculture (Safety, Health and Welfare Provisions) Act* 1956.

General note. A contravention of these regulations is, by s. 1 (6) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, p. 407, *ante*, an offence for which penalties are provided by s. 14 of that Act. These regulations are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding upon the Crown; see s. 22 of that Act.

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1. Citation, extent and commencement.—These regulations, which may be cited as the Agriculture (First Aid) Regulations 1957, shall apply to Great Britain (*a*) and shall come into operation on the first day of August, nineteen hundred and fifty-seven.

(*a*) ***Great Britain.*** For the meaning of this term see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

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2. Interpretation.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"box" includes cupboard;

"the British Pharmaceutical Codex" means the book published by that name by the Pharmaceutical Society of Great Britain;

"agriculture", "agricultural unit", "worker", "employer", and "employed" have the meanings respectively

assigned to them, as respects England and Wales (*a*), by subsection (1) of section 24 of the Act, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of the Act.

(2) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(*a*) ***England and Wales.*** For the meaning of this term see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

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3. Contents of first aid box.—For the purposes of paragraph (a) of subsection (1) of section 6 of the *Act* (which provides that a *worker employed* in *agriculture* shall not be *employed* to work on an *agricultural unit* unless there is provided thereon a first aid *box* or cupboard which contains first aid requisites and appliances of such descriptions and in such quantities as may be prescribed by regulations applicable to the part of Great Britain (*a*) in which the unit is situate) the first aid requisites and appliances to be provided (*b*) shall be—

(a) of the descriptions specified in the first column of Part I of the Schedule to these regulations; and

(b) in relation to *workers* of the number mentioned at the head of the second and third columns respectively of the said Part I, of the respective quantities specified in the appropriate column opposite each item mentioned in the said first column.

General note. Compare the provisions as to first aid contained in s. 61 of the Factories Act 1961, and the regulations made thereunder, for which see Redgrave's Factories Acts, 22nd Edn., pp. 203 *et seq.*

(*a*) ***Great Britain.*** For the meaning of this term see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

(*b*) ***Provided.*** As to the meaning of this expression, see note (*a*) to reg. 6 of the Agriculture (Poisonous Substances) Regulations 1963, p. 386.

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4. First aid containers.—(1) The *employer* of *workers employed* in *agriculture* on an *agricultural unit* (whether or not he is the occupier of the unit) shall, subject to the provisions of this regulation, at all times provide (*a*) one container of

first aid requisites and appliances for each 30 workers *employed* by him on the unit:

Provided that an *employer* (*a*) shall not be required to provide more than three containers on any one unit.

(2) For the purposes of paragraph (1) of this regulation:—

(a) in determining the number of *workers* on an *agricultural unit* any number less than 30 shall be reckoned as 30; and

(b) in determining the number of *workers* in the employment of an *employer* who provides a first aid *box* the following number of *workers* shall be disregarded:

(i) where a first aid *box* is provided containing the quantity of first aid requisites and appliances specified in the second column of Part I of the Schedule to these regulations, 3 *workers*; or

(ii) where a first aid *box* is provided containing the quantity of first aid requisites and appliances specified in the third column of the said Part I, 10 *workers*;

(c) where a *worker*, *employed* in *agriculture*, works on an *agricultural unit* of which his *employer* is not the occupier, then, provided that no monetary consideration exists for such an arrangement between the occupier of the unit and the *employer*, the *worker* shall be deemed to be in the employment of the occupier of the unit.

(3) The first aid requisites and appliances in each container shall be of the descriptions specified in the first column, and of the respective quantities specified in the second column opposite each item in the first column, of Part II of the Schedule to these regulations.

(4) Any such container as aforesaid shall be kept at such place on the *agricultural unit* as will make it accessible to the *workers* for whom it is provided, and it shall be conspicuously marked on the outside with the words "First Aid".

General note. See the General note to reg. 3.

(*a*) ***Provide.*** As to the meaning of this expression, see note (*a*) to reg. 6 of the Agriculture (Poisonous Substances) Regulations 1966, at p. 386.

5. Standard of requisites and appliances.—Any first aid requisite or appliance specified in the Schedule to these regulations that is contained in the *British Pharmaceutical Codex* or any supplement thereto shall be of a grade or quality not lower than the standard therein prescribed for that requisite or appliance.

SCHEDULE

PART I

Contents of first aid box to be provided in accordance with section 6 (1) (a) of the Act

Description of Contents Column 1	Quantity to be provided where not more than three workers are employed on an agricultural unit Column 2	Quantity to be provided where more than three workers are employed on an agricultural unit Column 3
1. Sterilised wound dressings:—		
(*a*) finger dressings (containing either absorbent or boric acid lint)	3	6
(*b*) small plain wound dressings . .	2	3
(*c*) medium plain wound dressings	2	3
2. Triangular bandages of which the base shall not be less than 51 inches and each of the other two sides not less than 36 inches	2	3
3. Waterproof adhesive wound dressings of the following measurements:—		
$1\frac{1}{2}$ inches by 2 inches	3	6
2 inches by 3 inches	3	6
4. Absorbent cotton wool, half-ounce packets	1	2
5. First aid leaflet issued by the Minister of Agriculture, Fisheries and Food and the Secretary of State	1	1

PART II

Contents of any container to be provided in accordance with regulation 4 of these regulations

Description of Contents Column 1	Quantities to be provided in each container Column 2
1. Sterilised wound dressings:—	
(*a*) finger dressings (containing either absorbent or boric acid lint)	6
(*b*) small plain wound dressings	3
(*c*) medium plain wound dressings	3
2. Triangular bandages of which the base shall not be less than 51 inches and each of the other two sides not less than 36 inches	3
3. Waterproof adhesive wound dressings of the following measurements:	
1½ inches by 2 inches	6
2 inches by 3 inches	6
4. Absorbent cotton wool, half-ounce packets ..	2
5. First aid leaflet issued by the Minister of Agriculture, Fisheries and Food and the Secretary of State	1

THE AGRICULTURE (LADDERS) REGULATIONS 1957

(S.I. 1957 No. 1385)

Dated 1*st August* 1957, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland, under section* 1 (1)–(4) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General note. These regulations give effect to the general provisions of s. 1 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, and in particular to the provisions of sub-s. (3) (f) thereof. A contravention of the regulations is, by s. 1 (6) of that Act, an offence, for which penalties are provided by s. 14 thereof. These regulations, which came into operation on 1st November 1957, are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding upon the Crown; see s. 22 of the Act of 1956.

1. Citation, extent and commencement.—These regulations, which may be cited as the Agriculture (Ladders) Regulations 1957 shall apply to Great Britain and shall come into operation three months after the making thereof.

Great Britain. For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

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2. Interpretation.—(1) In these regulations—

"agriculture", "agricultural unit", "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales, by subsection (1) of section 24 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of that Act;

"ladder" does not include a permanently fixed ladder, or a ladder made of rope or other non-rigid material, but save as aforesaid includes every kind of ladder (including steps and a trestle-ladder), whether made of wood, metal or other material;

"rung" means the rail or tread, serving as a step, set into the stiles of a *ladder*;

"steps" means a *ladder* (other than a trestle-ladder) provided with a means of self-support;

"stile" means the side-rail of a *ladder* into which the *rungs* are fitted;

"tie-rod" means a metal rod, extending through both *stiles*, which is so secured as to prevent the *stiles* moving apart;

"trestle-ladder" means a *ladder* made of two frames hinged together at the top, both being fitted with *rungs*.

(2) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

England and Wales. For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

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3. Obligations on employer only.—(1) The *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit to

be used by any *worker* so *employed*, in the course of his employment, any *ladder* unless it is of good construction and sound material, and is properly maintained (*b*).

(2) Without prejudice to the generality of the foregoing paragraph a *ladder* shall not be regarded as complying therewith if—

(a) where a *ladder* has wooden *stiles* or *rungs*, the grain thereof does not run lengthwise, or either *stile* or any *rung* contains any defect likely to weaken it which reasonable examination would disclose;

(b) where a *ladder* has wooden *stiles*, any *rung* of the *ladder* is supported solely by nails or screws;

(c) where a *ladder* has wooden *rungs*, the *rungs* are not fixed into the *stiles* by rabbet, notch or mortise, and (unless *tie-rods* are fitted not more than two feet from each end of the *ladder* and not more than eight feet apart throughout its length) are not through-tenoned and wedged in the *stiles;*

(d) in the case of *steps* or a *trestle-ladder*, it is not fitted with a device that is effective, in the circumstances in which it is used, in preventing the back support from spreading;

(e) (except in the case of a *trestle-ladder*) the distance between adjacent *rungs* exceeds twelve inches from centre to centre.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act.

(*b*) ***Good construction . . . maintained.*** Compare the cognate provisions of s. 28 (5) of the Factories Act 1961 (as to which see Redgrave's Factories Acts, 22nd Edn., p. 107, and the notes thereto), and of reg. 31 of the Construction (Working Places) Regulations 1966 (as to which see *op. cit.*, p. 696). For "properly maintained", see note (*h*) to s. 8 of the Offices, Shops and Railway Premises Act 1963.

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4. Obligations on both employer and worker.—(1) Subject to the provisions of this regulation the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit to

be used by any *worker* so *employed*, in the course of his employment, and a *worker employed* in *agriculture* shall not, in the course of his employment, use, any *ladder* if—

(a) it is not strong enough for the purposes and manner of its use;

(b) any *rung* is missing;

(c) it is not equally supported on each *stile*, and is not securely placed or held in position;

(d) the top of the *ladder* does not extend above any point at which it is necessary for the *worker* to get on or off the *ladder*.

(2) Sub-paragraph (d) of paragraph (1) of this regulation shall not apply—

(a) to *steps* and *trestle-ladders*; or

(b) if there is available to the *worker*, apart from the *ladder* itself, some means of secure hand-hold.

(*a*) **Cause.** See note (*p*) to s. 20 of the Offices, Shops and Factory Premises Act 1963.

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5. Reporting by workers of defects.—(1) If any *ladder*, with which a *worker employed* in *agriculture* is *employed* to work, develops a defect to which this regulation applies, any such *worker employed* to work with that *ladder* on discovering that defect, shall forthwith report it to his *employer*.

(2) The defects to which this regulation applies are—

(a) the absence of any *rung*;

(b) the cracking or breaking of any wooden *stile* or *rung*; and

(c) in the case of *steps* or a *trestle-ladder* the absence or breaking of any stop or cord with which such a *ladder* was designed to be operated.

(3) Nothing in this regulation shall absolve an *employer* from compliance with regulation 3, or an *employer* or *worker* from compliance with regulation 4, of these regulations.

THE AGRICULTURE (POWER TAKE-OFF) REGULATIONS 1957

(S.I. 1957 No. 1386)

Dated 1st *August* 1957, *made by the Minister of Agriculture, Fisheries and Food, and the Secretary of State for Scotland, acting jointly, under section* 1 (1)–(5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General note. These regulations give effect to the general provisions of s. 1 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, as well as to some of the particular provisions of sub-s. (3) (*b*) of that section. A contravention of the regulations is, by s. 1 (6) of that Act, an offence for which penalties are provided by s. 14 thereof. These regulations, which came into force on various dates as provided by reg. 1, are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding on the Crown; see s. 22 of the Act.

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1. Citation, extent and commencement.—These regulations, which may be cited as the Agriculture (Power Take-off) Regulations 1957 shall apply to Great Britain (*a*) and shall come into operation as follows:—

(a) regulation 3 hereof (which relates to the guarding of the power take-off of a tractor) shall come into operation on the 1st day of August, 1958:

Provided that in relation to any tractor that is not new on that date and is not designed by its manufacturer to have attached to it a shield of the kind referred to in that regulation, the said regulation shall not come into operation until the 1st day of August, 1959;

(b) regulation 4 hereof (which relates to the guarding of the power take-off shaft of other machinery) shall come into operation on the 1st day of February, 1959:

Provided that in relation to any machine that is not new on that date, the said regulation shall not come into operation until the 1st day of August, 1959; and

(c) the remainder of the regulations shall come into operation on the date on which they are made.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

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2. Interpretation.—(1) In these regulations—

"Agriculture", "agricultural unit", "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales (*a*) by subsection (1) of section 24 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, and, as respects Scotland by that subsection as applied by subsection (10) of section 25 of that Act;

"power take-off" means the splined shaft of any tractor intended for transmitting power to any machine by means of the power take-off shaft of that machine;

"power take-off shaft" means, as respects any machine, its shaft (including any couplings and clutches up to the first fixed bearing of the machine) intended for attachment to the *power take-off* of any tractor.

(2) Any vehicle having a splined shaft intended for transmitting power to any machine by means of the *power take-off shaft* of that machine shall be deemed to be a tractor for the purposes of these regulations.

(3) A tractor or machine is new for the purposes of these regulations if it has never been used since manufacture, or has only been used for test or demonstration.

(4) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

General note. This regulation came into force on 1st August 1957 (reg. 1 (c)).

(*a*) ***England and Wales.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

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3. Guarding of power take-off.—(1) The *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit to be used on an *agricultural unit* on which such a *worker* is *employed*, and a *worker employed* in *agriculture* shall not use, any *tractor* having a *power take-off*, whilst the engine is in motion unless—

(a) the *power take-off* is guarded by a shield so designed, and so attached to the tractor, that it protects a *worker* from coming in contact, from above or from either side, either directly or by means of his clothes, with the *power take-off* of that *tractor*, or

(b) the *power take-off* is not in use, and is completely enclosed by a cover so attached to the tractor that contact with any part of the *power take-off* is impossible.

(2) Every shield and cover required by this regulation shall be substantially constructed of metal or other material, and shall be capable when attached to a tractor of supporting a weight of not less than 250 pounds.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

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4. Guarding of power take-off shaft.—(1) Subject to the provisions of this regulation, the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit to be used on an *agricultural unit* on which such a *worker* is *employed*, and a *worker employed* in *agriculture* shall not use, any machine having a *power take-off shaft* unless—

(a) the entire length of the shaft, whilst in motion, is wholly enclosed in a guard so designed, and so attached to the machine, that it protects a *worker* from coming in contact, either directly or by means of his clothes, with any part of the *power take-off shaft* of that machine, or

(b) in the case of a machine which is not new on the coming into operation of this regulation, and in respect of which the distance between any part of its *power take-off shaft* and the ground does not exceed two feet, the entire length of the shaft, whilst in motion, is either wholly enclosed as aforesaid, or is partly enclosed in the manner described in paragraph (2) of this regulation.

(2) A *power take-off shaft* is partly enclosed for the purpose of sub-paragraph (b) of paragraph (1) of this regulation if the shaft is provided with a guard over its entire length on top and on both sides to a depth of at least two inches (measured at right angles to the shaft) below the lowest point of its circumference.

(3) Paragraph (1) of this regulation shall not apply to a machine that is so constructed and maintained as to afford no less protection against coming in contact with the *power take-off shaft* of the machine than would require to be afforded under the said paragraph (1):

Provided that where a machine is so constructed and maintained as to afford such measure of protection as aforesaid in respect of only a part of the *power take-off shaft* of the machine, the said paragraph (1) shall apply to that machine in respect of any part of the shaft as to which such protection is not so afforded.

(4) Every guard required by this regulation shall be substantially constructed, and shall be maintained (*b*) in good condition.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

(*b*) ***Maintained.*** See note (*h*) to s. 8 of the Offices, Shops and Railway Premises Act 1963.

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5. Certificates of exemption.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, an *employer* of a *worker employed* in *agriculture*, and a *worker* so *employed*, to whom any such certificate applies, shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales, (*a*) the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

(*a*) ***England and Wales.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

THE AGRICULTURE (AVOIDANCE OF ACCIDENTS TO CHILDREN) REGULATIONS 1958

(S.I. 1958 No. 366)

Dated 6th March 1958, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland under section* 7 (1), (2) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General note. A contravention of these regulations is, by virtue of s. 7 (3) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, an offence, for which penalties are provided by s. 14 of that Act. These regulations, which came into operation on the 1st July 1958, do not bind the Crown; see s. 22 of the Act.

1. Citation and commencement.—These regulations, which may be cited as the Agriculture (Avoidance of Accidents to Children) Regulations 1958, shall apply to Great Britain, (*a*) and shall come into operation on the 1st day of July 1958.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

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2. Interpretation.—(1) In these regulations:—

"child" means a child who has not attained the age (*a*) at which his employment ceases to be prohibited (*b*)—

(i) in England and Wales under paragraph (a) of subsection (1) of section 18 of the Children and Young Persons Act 1933, or

(ii) in Scotland under paragraph (a) of subsection (1) of section 28 of the Children and Young Persons (Scotland) Act 1937;

"trailer" means any vehicle used as a trailer whether or not designed to be so used, but does not include any such vehicle drawn by an animal.

(2) In these regulations any reference to a tractor, machine, implement, *trailer* or other vehicle includes any drawbar, towbar or coupling which may be used for the purpose of towing or propelling.

(3) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(*a*) ***Attained the age.*** See note (*b*) to s.7 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, p. 417.

(*b*) ***Age at which his employment ceases to be prohibited.*** Under the Acts set out in sub-paras. (i) and (ii), as respectively amended by the Education (Miscellaneous Provisions) Act 1948, s. 11 (1) and the First Schedule, Part II, and the Education (Scotland) Act 1949, s. 5 and the Schedule, Part II, the age is at present thirteen; and see 21 Halsbury's Laws of England, 3rd Edn., p. 301. Section 1 of the Children Act 1972 provides that the minimum age remains at thirteen notwithstanding any change in the school-leaving age.

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3. Prohibition on riding on vehicles and machines.—(1) Subject to paragraph (2) of this regulation no *child* shall ride on any of the following classes of vehicles or machines while such vehicles or machines are being used in the course of agricultural operations or are going to or from the site of such operations:—

(a) tractors;
(b) self-propelled agricultural machines;
(c) *trailers;*
(d) *trailers* into which any conveyor mechanism is built;
(e) machines mounted in whole or in part on tractors or vehicles, or towed or propelled by tractors or vehicles;
(f) binders or mowers drawn by animals.

(2) The foregoing paragraph shall not apply as respects subparagraph (c) thereof in circumstances where the *child* rides—

(a) on the floor of the *trailer;* or
(b) on any load carried by the *trailer* provided that the *trailer* has four sides each of which is higher than the load.

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4. Prohibition on driving vehicles and machines.—No *child* shall drive any tractor, or self-propelled vehicle or machine while that tractor, vehicle or machine is being used in the course of agricultural operations or is going to or from the site of such operations.

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5. Prohibition on riding on implements.—No *child* shall ride on any of the following implements while they are being towed or propelled:—

(a) agricultural implements mounted in whole or in part on tractors or vehicles, or towed or propelled by tractors or vehicles;

(b) animal-drawn rollers.

THE AGRICULTURE (CIRCULAR SAWS) REGULATIONS 1959

(S.I. 1959 No. 427)

Dated 12*th March* 1959, *made by the Minister of Agriculture, Fisheries and Food, and the Secretary of State for Scotland, under section* 1 (1)–(5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General note. These regulations give effect to the general provisions of s. 1 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956 and to sub-s. (3) (a) thereof in particular. They may be compared with the Woodworking Machinery Regulations 1922, which apply to factories and to certain other premises; see Redgrave's Factories Acts (22nd Edn.), p. 1132.

A contravention of the regulations is, by s. 1 (6) of the Act of 1956, an offence, for which penalties are provided by s. 14 thereof, and in so far as the regulations impose duties failure to comply with which might give rise to a liability in tort, they are binding on the Crown; see s. 22 of the Act. If a circular saw, as defined by these Regulations, is also a stationary machine as defined by the Agriculture (Stationary Machinery) Regulations 1959 (p. 468 *et seq.*) the latter Regulations also apply (*ibid.*, reg. 2 (3)).

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1. Citation, extent and commencement.—These regulations, which may be cited as the Agriculture (Circular Saws) Regulations 1959 shall apply to Great Britain (*a*) and shall come into operation as follows:—

(a) this regulation and regulations 2 and 6 shall come into operation on the date of the making of these regulations;

(b) regulation 3 (in its application to paragraph 3 of the First Schedule to these regulations), regulation 4 (in its application to paragraph 9 of that Schedule) and regulation 5 shall come into operation six months after the making of these regulations; and

(c) regulation 3 (except in its application to the said paragraph 3) and regulation 4 (in its application to paragraph 8 of the said First Schedule) shall come into operation twelve months after the making of these regulations.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

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2. Interpretation.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"agriculture", "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales, by subsection (1) of section 24 of the Act, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of the Act;

"circular saw" means a machine intended for sawing wood by means of a circular blade, exceeding twelve inches in diameter, in a fixed or portable bench or frame, but does not include a swing or other saw which is operated by movement towards the wood.

(2) The Interpretation Act 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

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3. Obligations affecting employers only.—Subject to the provisions of these regulations the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit a *worker* so *employed*, in the course of his employment, to operate or assist at a *circular saw* unless the requirements contained in Part I of the First Schedule to these regulations are complied with.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

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4. Obligations affecting workers only.—Subject to the provisions of these regulations a *worker employed* in *agriculture* who, in the course of his employment, operates a *circular saw* shall comply with the requirements contained in Part II of the First Schedule to these regulations.

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5. Obligations affecting both employers and workers.—(1) Subject to the provisions of these regulations—

(a) the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit a *worker* so *employed*, in the course of his employment, to operate, and

(b) a *worker* so *employed* shall not, in the course of his employment, operate, a *circular saw* unless the requirements contained in Part III of the First Schedule to these regulations are complied with, or in contravention of paragraph 1 of the Second Schedule to these regulations.

(2) Subject to the provisions of these regulations—

(a) the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit a *worker* so *employed*, in the course of his employment, to operate or assist at, and

(b) a *worker* so *employed* shall not, in the course of his employment, operate or assist at,

a *circular saw* in contravention of paragraphs 2 and 3 of the Second Schedule to these regulations.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

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6. Certificates of Exemption.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, an *employer* of a *worker employed* in *agriculture*, and a *worker* so *employed*, to whom any such certificate applies shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

FIRST SCHEDULE Regulation 3

PART I

REQUIREMENTS AFFECTING EMPLOYERS ONLY

1. Construction and maintenance.—Every *circular saw* shall be substantially constructed and properly maintained (*a*).

(*a*) ***Properly maintained.*** See note (*h*) to s. 8 of the Offices, Shops and Railway Premises Act 1963.

2. Lighting.—At every *circular saw* there shall be adequate natural or artificial light.

3. Defective saw blades.—No saw blade shall knowingly be used if—

(a) it is cracked;

(b) it has been repaired by brazing or welding;

(c) it has two or more teeth missing;

(d) while in motion its teeth come in contact with the bench table, whether by reason of warping, misalignment or otherwise.

4. Riving knives.—In a direct line behind the saw blade, and in the same vertical plane there shall be a metal riving knife having a smooth surface. The knife shall be strong and rigid, its front edge extending upward and forward, and shall also conform with the following conditions, that is to say:—

(a) the distance between the front edge of the knife and the teeth of the saw blade shall not exceed half an inch at the level of the top surface of the bench table;

(b) the knife shall extend upward from the bench table for a distance of not less than half and not more than the full height of the saw blade above the bench table.

5. Top guards.—(1) The cutting edge of the saw blade above the bench table shall be guarded by a guard which shall—

(a) be rigid, not less than one inch wide measured horizontally, and as close to the edge of the saw blade as is practicable in the circumstances of use; and

(b) extend forward from above the riving knife at least as far as to a point that is directly over the point at which the cutting edge of the saw blade passes below the level of the upper surface of the bench table.

(2) So much of the guard as extends beyond the top of the saw blade shall, so far as it is not parallel to the bench table, slope or curve in a downward direction only.

6. Bottom guards.—(1) The part of the saw blade below the bench table shall be guarded by two plates of metal or other suitable material, one on each side of the blade.

(2) Such plates shall not be more than six inches apart and shall extend from the axis of the saw blade outward to a distance of not less than two inches beyond the edge of the saw blade:

Provided that this paragraph shall not apply if the *circular saw* is so constructed and maintained as to afford no less protection against coming in contact with the saw blade from below the bench table than would require to be afforded under this paragraph.

7. Special provision for circular saws with swinging tables.—(1) The provisions of this paragraph apply to a *circular saw* constructed with a swinging table, being a saw designed solely for cross-cutting.

(2) The cutting edge of the saw blade above the level of its axis shall be guarded by a guard which shall—

(a) be rigid, not less than one inch wide measured horizontally, and as close to the edge of the saw blade as is practicable in the circumstances of use; and

(b) extend upward and forward from the level of its axis to the top of the saw blade and thence at least as far as to a point that is directly over the point at which the cutting edge of the saw blade passes below the level of its axis.

(3) So much of any such guard as extends beyond the top of the saw blade shall, so far as it is not horizontal, slope or curve in a downward direction only.

(4) The part of the saw blade below the level of its axis shall be guarded by two plates of metal or other suitable material, one on each side of the blade.

(5) Such plates shall not be more than six inches apart and shall extend from the axis of the saw blade outward to a distance of not less than two inches beyond the edge of the saw blade:

Provided that the last foregoing subparagraph and this subparagraph shall not apply if the *circular saw* is so constructed and maintained as to afford no less protection against coming in contact with the saw blade below the level of its axis than would require to be afforded under this subparagraph.

(6) Paragraphs 4, 5 and 6 of this Schedule shall not apply to a circular saw of the kind mentioned in subparagraph (1) of this paragraph.

PART II

Regulation 4

REQUIREMENTS AFFECTING WORKERS ONLY

8. Use of safety appliances.—Without prejudice to subsection (1) of section 13 of the Act (which makes it an offence for a *worker* wilfully to interfere with, or misuse, any equipment, appliance, facilities or other thing provided in pursuance of the Act or regulations thereunder) a *worker* shall keep in position and shall make full use of every riving knife, guard, facility and other thing provided, which satisfies the requirements of this Schedule:

Provided that nothing in this paragraph shall prevent a worker from carrying out adjustments to a *circular saw* (including any riving knife or guard), while the saw blade is not in motion.

9. Defective saws.—(1) If any *circular saw* which a *worker* is *employed* to operate is or becomes defective within the meaning of this paragraph, any *worker employed* to operate that saw, shall on discovering that it is defective, forthwith report the fact to his *employer*.

(2) A *circular saw* is defective within the meaning of this paragraph if—

(a) the saw blade is cracked, or two or more teeth thereof are missing;

(b) the teeth of the saw blade while in motion come in contact with the bench table;

(c) any riving knife or guard (of the respective kinds required under Part I of this Schedule) which has been fitted to a *circular saw* is damaged or missing.

(3) Nothing in this paragraph shall absolve an *employer* from complying with the requirements contained in Part I of this Schedule.

General note. The requirements contained in this Part must be explained to a worker before he operates or assists at a circular saw; see para. 3 of the Second Schedule.

PART III

Regulation 5

REQUIREMENTS AFFECTING BOTH EMPLOYERS AND WORKERS

10. Floors.—The floor or ground area used by a *worker* operating a *circular saw* shall be unobstructed and shall afford him a firm foothold.

11. Push-sticks, etc.—At every *circular saw* which is fed by hand a suitable push-stick or push-block of wood shall be used, whenever risk of injury can be thereby reduced.

12. Prohibition of adjustments while saw blade is in motion.—No adjustment shall, while the saw blade is in motion, be made to any part of a *circular saw* (including any riving knife or guard) other than to any device fitted to the saw for determining the rate of feed or the width, depth or angle at which the wood is to be cut .

General note. The requirements contained in this Part must be explained to a worker before he operates or assists at a circular saw; see para. 3 of the Second Schedule.

SECOND SCHEDULE Regulation 5

OTHER PROVISIONS AFFECTING BOTH EMPLOYERS AND WORKERS

1. Instruction and supervision.—(1) A worker who has never operated a *circular saw* shall not operate a *circular saw* unless its working or the working of one of similar type has been demonstrated to him by a person over the age of eighteen years having a thorough knowledge of the working of the saw to be operated or of the working of one of similar type.

(2) Without prejudice to the generality of the foregoing sub-paragraph, a *worker* who has attained the age of sixteen years but has not attained the age of eighteen years shall not operate a *circular saw* except under the supervision of a person who—

(a) has attained the age of eighteen years; and

(b) has a thorough knowledge of the working of the *circular saw* to be operated.

2. Minimum age.—A worker shall not operate or assist at a *circular saw* unless he has attained the age (*a*) of sixteen years.

3. Explanation of regulations.—A *worker* shall not operate or assist at a *circular saw* unless the requirements contained in Parts II and III of the First Schedule and the provisions of paragraph 1 of this Schedule have first been explained to him.

(*a*) ***Attained the age.*** See note (*b*) to s. 7 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, p. 417.

THE AGRICULTURE (SAFEGUARDING OF WORKPLACES) REGULATIONS 1959

(S.I. 1959 No. 428)

Dated 12th March 1959, made by the Minister of Agriculture, Fisheries and Food, and the Secretary of State for Scotland under section 1 (1)–(5) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

General note. These regulations give effect to the general provisions of s. 1 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, and in particular to sub-s. (3) (f) thereof. The regulations came into force on 1st April 1961; contravention of them, is by s. 1 (6) of the Act, an offence for which penalties are provided by s. 14 thereof. In so far as they impose duties failure to comply with which might give rise to a liability in tort, the regulations are binding on the Crown; see s. 22 of the Act.

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1. Citation, extent and commencement.—These regulations, which may be cited as the Agriculture (Safeguarding of Workplaces) Regulations 1959, shall apply to Great Britain (*a*) and shall come into operation on the 1st day of April, 1961.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

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2. Interpretation.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956; and

"agriculture", "agricultural unit", "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales, by subsection (1) of section 24 of the Act, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of the Act.

(2) Expressions used in Part II and III of the Schedule to these regulations of which there are definitions in Part I thereof have the meanings thereby respectively assigned to them.

(3) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

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3. Obligations applicable to employers and occupiers.—(1) Subject to the provisions of these regulations—

(a) the *employer* of a *worker employed* in *agriculture* to work on an *agricultural unit* of which the *employer* is the occupier, and

(b) the occupier of an *agricultural unit* on which a *worker employed* in *agriculture* is employed to work by an *employer* other than the occupier of that unit,

shall not cause (*a*) or permit a *worker* so *employed*, in the course of his employment, to work at or to use any place on that unit unless the requirements applicable to such a place contained in Part II of the Schedule to these regulations are complied with.

(2) This regulation shall not apply in respect of a *worker* while working on the construction, alteration or maintenance of a building (*a*).

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

(*b*) ***Construction, etc. of a building.*** These terms have been judicially interpreted as they occur in s. 176 of the Factories Act 1961; for this interpretation, see Redgrave's Factories Acts, 22nd Edn., pp. 466 *et seq.*

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4. Obligations applicable to workers.—(1) Subject to the provisions of these regulations a *worker employed* in *agriculture* to work on an *agricultural unit* shall comply with the requirements contained in Part III of the Schedule to these regulations.

(2) This regulation shall not apply in respect of a *worker* while working on the construction, alteration or maintenance of a building (*a*).

(*a*) ***Construction, etc. of a building.*** See note (*b*) to reg. 3.

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5. Certificate of exemption.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, the *employer* of a *worker employed* in *agriculture*,

and a *worker* so *employed*, to whom any such certificate applies shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales (*a*), the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

(*a*) ***England and Wales.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

SCHEDULE

PART I

Regulation 2 (2)

Interpretation

In this Schedule—

"cover" includes a grid which affords a worker no less protection against falling than would be afforded by a cover other than a grid;

"floor" means any structural surface within a building, or forming part of a building, on which a worker has to work, or over or across which he has to pass in connection with his work, but does not include any part of a *stairway;*

"stairway" means a permanent staircase or a permanently fixed ladder being a staircase or ladder which is either within a building or gives access to a building or to a part of a building; and

"step" means, in relation to any *stairway*, any tread or rung thereof.

PART II

Regulation 3

REQUIREMENTS APPLICABLE TO EMPLOYERS (OR, IN CERTAIN CASES, TO OCCUPIERS)

1. General.—Every *stairway* and every *floor* shall be as safe as is reasonably practicable (*a*) for the purposes for which it is used.

(*a*) ***Reasonably Practicable.*** See note (*f*) to s. 6 of the Offices, Shops and Railway Premises Act 1963.

2. Construction and maintenance of stairways.—(1) No *step* of a *stairway* shall depend for its support on being secured solely by nails, screws or other similar fixing:

Provided that nothing in this sub-paragraph shall prevent the *steps* of a *stairway* from being supported by brackets or bearers which are secured in such a manner.

(2) No *stairway* shall have any *step* missing or any defect likely to weaken the *stairway* which reasonable examination would disclose.

3. Handrails for certain stairways.—(1) Subject to the provisions of this paragraph every *stairway* shall be fitted with a handrail (*a*) or handrails.

(2) If a *stairway* has an open side the handrail shall be on that side; if the *stairway* has two open sides there shall be a handrail on each side; if there is no open side the handrail may be on either side.

(3) Every handrail fitted in accordance with the foregoing provisions of this paragraph—

(a) shall be of wood, metal or other suitable material, and shall be smooth and rigid;

(b) shall be of adequate strength and shall be securely fixed in position; and

(c) shall extend the whole length of the *stairway*:

Provided that if it is impossible for a handrail to extend the whole length of the *stairway* without obstructing access thereto the handrail need not extend so as to obstruct access to the *stairway*.

(4) This paragraph shall not apply to *a stairway*—

(a) which extends less than 3 feet measured vertically from the ground, or floor level, on which the bottom of the stairway rests; or

(b) to which paragraph 4 of this Schedule applies.

(*a*) ***Handrail.*** A handrail is quite different from a guardrail. A guardrail is one of such a character as will provide a physical barrier against a person falling over the side which is guarded. A handrail is a rail which can be gripped by the hand; it need not necessarily act as a physical barrier; it need only be such a rail as to enable any person, by gripping it, to steady himself against falling (*Corn* v. *Weir's Glass* (*Hanley*), *Ltd.*, [1960] 2 All E.R. 300, C.A., so interpreting the cognate provisions of reg. 27 of the Building (Safety, Health and Welfare) Regulations, 1948).

4. Special provision for steep stairways.—(1) This paragraph applies to a *stairway* which is at an angle of 30 degrees or less from the vertical.

(2) Every *stairway* to which this paragraph applies shall be provided with a secure handhold (*a*) for use by a *worker* at the highest point at which he has to get on or off the *stairway*; whether by extension of at least one stile for not less than 3 feet above such point or by some other means.

(*a*) ***Handhold.*** The mere fact that a person falls from a stairway does not demonstrate the absence of a secure handhold (*Wigley* v. *British Vinegars, Ltd.*, [1962] 3 All E.R. 161, H.L., a case upon what is now s. 29 (2) of the Factories Act 1961).

5. Apertures in floors and walls, and edges of floors.— (1) Subject to the provisions of this paragraph, every aperture in a *floor* (*a*), being an aperture through which a *worker* is liable to fall more than 5 feet, shall be guarded by—

(a) a *cover*; or

(b) a fence not less than 3 feet high; or

(c) a guard rail (*b*) not less than 3 feet nor more than 3 feet 6 inches above the level of the floor.

(2) Subject to the provisions of this paragraph, every edge of a *floor*, being an edge of a *floor* from which a *worker* is liable to fall more than 5 feet, shall be guarded by—

(a) a fence not less than 3 feet high; or

(b) a guard rail (*b*) not less than 3 feet nor more than 3 feet 6 inches above the level of the *floor*:

Provided that this sub-paragraph shall not apply where a *floor* terminates at an aperture in a wall.

(3) Subject to the provisions of this paragraph, every aperture in a wall in a building, being an aperture through which a *worker* is liable to fall more than 5 feet, shall be guarded by—

(a) a door or fence not less than 3 feet high; or

(b) a guard rail (*b*) not less than 3 feet nor more than 3 feet 6 inches above the level of the *floor*:

Provided that this sub-paragraph shall not apply if—

(i) the height of the aperture from top to bottom does not exceed 4 feet; or

(ii) the bottom of the aperture is more than 2 feet above the *floor*.

(4) Every *cover*, door, fence or guard rail (*b*) fitted in accordance with the foregoing provisions of this paragraph shall be of adequate strength (*c*); shall (except as provided by sub-paragraph (6) of this paragraph) be securely fixed in position, or, in the case of any door, shall be kept shut; and shall be properly maintained (*d*).

(5) Every guard rail (*b*) shall be so fitted that it is not outside a line plumb with the edge of the aperture or of the *floor* to be guarded:

Provided that a guard rail may be fitted not more than 10 inches outside such a line if there is also fitted within such distance of 10 inches an intermediate rail which is not less than 1 foot 6 inches nor more than 1 foot 9 inches above the level of the floor.

(6) No *cover* or door fitted in accordance with the foregoing provisions of this paragraph shall be opened or removed, and no fence or guard rail (*b*) so fitted shall be removed—

(a) except for the time and to the extent necessary for the access of persons or the movement of materials; and

(b) unless there is a secure handhold (*e*) available for use when the *cover*, fence or guard rail is not in position, or, as the case may be, the door is open (so, however, that a handhold shall not be necessary where the cover consists of a self-closing trap door).

(7) This paragraph shall not apply to an aperture, or to an edge of a *floor*, used as access to a *stairway*.

(*a*) ***Opening in a floor.*** See the interpretation of this phrase, as it occurs in s. 28 (4) of the Factories Act 1961, discussed in Redgrave's Factories Acts, 22nd. Edn., p. 107, note (*a*).

(*b*) ***Guard rail.*** See note (*a*) to paragraph 3.

(*c*) ***Adequate strength.*** See the interpretation of this phrase, as it occurs in s. 22 (1) of the Factories Act 1961, discussed in Redgrave's Factories Acts, 22nd Edn., p. 88 note (*b*).

(*d*) ***Properly maintained.*** See note (*h*) to s. 8 of the Offices, Shops, and Railway Premises Act 1963.

(*e*) ***Handhold.*** See note (*a*) to paragraph 4.

6. Grain pits, stokeholds and furnace pits.—(1) Every grain pit, stokehold or furnace pit into which a *worker* is liable to fall more than 5 feet shall be guarded by—

(a) a *cover*; or

(b) a fence not less than 3 feet high; or

(c) a guard rail (*a*) not less than 3 feet nor more than 3 feet 6 inches above the level of the ground.

(2) Every *cover*, fence or guard rail (*a*) fitted in accordance with the foregoing provisions of this paragraph shall be of adequate strength (*b*); shall (except as provided by sub-paragraph (4) of this paragraph) be securely fixed in position; and shall be properly maintained (*c*).

(3) Every guard rail (*a*) shall be so fitted that it is not outside a line plumb with the edge of the grain pit, stokehold or furnace pit to be guarded.

(4) No cover, fence, or guard rail (*a*) shall be opened or removed except for the time and to the extent necessary for the access of persons or the movement of materials.

(*a*) ***Guard rail.*** See note (*a*) to paragraph 3.

(*b*) ***Adequate strength.*** See note (*c*) to paragraph 5.

(*c*) ***Properly maintained.*** See note (*d*) to paragraph 5.

PART III

Regulation 4

REQUIREMENTS APPLICABLE TO WORKERS

7. Non-removal of safety appliances.—Without prejudice to subsection (1) of section 13 of the Act (which makes it an offence for a *worker* wilfully to interfere with, or misuse, any equipment, appliance, facilities or other thing provided in pursuance of the Act or regulations thereunder) a *worker* shall not open or remove any *cover* or door, fence or guard rail (*a*), except as permitted under Part II of this Schedule.

(*a*) ***Guard rail.*** See note (*a*) to para. 5.

8. Reporting of defects.—(1) Subject to the provisions of this paragraph if—

(a) any *step* of a *stairway*, or

(b) any handrail, *cover*, fence or guard rail (*a*) (of the respective kinds required under Part II of this Schedule) which has been fitted to anything which has to be guarded in accordance with Part II of this Schedule,

is or becomes defective within the meaning of this paragraph, any *worker* who has to use that *stairway*, or (as the case may be) has to work where such *cover*, fence or guard rail (*a*) is fitted, shall on discovering that it is defective, forthwith report the fact to his *employer*.

(2) A *step* of a *stairway* is defective within the meaning of this paragraph if it is missing or broken.

(3) A handrail, *cover*, fence or guard rail (*a*) is defective within the meaning of this paragraph if it is broken.

(4) This paragraph shall not apply to a *worker* whose *employer* is not the occupier of the *agricultural unit* on which the *worker* is *employed to* work.

(5) Nothing in this paragraph shall absolve an *employer* from complying with the requirements contained in Part II of this Schedule.

(*a*) ***Guard rail.*** See note (*a*) to paragraph 5.

THE AGRICULTURE (STATIONARY MACHINERY) REGULATIONS 1959

(S.I. 1959 No. 1216)

Dated 14*th July* 1959, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State under section* 1 (1) *to* (5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General note. A contravention of these regulations is, by s. 1 (6) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, an offence for which penalties are provided by s. 14 of that Act. These regulations are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding upon the Crown; see s. 22 of that Act.

Citation, extent and commencement

1. These regulations, which may be cited as the Agriculture (Stationary Machinery) Regulations 1959, shall apply to Great Britain (*a*) and shall come into operation as follows:—

(a) this regulation and regulations 2 and 5 shall come into operation on the date of the making of these regulations (*b*);

(b) regulation 3 (in its application to subparagraph (1) of paragraph 4 and to paragraphs 6 to 8 of the Schedule to these regulations), and regulation 4, shall come into operation one year after (*c*) the making of these regulations; and

(c) regulation 3 (except in its application as aforesaid) shall come into operation two years after (*d*) the making of these regulations.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

(*b*) ***The date . . . regulations.*** That is, 14th July 1959.

(*c*) ***One year after.*** That is, 14th July 1960.

(*d*) ***Two years after.*** That is, 14th July 1961.

Interpretation

2.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"agriculture", "worker", "employer" and "employed" have the meanings respectively assigned to them, as

respects England and Wales (*a*), by subsection (1) of section 24 of *the Act*, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of the Act;

"stationary machine" has the meaning assigned to it in Part I of the Schedule to these regulations.

(2) Expressions used in Parts II and III of the Schedule to these regulations of which there are definitions in Part I thereof have the meanings thereby respectively assigned to them.

(3) The provisions of these regulations shall apply, in addition to the provisions of the Agriculture (Circular Saws) Regulations 1959 (*b*), to any stationary machine that is a circular saw as therein defined.

(4) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(*a*) ***England and Wales.*** For the meaning of this expression, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

(*b*) ***Agriculture (Circular Saws) Regulation 1959.*** See p. 454.

Obligations affecting employers

3. Subject to the provisions of these regulations the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) or permit a *worker* so *employed*, in the course of his employment, to work at a *stationary machine* unless the requirements contained in Part II of the Schedule to these regulations are complied with.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963.

Obligations affecting workers

4. Subject to the provisions of these regulations a *worker employed* in *agriculture* who, in the course of his employment, works at a *stationary machine* shall comply with the requirements contained in Part III of the Schedule to these regulations.

Certificates of Exemption

5.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as

may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, an *employer* of *workers* employed in *agriculture*, and a *worker* so *employed*, to whom any such certificate applies shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

SCHEDULE

PART I

Regulation 2 (2)

INTERPRETATION

1.—(1) In this Schedule—

"belt" includes any flexible material used to transmit power from one pulley to another;

"primary driving belt" means a *belt* for transmitting power from the driving pulley of a *prime mover* to any *stationary machine* (other than a *prime mover*);

"prime mover" means any internal combustion engine or electric motor, whether or not any such engine or motor is designed for stationary use only;

"run-on point" means the on-running point of contact of a *belt* with a pulley, or of a chain with a sprocket;

"shafting" means a shaft or system of shafts (including any couplings and clutches) used for transmitting power;

"stationary machine" means any machine (together with any transmission machinery used therewith) designed or adapted for stationary use (*a*) only, and includes any *prime mover* which is so designed or adapted, but does not include a thresher, huller, baler or trusser (*b*);

"striking gear" means a device by which a *belt* while in motion can be moved from a fast to a loose pulley, and *vice versa*;

(2) References in this Schedule to a *worker* coming in contact with any part of a *stationary machine*, or *prime mover* that is not a *stationary machine*, shall be construed as references to his coming in contact therewith either directly or by means of his clothes.

(*a*) ***Stationary use.*** Machinery which is not so designed or adapted for stationary use only may be governed by the provisions of the Agriculture (Threshers and Balers) Regulations 1960 (see p. 475) or the Agriculture (Field Machinery) Regulations 1962 (see p. 484).

(*b*) ***Thresher . . . trusser.*** Such machines, if stationary, are governed by the Agriculture (Threshers and Balers) Regulations 1960 (see p. 475); if mobile, they are governed by the Agriculture (Field Machinery) Regulations 1962 (see p. 484).

PART II

Regulation 3

REQUIREMENTS APPLICABLE TO EMPLOYERS

Components of stationary machinery

2.—(1) Subject to the provisions of this paragraph every component of a *stationary machine*, being a component to which this paragraph applies, shall be so situated or so guarded as to protect a *worker* from coming in contact therewith.

(2) Without prejudice to the generality of the foregoing subparagraph a component, and any part of a component, shall be deemed to be so situated as aforesaid if it is more than 6 feet 6 inches from every floor, platform, staircase, fixed ladder or other place to which a *worker* has access in the course of his employment.

(3) The components of a *stationary machine* to which this paragraph applies are any *shafting*, pulley, flywheel, gearing, sprocket, chain, *belt*, or, as respects any fan, (in addition to any of the foregoing components) any wing or blade thereof:

Provided that this paragraph shall not apply to a shaft to which the Agriculture (Power Take-off) Regulations 1957 apply, and shall only apply to a *primary driving belt* if the *prime mover* and the *stationary machine* which it drives by means of such belt are both permanently fixed installations.

(4) Nothing in this paragraph shall require the guarding, elsewhere than at the *run-on points*, of any chain or *belt* moving at less than 30 feet per minute, or of any conveyor chain or *belt* for the movement of materials.

Primary driving belts

3.—(1) Whenever power is transmitted by means of a *primary driving belt* from a *prime mover* to a *stationary machine* (other than a *prime mover*) every *run-on point* both on the *prime mover* and on the *stationary machine* shall be so situated or so guarded as to protect a *worker* from coming in contact therewith.

(2) Without prejudice to the generality of the foregoing subparagraph a *run-on point* shall be deemed to be so situated as aforesaid if it is more than 6 feet 6 inches from every floor, platform, staircase, fixed ladder or other place to which a *worker* has access in the course of his employment.

Guarding of certain feeding inlets and discharge outlets

4.—(1) The feeding inlet and discharge outlet of every stationary grain auger, and of every power-driven *stationary machine* which grinds, crushes, bruises or pulverises grain, shall be so guarded as to protect a *worker* from coming in contact with any moving part of the auger or with any internal moving part of any such machine.

(2) The feeding inlet and discharge outlet of every power-driven *stationary machine*, which cuts or pulps roots, chops hay or straw, or grinds, breaks, mixes or pulverises feedingstuffs (other than grain) shall be so guarded as to protect a *worker*, in the normal operating position, from coming into contact with any internal moving part of any such machine.

(3) The requirements contained in this paragraph shall be in addition to and not in derogation of the requirements contained in paragraph 2 of this Schedule.

Means to be provided for quickly stopping machinery

General provisions

5.—(1) Every *prime mover* from which power is transmitted to a *stationary machine* (other than a *prime mover*) shall be provided with a readily accessible device (whether or not a switch) by means of which the *prime mover* may quickly be stopped.

(2) Such device shall be situated on or near the *prime mover* unless the *prime mover*—

(a) is more than 6 feet 6 inches from every floor, platform, staircase, fixed ladder or other place to which a *worker* has access in the course of his employment, or

(b) is otherwise so situated as to protect a *worker* from coming in contact therewith.

(3) Every *stationary machine* (other than a *prime mover*) shall be fitted with a loose pulley and *striking gear*, or with a clutch or other device, readily accessible to the operator of the machine, by means of which the power transmitted from the *prime mover* may quickly be disconnected:

Provided that this subparagraph shall not apply if the *prime mover* may be stopped by a device readily accessible to the operator of the machine.

(4) Notwithstanding anything in the last foregoing subparagraph, the means of disconnecting the power to any *stationary machine* at which a worker dresses or handles agricultural produce on or near any moving part of such machine, shall be within reach of every such *worker* (or, if at any such machine there is more than

one such *worker*, within reach of one of them) from his working position.

(5) Where any such *stationary machine* as is mentioned in subparagraph (4) of this paragraph has two or more stages the provisions of subparagraphs (3) and (4) of this paragraph shall apply in relation to each stage thereof at which a *worker* is *employed* to work.

(6) Every device for stopping a *prime mover* in accordance with subparagraph (1) of this paragraph, and every device for disconnecting the power to a *stationary machine* (other than a *prime mover*) in accordance with subparagraph (3) of this paragraph, shall be so constructed and maintained that the power cannot be reconnected by vibration.

Special provisions for switches.

(7) At every switch controlling a *prime mover* it shall be clearly indicated how the *prime mover* may be stopped.

(8) At every switch controlling a *prime mover* it shall be clearly indicated which *prime mover* the switch controls:

Provided that this subparagraph shall not apply where any such switch is mounted on the *prime mover* which it controls, or on a *stationary machine* (other than a *prime mover*) of which a *prime mover* is an integral part.

(9) Where a *prime mover*, or a *stationary machine* (other than a *prime mover*) of which a *prime mover* is an integral part, is controlled by two or more manually operated switches they shall be connected in such manner that if the power is disconnected at any one such switch it shall be incapable of being reconnected unless that switch is subsequently manually operated.

In this subparagraph "manually operated" means operated by hand, foot or other bodily means.

Maintenance of belts

6. Every *belt* (including a *primary driving* belt) together with its fastenings, which is used in connection with a stationary *machine*, shall be properly maintained (*a*), and no such *belt* shall rest or ride directly on a revolving shaft.

Lighting

7. At every *stationary machine*, and at every *prime mover* used therewith, there shall be adequate natural or artificial light.

Guards

8. Every guard required by this Schedule shall be of adequate strength and shall be properly maintained (*a*).

(*a*) ***Adequate strength; properly maintained.*** See notes (*c*) and (*d*) to paragraph 5 of the Schedule to the Agriculture (Safeguarding of Workplaces) Regulations 1959, p. 461.

PART III

Regulation 4

REQUIREMENTS APPLICABLE TO WORKERS

Use of safety appliances

9.—(1) Without prejudice to subsection (1) of section 13 of the Act (which makes it an offence for a *worker* wilfully to interfere with, or misuse, any equipment, appliance, facilities or other thing provided in pursuance of the Act or regulations thereunder) a *worker* shall keep in position and shall make full use of every guard, facility and other thing provided, which satisfies the requirements of this Schedule:

Provided that a guard may be removed from a *stationary machine*, or from a *prime mover* that is not a *stationary machine*, by a *worker* who has attained the age of 16 years—

(a) while the machine or *prime mover* is not in motion for so long only as is necessary for cleaning, repair or adjustment; or

(b) while the machine or *prime mover* is in motion for so long as is necessary for carrying out any essential adjustment, being an adjustment which cannot be carried out unless the machine or *prime mover* is in motion.

(2) Nothing in the last foregoing subparagraph shall prevent a guard from being temporarily removed from a *prime mover* by a *worker* who has attained the age of 16 years if its removal is necessary in order to start the *prime mover* by hand.

Damaged guards

10.—(1) If any guard required under Part II of this Schedule which has been fitted to a *stationary machine*, or any component thereof, or to a *prime mover* that is not a *stationary machine*, or any component thereof, is or becomes damaged, any *worker employed* to operate that machine or *prime mover* shall, on discovering that it is damaged, forthwith report the fact to his *employer*.

(2) Nothing in this paragraph shall absolve an *employer* from complying with the requirements contained in Part II of this Schedule.

THE AGRICULTURE (THRESHERS AND BALERS) REGULATIONS 1960

(S.I. 1960 No. 1199)

Dated 14*th July* 1960, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State, under section* 1 (1) *to* (5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956 *and of all other enabling powers.*

General note. A contravention of these regulations is, by s. 1 (6) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, an offence for which penalties are provided by s. 14 of that Act. These regulations are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding on the Crown; see s. 22 of that Act. In the case of some of the machines governed by these regulations protection was formerly afforded by the Threshing Machines Act 1878, and the Chaff-Cutting Machines (Accidents) Act 1897. Both these statutes are now repealed (see notes (*i*) and (*j*) to s. 1 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956).

Citation, extent and commencement

1. These regulations, which may be cited as the Agriculture (Threshers and Balers) Regulations 1960, shall apply to Great Britain (*a*) and shall come into operation on the 1st day of August, 1961.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

Interpretation

2.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"agriculture", "agricultural unit", and (subject to regulation 6 of these regulations) "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales (*a*), by subsection (1) of section 24 of *the Act*, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of *the Act*;

"thresher" and "baler" have the meanings respectively assigned to them in Part I of the Schedule to these regulations.

(2) For the purposes of these regulations a worker works at a *thresher* or *baler* if—

(a) he operates or assists in the operation of the *thresher* or *baler:* or

(b) he is present at the site where threshing or baling is being carried out and performs any task which is necessarily incidental thereto.

(3) Expressions used in Parts II, III and IV of the Schedule to these regulations of which there are definitions in Part I thereof have the meanings thereby respectively assigned to them.

(4) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(*a*) ***England and Wales.*** For the meaning of this expression, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

Obligations affecting employers

3. Subject to the provisions of these regulations the *employer* (*a*) of a *worker employed* in *agriculture* shall not cause (*b*) or permit a *worker* so *employed*, in the course of his employment, to work at a *thresher* or *baler* unless the requirements contained in Part II of the Schedule to these regulations are complied with.

(*a*) ***Employer.*** See, further, reg. 6.

(*b*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963, p. 68.

Obligations affecting employers and workers

4. Subject to the provisions of these regulations—

(a) the *employer* (*a*) of a *worker employed* in *agriculture* shall not cause (*b*) or permit a *worker* so *employed*, in the course of his employment, to work at, and

(b) a *worker* so *employed* shall not, in the course of his employment work at,

a *thresher* or *baler* unless the requirements contained in Part III of the Schedule to these regulations are complied with.

(*a*) ***Employer.*** See, further, reg. 6.

(*b*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963, p. 68.

Obligations affecting workers

5. Subject to the provisions of these regulations a *worker employed* in *agriculture* who, in the course of his employment, works at a *thresher* or *baler* shall comply with the requirements contained in Part IV of the Schedule to these regulations.

Persons deemed to be employers

6.—(1) Where a *worker employed* in *agriculture* works at a *thresher* or *baler* elsewhere than in an *agricultural unit* of which his *employer* is the occupier, the *worker* shall, while so working, be deemed for the purposes of these regulations to be in the employment of the occupier of the *agricultural unit* on which the threshing or baling is being carried out, or (in cases where paragraph (2) of this regulation applies) of the agricultural contractor to whom the *thresher* or *baler* belongs.

(2) Where a *worker employed* in *agriculture* works at a *thresher* or *baler* belonging to an agricultural contractor, the *worker* shall, while so working, be deemed for the purposes of these regulations to be in the employment of the agricultural contractor.

(3) For the purposes of these regulations a *thresher* or *baler* belongs to an agricultural contractor if—

(a) he is the owner thereof; or

(b) he has hired or borrowed it from the owner.

(4) Where by virtue of paragraphs (1) or (2) of this regulation any person is deemed to be the *employer* of a *worker employed* in *agriculture*, regulations 3 and 4 of these regulations, except in their application to *workers*, shall not apply to any person other than the person so deemed as aforesaid.

Certificates of Exemption

7.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, the *employer* of a *worker employed* in *agriculture* (including any person deemed

by these regulations to be an *employer*), and a *worker* so *employed*, to whom any such certificate applies, shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

SCHEDULE

PART I

Regulation 2 (3)

INTERPRETATION

1.—(1) In this Schedule—

"baler" means a *stationary machine* (*a*) used for baling or trussing straw or fodder, and includes a trusser;

"belt" includes any flexible material used to transmit power from one pulley to another;

"deck" means any platform (other than any temporary extension thereof) of a *thresher* designed for a worker to stand on while working at the *thresher*;

"primary driving belt" means a belt for transmitting power from the driving pulley of a prime mover to a *thresher* or *baler*;

"prime mover" means every engine, motor or other appliance which provides mechanical energy to a *thresher* or *baler*;

"run-on point" means the on-running point of contact of a belt with a pulley, or of a chain with a sprocket;

"shafting" means a shaft or system of shafts (including any couplings and clutches) used for transmitting power;

"stationary machine" means any machine (together with any *prime mover* forming an integral part thereof and any transmission machinery used therewith) designed, or permanently converted, for stationary use only;

"thresher" means a *stationary machine* (*a*) used for threshing grain or seed, and includes a huller but does not include a pea-viner.

(2) References in this Schedule to a *worker* coming in contact with any part of a *thresher* or *baler* (or, in relation to a *primary driving belt*, with any *run-on point*), shall be construed as references to his coming in contact therewith either directly or by means of his clothes.

(*a*) ***Stationary machine.*** Mobile machines are governed by the Agriculture (Field Machinery) Regulations 1962, p. 484.

PART II *Regulation* 3

REQUIREMENTS APPLICABLE TO EMPLOYERS

Threshers

Guarding of drum feeding mouth

2.—(1) Subject to the provisions of this paragraph the drum feeding mouth of every *thresher* shall, whenever produce is being fed to the drum, be so guarded as to protect a *worker* from coming in contact with the drum:

Provided that nothing in this subparagraph shall require the feeding mouth to be guarded in a manner that would render it impracticable for produce to be fed to the drum.

(2) Without prejudice to the generality of the foregoing subparagraph, the requirements thereof shall be deemed to be complied with if a *thresher* is fitted with a self-feeder which affords a worker no less protection against coming in contact with the drum than if the drum feeding mouth were guarded in accordance with that subparagraph.

Fitting of cover over drum feeding mouth

3.—(1) If while the drum of a *thresher* is rotating produce is not being fed to the drum, the drum feeding mouth shall be so covered as to render it impossible for a *worker* to come in contact with the drum.

(2) A cover required in accordance with the foregoing subparagraph shall, for the purposes of this Schedule, be treated as a guard.

Decks

4.—(1) The *deck* of every *thresher* from which a *worker* is liable to fall more than 5 feet shall be fitted with a guard (being a guard which complies with subparagraph (2) of this paragraph)—

(a) at each end of the *deck*; and

(b) at the side of the *deck* not being used for the movement of produce:

Provided that one gap of not more than 2 feet may be left in the guard for access to the *deck* by a *worker*.

(2) The said guard—

(a) shall consist of a guard rail, rope, chain or fence;

(b) shall be not less than 3 feet nor more than 4 feet above the deck; and

(c) shall be supported by uprights not more than 8 feet apart.

(3) The foregoing subparagraphs shall not apply to any floor to which the Agriculture (Safeguarding of Workplaces) Regulations 1959, apply.

Prohibition of use of pointed hooks and spikes

5. No pointed hook or spike shall be used, or form part of any device, for the attachment of a sack or bag to a *thresher*.

Balers and trussers

Guarding of dangerous parts of balers and trussers

6.—(1) Every *baler* shall at both sides be fitted with a guard so situated as to protect a *worker* from coming in contact with the ram.

(2) Every trusser shall be fitted with a guard so situated as to protect a *worker* from coming in contact with the discharge arms.

Threshers and balers

Construction and Maintenance

7. Every *thresher* and every *baler* shall be of sound construction and properly maintained (*a*).

Components of threshers and balers

8.—(1) Subject to the provisions of this paragraph every component of a *thresher*, and every component of a *baler*, being a component to which this paragraph applies, shall be so situated or so guarded as to protect a *worker* from coming in contact therewith.

(2) Without prejudice to the generality of the foregoing subparagraph, where a *thresher* or *baler* is permanently fixed in one position, a component, and any part of a component, shall be deemed to be so situated as aforesaid if it is more than 6 feet 6 inches from every floor, platform, staircase, fixed ladder or other place to which a *worker* has access in the course of his employment.

(3) The components to which this paragraph applies are any *shafting*, pulley, flywheel, gearing, crank, spocket, *belt* or chain:

Provided that this paragraph shall not apply to shafts to which the Agriculture (Power Take-off) Regulations 1957 apply, and, as respects *belts* and chains, shall have effect subject to the next following subparagraph.

(4) In the case of—

(a) a *primary driving belt* in respect of which the *prime mover* and *thresher* or *baler* are not permanently fixed in relation to each other; and

(b) any *belt* or chain connecting a *thresher* and a *baler* which are not so fixed as aforesaid,

the provisions of subparagraph (1) of this paragraph shall apply only in relation to the *run-on points*.

Means of quickly stopping machinery

9.—(1) Means shall be provided, in accordance with the following provisions of this paragraph, of quickly stopping every *thresher* and *baler*, that is to say, either—

(a) the *prime mover* shall be fitted with a readily accessible device (whether or not a switch) by means of which the *prime mover* may quickly be stopped; or

(b) the *thresher* or *baler* shall be fitted with such a device by means of which it may be immediately disconnected from its *prime mover*.

(2) Every such device as is mentioned in the foregoing subparagraph shall be so constructed and maintained that the power cannot be reconnected to the *thresher* or *baler* unless the device is manually operated.

(3) Where a *prime mover*, whether or not forming an integral part of a *baler* or *thresher*, is controlled by two or more manually operated switches, they shall be connected in such manner that if the power is disconnected at any one such switch, it shall be incapable of being reconnected unless that switch is subsequently manually operated.

(4) In the last two foregoing subparagraphs "manually operated" means operated by hand, foot or other bodily means.

Belts

10.—(1) Every *belt* (including a *primary driving belt*) together with its fastenings which is used in connection with a *thresher* or *baler* shall be properly maintained (*a*).

(2) No such *belt* shall rest or ride directly on a revolving shaft.

(3) No fastening on a *primary driving belt* shall be such as to constitute a danger to a *worker*.

Lighting

11. At every *thresher* and every *baler*, and at every *prime mover* used therewith, there shall be adequate natural or artificial light.

Guards

12. Every guard required by this Schedule shall be of adequate strength (*b*) and shall be properly maintained (*c*).

(*a*) ***Properly maintained.*** See note (*h*) to s. 8 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956.

(*b*) ***Adequate strength.*** See note (*c*) to paragraph 5 of the Schedule to the Agriculture (Safeguarding of Workplaces) Regulations 1959, p. 466.

PART III *Regulation* 4

REQUIREMENTS APPLICABLE TO EMPLOYERS AND WORKERS

Threshers

Prohibited standing places for workers

13. A *worker* shall not, while the drum of a *thresher* is rotating, stand on any platform, or other surface, which slopes down directly into the drum feeding mouth of the *thresher*.

Minimum age for feeding into drum feeding mouth

14. A *worker* shall not feed produce into the drum feeding mouth of a *thresher* unless he has attained the age of 18 years.

Balers

Prohibition of being on baler during operation

15. A *worker* shall not be on top of a *baler* while it is being operated.

PART IV *Regulation* 5

REQUIREMENTS APPLICABLE TO WORKERS

Threshers and balers

Use of safety appliances

16.—(1) Subject to the provisions of this paragraph, and without prejudice to subsection (1) of section 13 of *the Act* (which makes it an offence for a *worker* wilfully to interfere with, or misuse, any equipment, appliance, facilities or other thing provided in pursuance of the Act or regulations thereunder), a *worker* shall keep in position and shall make full use of every guard, facility and other thing provided, which satisfies the requirements of this Schedule:

Provided that a guard may be removed from a *thresher* or *baler* (and from a *primary driving belt*) by a *worker* who has attained the age of 16 years—

(a) while the *thresher* or *baler* is not in use for so long only as is necessary for repair or adjustment; or

(b) while the *thresher* or *baler* is in use for so long only as is necessary for carrying out any essential adjustment, being an adjustment which cannot be carried out unless the *thresher* or *baler* is in use.

(2) The foregoing subparagraph shall not apply in respect of any period while a *thresher* or *baler* is disconnected from its *prime mover*.

Damaged guards

17.—(1) If any guard required under Part II of this Schedule is or becomes damaged, any *worker employed* to work at any *thresher* or *baler* to which such a guard has been fitted shall, on discovering that the guard is damaged, forthwith report the fact to his *employer*, or, in cases where for the purposes of these regulations some other person is deemed to be his *employer*, to that person.

(2) Nothing in this paragraph shall absolve an *employer*, or a person deemed for the purposes of these regulations to be an *employer*, from complying with the requirements contained in Part II of this Schedule.

THE AGRICULTURE (FIELD MACHINERY) REGULATIONS 1962

(S.I. 1961 No. 1472)

Dated 13*th July* 1962, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly, in exercise of the powers conferred on them by section* 1 (1) *to* (5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956, *and of all other enabling powers.*

General note. A contravention of these regulations is, by s. 1 (6) of the Agriculture (Safety, Health and Welfare Provision) Act 1956, an offence for which penalties are provided by s. 14 of that Act. These regulations are, in so far as they impose duties failure to comply with which might give rise to a liability in tort, binding on the Crown; see s. 22, of that Act.

These regulations apply to any machine designed or adapted for use in agriculture other than a machine designed or adapted for stationary use only (*ibid.*, reg. 2 (1) and Sch. 1, para. 1 (1)). As to stationary machines, see the Agriculture (Circular Saws) Regulations 1959, Agriculture (Stationary Machinery) Regulations, 1959, and the Agriculture (Threshers and Balers) Regulations 1960.

Citation, extent and commencement

1. These regulations, which may be cited as the Agriculture (Field Machinery) Regulations 1962, shall apply to Great Britain (*a*) and shall come into operation as follows—

(a) this regulation, and regulations 2 and 5, shall come into operation on the date of the making of these regulations (*b*);

(b) regulation 3 (in its application to paragraphs 14 and 15 of Part II of schedule 1 to these regulations, and to Parts III, IV and V thereof) shall come into operation three months after the making of these regulations;

(c) regulation 3 (in its application to the remainder of the said Part II) as respects *field machines* which are new, and paragraph (1) of regulation 4 of these regulations shall come into operation on the 1st July 1964;

(d) regulation 3 (in its application to the remainder of the said Part II as aforesaid) as respects *field machines* which are not new, and paragraph (2) of regulation 4 of these regulations, shall, in relation to machines of the several classes mentioned in the first column of schedule 2 to these regulations, come into operation

on the dates respectively applicable to each such class shown in the second column of that schedule.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

(*b*) ***Date . . . regulations.*** That is, 13th July 1962.

Interpretation

2.—(1) In these regulations—

"the Act" means the Agriculture (Safety, Health and Welfare Provisions) Act 1956;

"agriculture", "agricultural unit" and (subject to paragraphs (2) to (5) of regulation 3 of these regulations) "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales (*a*), by subsection (1) of section 24 of *the Act*, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of *the Act;*

"field machine" has the meaning assigned to it in Part I of schedule 1 to these regulations.

(2) For the purposes of these regulations—

(a) a *worker* works at a *field machine* if—

(i) he drives, operates or assists in the operation of the *field machine*; or

(ii) he is present at the site where the *field machine*, or any other machine operated in conjunction with such *field machine*, is being used and performs any task which is necessarily incidental to such use, and

(b) a *field machine* is new if the first sale of it, since its manufacture, to a purchaser for use by him in agriculture occurs on or after the 1st July 1964.

(3) Expressions used in Parts II, III, IV, and V of schedule 1 to these regulations of which there are definitions in Part I thereof have the meanings thereby respectively assigned to them.

(4) The Interpretation Act 1889 applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(*a*) ***England and Wales.*** For the meaning of this expression, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

Obligations affecting employers, workers and others

3.—(1) Subject to the provisions of these regulations—

(a) the *employer* of a *worker employed* in *agriculture* shall not cause (*a*) to permit him, in the course of his employment, to work at a *field machine* (*b*) unless the requirements contained in Part II of schedule 1 to these regulations, applicable to such *worker* in respect of such machine, are complied with;

(b) every *worker employed* in *agriculture* shall comply with the requirements contained in Part III of the said schedule 1, and his *employer* shall not cause (*a*) or permit him to contravene any such requirement;

(c) a *worker employed* in *agriculture* who, in the course of his employment, works at a *field machine* (*b*) shall comply with the requirements contained in Part IV of the said schedule 1 applicable to such *worker* in respect of such machine; and

(d) no person shall contravene any requirement contained in Part V of the said schedule 1:

Provided that subparagraph (d) of this paragraph shall apply to persons other than *workers* only in so far as failure to comply with the requirements of the said Part V would expose a *worker* to risk of injury.

(2) Where a *worker employed* in *agriculture* works at a *field machine* (*a*) elsewhere than on an *agricultural unit* of which his *employer* is the occupier, the *worker* shall, while so working, be deemed for the purposes of these regulations to be in the employment of the occupier of the *agricultural unit* on which the *field machine* is being used, or (in cases where paragraph (3) of this regulation applies) of the agricultural contractor to whom the *field machine* belongs.

(3) Where a *worker employed* in *agriculture* works at a *field machine* (*a*) belonging to an agricultural contractor, the *worker* shall, while so working, be deemed for the purposes of these regulations to be in the employment of the agricultural contractor.

(4) For the purposes of these regulations a *field machine* belongs to an agricultural contractor if he is the owner thereof, or if he has hired or borrowed it from the owner.

(5) Where by virtue of paragraphs (2) or (3) of this regulation any person is deemed to be the *employer* of a *worker employed in agriculture*, paragraph (1) of this regulation, in its application to *employers*, shall not apply to any person other than the person so deemed as aforesaid.

(*a*) ***Cause.*** See note (*p*) to s. 20 of the Offices, Shops and Railway Premises Act 1963, p. 68.

(*b*) ***Work at a field machine.*** See, as to working at a field machine, the provisions of reg. 2 (2) (a).

Prohibition of sale and letting on hire of non-complying field machines

4.—(1) No person shall sell to a purchaser, for use in *agriculture* in Great Britain (*a*), any *field machine* that does not comply with the requirements contained in Part II of schedule 1 to these regulations (other than paragraph 15 (1) thereof):

Provided that this paragraph shall not apply in respect of a *field machine* that has previously been sold to a purchaser for use by him in *agriculture*.

(2) No person shall let on hire for use in *agriculture* in Great Britain (*a*) any *field machine* that does not comply with any of the requirements contained in the said Part II.

(3) For the purposes of this regulation a *field machine* which is the subject of a hire purchase contract shall be deemed to be sold and not to be let on hire.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

Certificates of exemption

5.—(1) Notwithstanding anything in these regulations, the Minister may grant certificates exempting (for such periods as may be specified therein and subject to such conditions, if any, as may be so specified) particular cases or particular persons from the operation of the provisions of these regulations, and where any such conditions are imposed, the *employer* of a *worker employed* in *agriculture* (including any person deemed by these regulations to be an *employer*), and a *worker* so *employed*, to whom any such certificate applies, shall comply with those conditions.

(2) In this regulation "the Minister" means, as respects England and Wales, the Minister of Agriculture, Fisheries and Food, and, as respects Scotland, the Secretary of State.

SCHEDULE ONE

Regulation 2 (3)

PART I

INTERPRETATION

1.—(1) In this schedule the following expressions have the meanings hereby respectively assigned to them, that is to say—

"field machine" means any machine designed or adapted for use in *agriculture* other than a machine so designed or adapted for stationary use only, and includes a power driven handtool and (subject to paragraphs 11 and 13 of this schedule) a trailer, but does not include a self-propelled road vehicle which is designed primarily for the carriage of persons or of loads, or an aircraft;

"ground wheel" means, in relation to a field machine, any wheel thereof which revolves in contact with the ground;

"manual" means by hand, foot or other bodily means, and "manually" has a corresponding meaning;

"pedestrian controlled", in relation to a *field machine*, means a *field machine* which can be operated only by a person on foot;

"power driven" means driven by any form of power other than that derived from a *ground wheel;*

"prime mover" means every engine, motor, or other appliance which provides mechanical energy to a field machine;

"pulley" includes a roller on which a belt is carried;

"safety device" means any thing required under this schedule to be provided for a *worker's* safety;

"trailer" means a vehicle (whether or not fitted with machinery) designed or adapted to be towed, being a vehicle primarily intended for the carriage of loads.

(2) References in this schedule to a *worker* operating a *field machine* include (except where the context otherwise requires) references to a *worker* assisting in the operation thereof, and references to a *worker* (or to any part of a *worker*) coming in contact with any part of a *field machine* shall be construed as references to his coming in contact therewith, either directly or by means of his clothes.

PART II

Regulation 3 (1) (*a*)

REQUIREMENTS APPLICABLE TO EMPLOYERS

Components of field machines

2.—(1) Subject to the provisions of this paragraph every component of a *field machine*, being a component to which this paragraph applies, shall—

(a) if the component is driven by any *ground wheel* of the machine, be so situated or so guarded that any *worker* who operates the machine, while in the normal operating position applicable to such *worker*, is protected from coming in contact with such component;

(b) if the component is *power driven*, be so situated or so guarded that any *worker*, working at the machine, is protected from coming in contact with such component.

(2) The components to which this paragraph applies are—

(a) in the case of every *field machine*, any shafting, *pulley*, flywheel, gearing, sprocket, *belt*, *chain*, or as respects any fan (in addition to any of the foregoing components) any wing or blade thereof; and

(b) in the case of a *field machine* designed to perform a function by means of reciprocal action, (in addition to the components mentioned in subparagraph (a) hereof) the reciprocating parts of such a machine if they are so situated in relation to any other part of the machine as to expose the *worker* to risk of injury:

Provided that this paragraph shall not apply to—

(i) so much of any such component as functions in contact with the soil;

(ii) any axle of a *ground wheel*, or any component forming part of the track gear of a track laying tractor;

(iii) any *smooth pulley* or *smooth* flywheel;

(iv) any reciprocating knife; or

(v) any shaft to which the Agriculture (Power Take-off) Regulations 1957 apply,

and, as respects *belts* and *chains*, shall have effect subject to the two next following subparagraphs.

(3) As respects a *belt* or *chain* (other than a conveyor *belt* or *chain* for the movement of materials) it shall be sufficient compliance with this paragraph, so far as the requirements thereof are met by guarding, if the *belt* or *chain* is guarded at its *run-on points* and, in the case of a *field machine* designed for operation

by a *worker* while on the machine, at every place where such a *worker* would (but for this provision) be exposed to risk of injury by such *belt* or *chain;* but this modification of requirements shall not apply where a *belt* or *chain* has fastenings which expose a *worker* to risk of injury.

(4) As respects a conveyor *belt* or *chain* for the movement of materials it shall be sufficient compliance with this paragraph, so far as the requirements thereof are met by guarding, if the *belt* or *chain* is guarded at its *run-on points;* but, if a *worker* is required to handle anything on such a *belt* or *chain*, or to work so close to it as to be exposed to risk of injury, the requirements of this paragraph shall be met only if the side of the *belt* or *chain* is so guarded, at every place where a *worker* is required to handle anything on the *belt* or *chain*, that the *worker* is protected from coming in contact with such side.

(5) In this paragraph "belt" includes any flexible material used to transmit power from one *pulley* to another; "chain" means any chain composed of links of metal or other non-flexible material used to transmit power from one sprocket to another; "run-on point" means the on-running point of contact of a *belt* with a *pulley*, or of a *chain* with a sprocket; and "smooth *pulley*" and "smooth flywheel" mean respectively a *pulley* or flywheel which has a continuous, unbroken and smooth surface between the centre and the rim, and has no protuberance which exposes a *worker* to risk of injury.

(6) The mention of particular guarding requirements in the two next following paragraphs shall be without prejudice to the application of this paragraph to any *field machine* to which either of those paragraphs applies.

Guarding of operative parts of certain field machines

3.—(1) This paragraph applies to any *power driven field machine* which has rotating knives, tines, flails, or other parts similar thereto (in this paragraph referred to as "the operative parts") operating in or near the ground:

Provided that this paragraph shall not apply to—

(i) a cylinder mower, haymaking machine, hedge cutter, potato spinner, root gapper or thinner, or to

(ii) any *pedestrian controlled field machine* whose operative parts rotate in a vertical or near vertical plane.

(2) Every *field machine* to which this paragraph applies shall be fitted with a guard which—

(a) covers the operative parts of the machine being as near to such parts as practicable; and

(b) fulfils the other conditions respectively applicable to such a machine set forth in the two next following subparagraphs.

(3) Where the operative parts of the *field machine* rotate in a vertical or near vertical plane the said guard shall cover each end of the rotating assembly as well as the top thereof, and shall extend downwards so as to be as near the ground as practicable.

(4) Where the operative parts of the *field machine* rotate in a horizontal or near horizontal plane the said guard shall, unless it extends downwards below the plane of the rotating assembly so as to be as near the ground as practicable, extend at least 1 foot beyond the periphery of such parts.

Guarding of specific field machines

4.—(1) As respects every *power driven* potato spinner the digging reel thereof shall be guarded with a horizontal guard rail surrounding such reel, such guard rail being not less than 1 foot, measured horizontally from the reel, and not less than 2 feet nor more than 3 feet from the ground; and, where such a potato spinner has a receiving reel, that reel also shall be guarded in like manner.

For the purpose of any of the said measurements a potato spinner shall be assumed to be in the operating position.

(2) Every chain saw designed or adapted for operation by one person, shall, unless it has a guard between the handle and the saw which protects the operator's hand from slipping off the handle on to the saw, be fitted with a rigid safety bar which extends above and along the back of the saw from the end nearer to the operator for at least 9 inches.

(3) As respects every chain saw designed or adapted for operation by more than one person, being a saw which requires for its operation that one person shall be stationed at each end, the whole of the back of the saw shall be guarded by a rigid safety bar.

(4) Every rotary hedge cutter shall be so guarded as to protect every *worker* working at it while in the normal operating position from injury by material ejected by or from its cutting parts.

(5) As respects every pick-up baler the pick-up shall be fitted with a rigid guard rail (*b*) which affords an adequate handhold (*c*) and which—

(a) extends for the whole width of the pick-up;

(b) is placed in such a position that when the pick-up is in the operating position the guard rail is not less than 18 inches nor more than 3 feet 6 inches from the ground; and

(c) is not less than 12 inches in front of the foremost revolving part of the pick-up.

Cutter bars

5.—(1) Where a *field machine* is fitted with a cutter bar (not being a cutter bar having a reel over the fingers which extends to at least 1 foot in front thereof), the points of the fingers shall except when the cutter bar is in use be at all times completely and securely covered by a rigid guard.

(2) Without prejudice to the generality of the foregoing exception a cutter bar shall be deemed to be in use if it is undergoing repair or adjustment, or is being transported from one part of an *agricultural unit* to another in the course of a single agricultural operation.

Stopping devices

6.—(1) Every *prime mover* shall be fitted with a device by means of which the *prime mover* may quickly be stopped.

(2) The purpose and method of operation of every such device shall be clearly indicated.

(3) Every such device shall be so constructed and maintained that—

(a) it does not depend on sustained *manual* pressure for its operation; and

(b) when it is set at the "off" or "stop" position the *prime mover* is incapable of being re-started unless the device is *manually* re-set.

Every such device shall be readily accessible—

(a) in the case of a self-propelled *field machine*, to the driver thereof at the normal driving position;

(b) in the case of a *field machine* which is *pedestrain controlled*, to the *worker* operating it at the normal control position;

(c) in the case of a *field machine* having its own *prime mover*, being a machine which is both towed and manned, as respects that *prime mover*, to at least one *worker* operating the machine at the normal operating position applicable to such *worker*, provided that this requirement shall not apply where there is readily accessible to at least one such *worker* at the said position a device by means of which the power from that *prime mover* may quickly be disconnected.

(5) In the case of a *field machine* having its own *prime move* being a machine which is towed but is not manned, the stop

device required by this paragraph shall be as near as practicable to that *prime mover*.

(6) Without prejudice to subparagraph (1) of this paragraph, every self-propelled *field machine* (other than a machine which is *pedestrian controlled*) shall be fitted with a device, readily accessible to the driver of the machine at the normal driving position, by means of which the power from the *prime mover* may quickly be disconnected.

(7) Where a *field machine* is fitted with a clutch (other than a clutch which on release automatically returns to the engaged position) effective means shall be provided to secure the clutch in the disengaged position so that it is incapable of being re-engaged unless it is *manually* operated.

Differential locks

7. Every *manually* operated device fitted to a self-propelled *field machine*, the function of which is to lock the differential gear of the mutually opposite driving wheels of such a machine, shall be so designed, fitted and maintained that the position of the controlling mechanism clearly indicates to the driver of the machine whether or not such gear is locked.

Valves and cocks

8. At every *manually* operated cock or valve provided for operating or isolating any part of the hydraulic or pneumatic system embodied in a *field machine* there shall be an indicator clearly showing the effect of movement of the valve or cock in any direction.

Drawbar jacks

9.—(1) Every *field machine* having a drawbar, being a machine to which this paragraph applies, shall be fitted with a jack capable of raising and lowering the drawbar.

(2) Every such jack shall be so constructed, and so secured to the *field machine*, as to prevent the drawbar from falling when the jack is in use.

(3) No such jack shall be removed from a *field machine* to which it is fitted except where removal is necessary for the operation of the machine, for repair or for replacement.

(4) This paragraph applies to any *field machine* having a drawbar, being a machine which is mounted on two wheels—

(a) in the case of a *trailer*, if its unladen weight is more than 10 hundredweight;

(*b*) in the case of any other *field machine*, if, when the machine is unladen, the downward force exerted by the drawbar at the point of hitch is more than 56 pounds:

Provided that this paragraph shall not apply to a *field machine* if the drawbar is of a type that is designed exclusively for attachment otherwise than by *manual* means.

(5) For the purposes of this paragraph the downward force exerted by a drawbar shall be calculated on the basis that the *field machine* is at rest on level ground and that the drawbar is at a height of 16 inches therefrom.

Prohibition of use of pointed hooks and spikes

10. No pointed hook or spike shall be used, or form part of any device, for the attachment of a bag or other container to a *field machine*.

Standing platforms

11.—(1) Every *field machine* (other than a *trailer*) on which a *worker* may be required to stand while the machine is being operated shall be fitted with a platform which complies with sub-paragraph (2) of this paragraph.

(2) The said platform shall afford the *worker* adequate and flat standing space and a firm foothold, and shall be fitted at each side with—

(a) toeboards, which shall be at the edge of the platform or not more than 2 inches outside it, and shall extend not less than 3 inches above the platform; and

(b) guard rails (*a*) which shall be not less than 3 feet nor more than 3 feet 6 inches above the platform:

Provided that—

(i) no toeboard or guard rail (*a*) need be fitted to the platform—

(a) if the *field machine* itself affords no less protection to a *worker* against falling from the platform than would be afforded if a toeboard or guard rail (*a*) (as the case may be) were fitted to the platform;

(b) at places on the platform where it is necessary to permit the access of persons or the movement of materials;

(c) in the case of a platform not being more than 2 feet from the ground, at any side thereof from which a *worker* would, if he fell, fall clear of the machine or anything attached thereto, and

(ii) in the case of a drill having a rear platform, it shall be sufficient compliance with this subparagraph if there is—

(a) in front of the *worker* operating the drill a handrail which is within his reach from any part of the platform, or behind such *worker* a guard rail (*a*); and

(b) a toeboard at the leading edge of the platform.

(3) In the case of every *field machine* (including a *trailer*) having a *ground wheel* which protrudes through or is adjacent to a platform, being a platform on which a *worker* may be required to stand while the machine is being operated, each such *ground wheel* shall be so guarded as to protect the *worker's* legs and feet from coming in contact with such wheel whenever the *worker* is on the platform.

(4) Every *trailer* on which a *worker* may be required to stand while it is being operated shall, whenever it is attached to a pick-up baler be fitted with—

(a) a toeboard, which shall be not less than 4 inches high at the leading edge of the trailer, and shall extend the whole width thereof; or

(b) a triangular drawbar, of which the side nearest to the trailer shall be not less than the width thereof, and which shall be so constructed and maintained (*b*) that the area contained by its three sides affords firm support for the *worker's* feet.

(5) In this paragraph references to toe boards include references to other fitments serving the like purpose no less effectively, and references to *trailers* include references to bale or other sledges.

Seats and footrests

12.—(1) Every *field machine* on which a *worker* may be required to be seated while the machine is being operated shall be fitted with—

(*a*) a seat of adequate strength (*d*), being either fitted with a back-rest, or otherwise so shaped, as to protect the *worker* against slipping from the seat; and

(b) adequate and convenient footrests being so constructed and placed in position as to protect a *worker's* feet from slipping and from thereby coming in contact with any moving part of the machine, including its *ground wheels* and track gear.

(2) Whenever a *ground wheel* or track gear of a *field machine* is adjacent to a seat or footrest (whether or not the seat or footrest is part of that or of another *field machine*), a guard shall be fitted which shall protect the legs and feet of a *worker* seated on the

field machine from coming in contact with such *ground wheel* or track gear.

Mounting devices

13.—(1) Every *field machine* to which this paragraph applies shall be fitted with a mounting device which shall afford to a *worker* working at the machine a safe and convenient means of mounting, and dismounting from it.

(2) This paragraph applies to any *field machine* in relation to which the mounting distance from the ground in order to reach the position where the *worker* is required to work exceeds 21 inches; but does not apply to a *trailer*.

(3) In this paragraph "mounting device" means the combination of a mounting step, not more than 21 inches from the ground, with a suitable handhold (*c*), being together designed as a means of mounting, and dismounting from, the machine, whether or not such step and handhold (*c*) are designed exclusively for such purpose.

Towing devices

14.—(1) Whenever a *field machine* is used for towing, or is itself towed, the towing device shall be so constructed, fitted and maintained as to be secure for the purpose; and without prejudice to the generality of such requirement where such device includes a coupling pin it shall be firmly secured in position.

(2) In this paragraph "towing device" means everything which directly or indirectly serves as the means of connection of the *field machine* to that which is towed or (as the case may be) is used for towing, "towing" includes propelling and winching, and "towed" has a corresponding meaning.

(3) Nothing in this paragraph shall render unlawful the use of a safety breakaway hitch in connection with a machine any of whose parts operate directly in the soil, while any such part is so operating.

Maintenance

15.—(1) Every *field machine*, including every part thereof, shall be so maintained (*b*) as to be safe, in relation to the time when the machine is in use, for a *worker* to use it.

(2) Every *safety device* with which a *field machine* is provided shall be of adequate strength (*d*) and shall be properly secured in position and maintained (*b*).

(*a*) ***Guard rail.*** See note (*a*) to paragraph 3 of the Schedule to the Agriculture (Safeguarding of Workplaces) Regulations 1959.

(*b*) ***Maintained.*** See note (*h*) to s. 8 of the Offices, Shops and Railway Premises Act 1963.

(*c*) ***Handhold.*** See note (*a*) to paragraph 4 of the Schedule to the Agriculture (Safeguarding of Workplaces) Regulations 1959, p. 465.

(*d*) ***Adequate strength.*** See note (*c*) to paragraph 5 of the Schedule to the Agriculture (Safeguarding of Workplaces) Regulations 1959, p. 466.

PART III

Regulation 3 (1) (*a*) and (*b*)

Requirements as respects which both employers and workers are responsible

16.—(1) A *worker* shall not ride on the drawbar or other linkage of a *field machine*, or of any machine towed or propelled by a *field machine*, while the *field machine* is engaged in towing or propelling.

(2) A *worker* shall not mount, or, except in an emergency, dismount from, a self-propelled *field machine* while it is engaged in towing or propelling.

PART IV

Regulation 3 (1) (*c*)

Requirements applicable to workers

Use of safety appliances

17.—(1) Subject to the provisions of this paragraph, and without prejudice to subsection (1) of section 13 of *the Act* (which makes it an offence for a worker wilfully to interfere with, or misuse, any equipment, appliance, facilities or other thing provided in pursuance of *the Act* or regulations thereunder), a *worker* shall keep in position and shall make full use of every *safety device* which satisfies the requirements of this schedule:

Provided that if any part of a *field machine* required to be guarded is not in motion, the guard may be removed therefrom by a *worker* who has attained the age of 16 years for so long only as is necessary—

(a) for the cleaning, repair or adjustment of such part while it is not in motion;

(b) for carrying out any essential adjustment to such part while it is in motion, being an adjustment which cannot otherwise be carried out.

(2) Nothing in the last foregoing subparagraph shall prevent a guard from being temporarily removed from a *prime mover* by a *worker* who has attained the age of 16 years if its removal is necessary in order to start the *prime mover* by hand.

Damaged safety devices

18.—(1) If any *safety device* is or becomes damaged or defective, any *worker* employed to operate any *field machine* to which such a device has been fitted shall, on discovering that the device is damaged or defective, forthwith report the fact to his *employer*, or, in cases where for the purposes of these regulations some other person is deemed to be his *employer*, to that person.

(2) Nothing in this paragraph shall absolve an *employer*, or a person deemed for the purposes of these regulations to be an *employer*, from complying with the requirements contained in Part II of this schedule.

PART V

Regulation 3 (1) (*d*)

Requirements applicable to employers, workers and others

19.—(1) No person shall set a self-propelled *field machine* in motion over the ground except from the driving position thereof.

(2) No person shall, except in an emergency, leave the driving position of a self-propelled *field machine* while it is in motion over the ground.

(3) This paragraph, in its application to *field machines* which are remotely controlled, shall have effect as if for the references to the driving position there were substituted references to the place at which the remote controls are operated.

SCHEDULE TWO

Regulation 1 (*d*)

Dates on which regulations come into operation as respects field machines which are not new

Class of field machine	Date of coming into operation
Class I	
Bale sledges. Corn and seed drills (including combined corn and fertiliser drills). Farmyard manure spreaders. Lime and fertiliser distributors. Liquid manure distributors.	1st July 1964.

SCHEDULE TWO—*continued*

Class of field machine	Date of coming into operation
Loaders and elevators, whether or not tractor mounted. Potato planters. Rotary cultivators and hoes. Seedling transplanters.	
Class II Binders. Combine harvesters, whether self-propelled or tractor drawn. Pea and bean harvesters. Pick-up balers. Windrowers.	1st January 1965.
Class III *Pedestrian controlled field machines.* *Power driven* handtools. Tractors.	1st January 1966.
Class IV Forage harvesters. Haulm pulverisers. Hedge cutters. Mowers. Potato elevator diggers. Potato harvesters. Potato spinners. Root gappers and thinners. Root harvesters, savers and toppers. Rotary cutters and slashers. Sprayers and dusters.	1st January 1967.
Class V *Field machines* not included in Classes I to IV of this schedule.	1st January 1968.

THE AGRICULTURE (TRACTOR CABS) REGULATIONS 1967

(S.I. 1967 No. 1072)

Dated 18th July 1967, *made by the Minister of Agriculture, Fisheries and Food and the Secretary of State for Scotland under s.* 1. (1) *to* (5) *of the Agriculture* (*Safety, Health and Welfare Provisions*) *Act* 1956.

General Note. A contravention of these regulations is, by virtue of s. 7 (3) of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, is an offence, for which penalties are provided by s. 14 of that Act. These regulations are binding upon the Crown; see s. 22 of the Act.

Citation, extent and commencement

1.—(1) These regulations, which may be cited as the Agriculture (Tractor Cabs) Regulations 1967, shall apply to Great Britain (*a*) and, except for regulations 4, 5 and 6, shall come into operation on the date on which they are made.

(2) Regulations 4, 5 and 6 shall come into operation on 1st September 1970, but so that where the first sale of a *tractor* for use by the purchaser in *agriculture* has occurred before that date, regulations 4 (c) and (5) shall not apply to that *tractor* until 1st September 1977.

(*a*) ***Great Britain.*** For the meaning of this term, see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

"agriculture", "worker", "employer" and "employed" have the meanings respectively assigned to them, as respects England and Wales, by subsection (1) of section 24 of the Agriculture (Safety, Health and Welfare Provisions) Act 1956, and, as respects Scotland, by that subsection as applied by subsection (10) of section 25 of that Act;

"approval mark" means the mark, consisting of a crown inside a triangle, illustrated in paragraph 1 of Part I of the Schedule to these regulations;

"approved", in relation to a *safety cab*, means approved in accordance with regulation 3 for use with a *tractor*;

"building" includes any underground premises;

"marked" means marked in the manner described in Part II of the Schedule to these regulations;

"the Ministers" means the Minister of Agriculture, Fisheries and Food and the Secretary of State, acting jointly, and "the appropriate Minister" means, for the purposes of the application of these regulations to England and Wales, the Minister of Agriculture, Fisheries and Food, and for the purposes of their application to Scotland, the Secretary of State;

"new" means not previously sold to any purchaser for use by him in *agriculture*;

"safety cab" means a rigid framework or cab designed to protect the driver of a *tractor* to which it is fitted from being crushed if the *tractor* overturns, and includes a safety frame;

"supplementary marks" means the marks described in paragraph 2 of Part I of the Schedule to these regulations;

"tractor" means a wheeled *tractor* weighing 11 cwt. or more when assembled in the lightest form commercially available, without water, fuel or lubricating oil, but does not include a half-tracked vehicle or a steam traction engine.

(2) For the purposes of these regulations a *tractor* which is made the subject of a contract for hire purchase shall be deemed to be sold, and not let on hire.

(3) A *tractor* is properly fitted with a *safety cab* for the purposes of these regulations if the *safety cab* is—

(a) so maintained and so fitted to the *tractor* as to afford the protection for which it is designed, and

(b) equipped with an efficient automatic wiper for any windscreen it may have.

(4) The Interpretation Act 1889 shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Approved safety cabs

3.—(1) Subject to the following provisions of this regulation, *the Ministers* may approve a *safety cab* of any model for use with a *tractor* of any description by issuing a certificate of approval to the manufacturer of the *safety cab* approving the use of *safety cabs* of that model when fitted to *tractors* of that description.

(2) Before issuing a certificate of approval *the Ministers* shall be satisfied that *safety cabs* of the model to which it relates would be capable of satisfying British Standard Specification No. B.S.4063 : 1966 (*a*) when fitted to *tractors* of descriptions specified in the certificate.

(3) A certificate of approval may prescribe specifications for the construction of *safety cabs* of the model to which it relates, and unless a *safety cab* is constructed in accordance with any specifications so prescribed it shall not be a *safety cab* of that model.

(4) Such specifications may be prescribed by reference to documents other than the certificate of approval, by reference to specimens of *safety cabs* or materials, and in any other manner.

(5) An *approved safety cab* shall cease to be *approved* if it is materially changed as a result of damage, alteration, neglect or any other cause.

(6) *The Ministers* may at any time in writing to the manufacturer, given not less than one month before it is due to take effect, amend or revoke a certificate of approval.

(7) It shall be a condition of every certificate of approval that the manufacturer to whom it is issued—

(a) shall cause every *safety cab approved* under the certificate to be *marked* with the *approval mark* and *supplementary marks* before it is sold or let on hire; and

(b) shall on request, at any reasonable time before sale, whether during or after manufacture,

(i) make available for inspection by or on behalf of *the Ministers* any *safety cab* manufactured by him;

(ii) submit to such tests as *the Ministers* may require any *safety cab* which purports to be or is intended to be *approved* under the certificate,

(8) *The Ministers* shall not require a *safety cab* to be tested under paragraph (7) above unless in their opinion there is reason to believe either that the *safety cab* is not a *safety cab* of the model to which the certificate relates or that it is not capable of satisfying the British Standard Specification referred to in paragraph (2) above.

(9) Where a manufacturer fails to comply with a condition of a certificate imposed on him by paragraph (7) above, *the Ministers* may by notice given to him in writing revoke the certificate forthwith.

(10) Amendment or revocation of a certificate of approval shall not affect any *approved safety cab* sold before the amendment or revocation takes effect.

(*a*) ***British Standard.*** British Standard Specification for the Safety Requirements and Testing of Safety Cabs and Safety Frames for Agricultural Wheeled Tractors: published by the British Standards Institution, 2 Park Street, London, W.1.

Sale and hire of tractors and safety cabs

4. No person shall—

(a) sell a *new tractor*, or let it on hire (*a*), to a person for use by him in *agriculture* in Great Britain, unless it is properly fitted (*b*) with a *safety cab* which is—

(i) *approved* for use with that *tractor*,

(ii) *marked* with the *approved mark*, and

(iii) *marked* with *supplementary marks* which include the name of the make, and the name or number of the model, of that *tractor*;

(b) sell a *new safety cab*, or let it on hire (*a*), for use in *agriculture* in Great Britain, unless it is—

(i) *approved*, and

(ii) *marked* with the *approval mark* and *supplementary marks*;

(c) let a *tractor* on hire (*a*), for use in *agriculture* on Great Britain (*b*), unless it is properly fitted (*c*) with a *safety cab marked* with the *approval mark*.

(*a*) ***Let on hire*** See reg. 2 (2).

(*b*) ***Great Britain*** For the meaning of this term see note (*e*) to s. 1 of the Agriculture (Poisonous Substances) Act 1952, p. 365.

(*c*) ***Properly fitted*** See reg. 2 (3).

Obligations on employers, workers and others

5.—(1) The *employer* of a *worker employed* in *agriculture* shall ensure—

(a) that every *tractor* driven by that *worker* in the course of his employment is properly fitted (*a*) with a *safety cab marked* with the *approval mark*; and

(b) so far as it is reasonably practicable (*b*) for him to do so, that every *safety cab* fitted to a *tractor* so driven by that *worker* is *approved* for use with that *tractor*.

(2) No *worker employed* in *agriculture* shall drive a *tractor* in the course of his employment, and no person shall cause (*c*) or permit him to do so, unless it is properly fitted (*a*) with a *safety cab marked* with the *approval mark*.

(3) No *worker employed* in *agriculture* shall drive a *tractor* in the course of his employment if it is fitted with a *safety cab* which he knows is not *approved* for use with that *tractor*, and no person shall cause (*c*) or permit such a *worker* to drive a *tractor* in the course of his employment if it is fitted with a *safety cab* which that person knows is not *approved* for use with that *tractor*.

(4) Nothing in this regulation shall apply to a *tractor*—

(a) while it is being used for the purpose of carrying out an agricultural operation in a hop-garden, hop-yard or orchard, where it is not reasonably practicable to use the *tractor* for the purpose if it is fitted with a *safety cab approved* for use with that *tractor*;

(b) while it is being driven to or from a hop-garden, hop-yard or orchard for the purpose of or after being used there without an *approved safety cab* in compliance with sub-paragraph (a) above;

(c) while it is being used inside, or in close proximity to, a *building* for the purpose of carrying out an agricultural operation involving its use inside that *building*, where it is not reasonably practicable (*b*) by reason of the height, shape or construction of the *building* to use the *tractor* for the purpose if it is fitted with a *safety cab approved* for use with that *tractor*; or

(d) while it is being driven to or from any *building* for the purpose of or after being used there without an

approved safety cab in compliance with sub-paragraph (c) above, unless the *tractor* is at the same time engaged in, or being driven from or to the site of, any agricultural operation for which such a *safety cab* is required by this regulation.

(*a*) ***Properly fitted.*** See reg. 2 (3).

(*b*) ***Reasonably practicable.*** See note (*f*) to s. 6 of the Offices, Shops and Railway Premises Act 1963, p. 21.

(*c*) ***Cause.*** See note (*f*) to *ibid.*, s. 20, p. 68.

Obligation on workers to report overturning or damage

6. Every *worker employed* in *agriculture* to drive or maintain a *tractor* fitted with a *safety cab marked* with the *approval mark* shall forthwith report to his employer—

(a) any occasion when the *tractor* overturns;

(b) any damage caused to the *safety cab* or to the fittings which secure it to the *tractor*; or

(c) any defect in the windscreen wiper if one is fitted.

Restrictions on marking of safety cabs

7.—(1) No person other than the manufacturer of a *safety cab* shall, without the consent of *the appropriate Minister* in writing, apply to it any mark calculated to suggest—

(a) that the *safety cab* is *approved*, or

(b) that the *safety cab* is *approved* for use with a *tractor* of a specified description,

whether the *safety cab* is so *approved* or not.

(2) Subject to the provisions of paragraph (3) below, no person shall apply to a *safety cab* any mark calculated falsely to suggest—

(a) that the *safety cab* is *approved*; or

(b) that the *safety cab* is *approved* for use with a *tractor* of a specified description.

(3) The application of a mark to a *safety cab* by its manufacturer before the time when it is first sold or let on hire (*a*) shall not give rise to a contravention of paragraph (2) above unless the mark remains on the *safety cab* until that time, in which case the manufacturer shall be deemed for the purposes of that paragraph to have applied the mark to the *safety cab* at that time.

(4) No person other than the manufacturer of a *safety cab* shall, without the consent of *the appropriate Minister* in writing, alter, remove, obliterate or deface any mark on that *safety cab* which is, or which purports to be, a mark required by these regulations.

(5) For the purpose of this regulation a person applies a mark to a *safety cab* if he affixes or annexes it to, or in any manner marks it on or incorporates it with, the *safety cab*.

(*a*) ***Let on hire.*** See reg. 2 (2).

Certificates of exemption

8.—(1) Notwithstanding anything in these regulations, *the appropriate Minister* may grant certificates exempting, for such periods and subject to such conditions, if any, as may be specified therein, particular cases or particular persons from the operation of all or any of the provisions of these regulations.

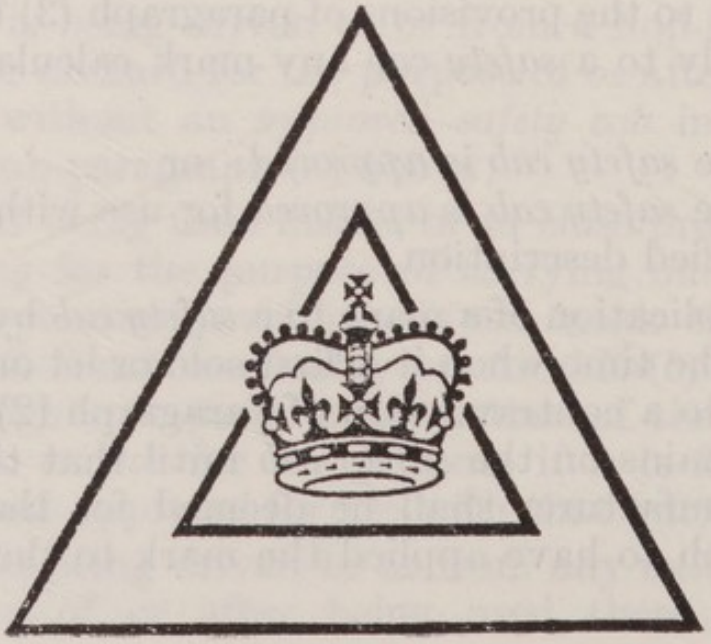
(2) Any breach of a condition imposed by such a certificate of exemption shall, while it continues, render the certificate void in relation to any *tractor* or *safety cab* affected by the breach.

SCHEDULE

PART I

Marks on safety cabs

1. The *approval mark* on a *safety cab* shall be a crown inside a triangle, viz.—



2. The *supplementary marks* on *safety cab* shall be—

(a) the name of the make, and the name or number of the model, of every *tractor* for use with which the *safety cab* is *approved* at the time of marking, and

(b) the serial number of the cab.

PART II

Manner in which safety cabs are to be marked

Safety cabs shall be marked in the following manner:—

(a) Every mark required by these regulations shall be on the main structure of the *safety cab*.

(b) Every such mark shall be clear, legible and permanent, and in a prominent and easily accessible position.

(c) The name of the make or model of a *tractor* may be represented by a recognisable abbreviation of that name.

(*d*) Where a model of *tractor* is referred to, it shall be described in such a way as not to include any *tractor* for use with which the *safety cab* is not *approved*.

(e) *Supplementary marks* shall be as near as is reasonably practicable to the *approval mark* and to each other.

PART IV
RAILWAY ACCIDENT PREVENTION

SUMMARY

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INTRODUCTION

The appointment of a Royal Commission under the chairmanship of Lord James of Hereford was announced on the 2nd June 1899 to "inquire into the causes of accidents, fatal and non-fatal, to servants of railway companies and of truck owners, and to report on the possibility of adopting means to reduce the number of such accidents, having regard to the working of railways, the rules and regulations made, and the safety appliances used by railway companies."

That there was need for such an inquiry was shown by the accident statistics given in evidence by an official of the Board of Trade when the Royal Commission began to hear evidence ten days later, which showed that in the three years 1896, 1897 and 1898 there had been 1,433 fatal and 11,861 non-fatal accidents to railway servants, although it later became apparent that the true figures were considerably higher.

In its unanimous report, published in January 1900, the Royal Commission concluded that the number of deaths and injuries arising from railway service was "unnecessarily great", the figures for 1898, excluding clerks and workshop mechanics, having been 542 killed and 12,979 injured—respectively 1.24 and 21 per thousand men employed.

The evidence had shown that the shunting of goods wagons was by far the most dangerous railway operation and that the dangers could be greatly reduced if not eliminated by the adoption of three measures, namely, the labelling of wagons on both sides, the fitting of brake levers on both sides and the provision of automatic couplings. Automatic couplings had, by 1900, been adopted on the majority of the world's railway systems, including the Imperial Railways of China, and were compulsory on the many privately owned systems of the United States of America; but the Royal Commission, while it considered them "most desirable", refrained from making a specific recommendation for their adoption because the technological aspects of the matter required expert consideration before the adoption of any one of the many available types of such couplings could be made compulsory.

The Royal Commission was able to make specific recommendation with regard to the twelve matters subsequently incorporated in the Schedule to this Act, although it appears to have taken some 38 years for one of the most important of

them, the fitting of brake levers on both sides of wagons, to be fully implemented, and no further action was, apparently, taken with regard to automatic couplings. It is also of interest to note that the recommendation with regard to lookouts, "That mechanised means or lookout men should be employed to protect gangs of men when engaged in relaying the permanent way. That such means should also be employed when necessary to protect men engaged in repairing the permanent way", was incorporated in the Schedule as "Protection to permanent way men when relaying or repairing permanent way" and that the qualification, "where any danger is likely to arise", which appears in Rule 9 of the Prevention of Accidents Rules 1902 and which has caused some difficulty in the Courts (see note (*e*) to Rule 9, p. 527), was, in its application to relaying, first introduced during the rule-making process.

Although the Act imposes penalties under the criminal law, it is clear that a breach of its provisions which causes death or injury to a railway servant and, perhaps, to other persons employed (see note (*d*) to s. 1 gives rise to a civil action for breach of statutory duty—see *Ferguson* v. *North British Railway*, 1915, S.C. 566, *Vincent* v. *Southern Rail Co.*, [1927] A.C. 340 and the cases cited in the notes to the Rules, pp. 524 *et seq.* For the principles governing such a right of action, see the General Introduction to this book.

The power to make rules under s. 1 of this Act has not been exercised since 1911, but, by the Transport Act 1947, s. 95, the British Transport Commission (now the British Railways Board and the London Transport Executive) is under a duty, where necessary, to consult the appropriate organisation in order to establish negotiating machinery for the promotion of safety measures for employees.

THE RAILWAY EMPLOYMENT (PREVENTION OF ACCIDENTS) ACT 1900

(63 & 64 Vict. c. 27)

ARRANGEMENT OF SECTIONS

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An Act for the better Prevention of Accidents on Railways [30th July 1900]

1. Power to make rules as to dangerous railway operations.—(1) The Board of Trade (*a*) may, subject to the provisions of this Act, make such rules (*b*) as they think fit with respect to any of the subjects mentioned in the schedule to this Act, with the object of reducing or removing the dangers and risks incidental to railway (*c*) service.

(2) Where the Board of Trade (*a*) consider that avoidable danger to persons employed (*d*) on any railway (*c*) arises from any operation of railway (*c*) service (not being a matter in

respect to which rules may be made under the foregoing provisions of the section), whether that danger arises from anything done or omitted to be done by the railway company (*e*) or any of its officers or servants, or from any want of proper appliances or plant, they may, subject to the provisions of this Act, after communicating with the railway company (*e*), and giving them a reasonable opportunity of reducing or removing the danger or risk, make rules (*f*) for that purpose.

(3) The Board of Trade (*a*) may, by any rules (*b*) made under this section, require amongst other matters the use of any plant or appliance which has been shown to the satisfaction of the Board of Trade (*a*) to be calculated to reduce danger to persons employed (*d*) on a railway (*c*), or the disuse of any plant or appliance which has been similarly shown to involve such danger.

(4) The Board of Trade (*a*) shall, by any rule (*b*) made by them under this section, give a reasonable time for carrying out the requirements of the rule.

(*a*) ***Board of Trade.*** The powers of the Board of Trade under this Act were transferred to the Minister of Transport by the Ministry of Transport Act 1919, s. 2. The powers of the Minister of Transport are now exercised by the Secretary of State for the Environment (S.I. 1970 No. 681).

(*b*) ***Rules.*** As to the making of rules, see ss. 2–7; as to the power to make an order or give a direction in place of a rule, see s. 8; as to the variation or recission of rules, see s. 10.

The Rules made under this subsection are the Prevention of Accidents Rules 1902, and the Prevention of Accidents Rules 1911, set out at pp. 524 and 528 respectively.

It is submitted that on the proper construction of this subsection rules cannot lawfully be made under it in favour of persons other than those engaged in "railway service"; see *Canadian Pacific Steamships, Ltd.* v. *Bryers*, [1958] A.C. 485; [1957] 3 All E.R. 572, where Viscount KILMUIR, L.C., discussed and explained the principles governing the exercise of a power to make regulations. As to rules made under sub-ss. (2) and (3), see note (*d*).

(*c*) ***Railway.*** For definition, see s. 16.

(*d*) ***Persons employed.*** Although the matter has not been tested under this Act, it has been held that special regulations for the benefit of "persons employed" made under s. 60 of the Factories Act 1937 as amended by s. 12 (1) of the Factories Act 1948 (now s. 76 (1) of the Factories Act 1961) are for the benefit of all persons employed in the factory, whether employed by the occupier of the factory or not, so long as they are employed in work in the factory (*Massey-Harris-Ferguson (Manufacturing), Ltd.* v. *Piper*, [1956] 2 Q.B. 396; [1956] 2 All E.R. 722, C.A.) unless there is some good reason to be found in the construction of the

regulations for inserting a further limitation; *Wingrove* v. *Prestige & Co., Ltd.*, [1954] 1 All E.R. 576, as explained in *Canadian Pacific Steamships, Ltd.* v. *Bryers*, [1958] A.C. 485, [1957] 3 All E.R. 572, H.L., where the principles are discussed. A member of a fire brigade dealing with a fire at a factory and, probably, a police officer on police business at a factory is not "employed in the factory" and is outside any such special regulations; *Hartley* v. *Mayoh & Co.*, [1954] 1 Q.B. 383; [1954] 1 All E.R. 375, as distinguished and explained in *Massey Harris-Ferguson (Manufacturing), Ltd.* v. *Piper, supra.* It seems, therefore, that rules made under subsections (2) and (3) of this section would, subject to the construction of any particular rule, cover persons employed on the railway, whether railway servants or not.

(*e*) ***Railway company.*** For definition, see s. 16.

(*f*) ***Rules.*** As to the making of rules, see note (*b*).

No rules under this subsection have been made.

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2. Publication and consideration of draft rules.—(1) When the Board of Trade (*a*) propose to make any rules under this Act, the Board shall publish in the London Gazette (*b*) notice of the proposal to make the rules, and of the place where copies of the draft rules may be obtained, and of the time, not being less than one month, within which any objection or suggestion made with respect to the draft rules by or on behalf of persons affected (*c*) must be lodged with the Board, and shall take such other steps as they think best adapted for giving information with respect to those matters to persons affected (*c*).

(2) The Board of Trade (*a*) shall consider any objection or suggestion made by or on behalf of persons appearing to them to be affected (*c*) which is lodged within the required time, and give to any person lodging any such objection or suggestion an opportunity of communicating with the Board on the matter.

(3) The Board of Trade (*a*) may modify the draft rules in such manner as may seem expedient on consideration of the objections or suggestions, and may, if they think fit, withdraw any draft rule without prejudice to the power of making a new rule with respect to the same matter.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

(*b*) ***London Gazette.*** As to railways in Scotland and Northern Ireland, see s. 19.

(*c*) ***Persons affected.*** As to what class of persons may be affected by rules made under s. 1 (1), see note (*b*) to s. 1; as to what class of persons may be affected by rules made under s. 1 (2) or (3), see note (*d*) to s. 1.

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3. Reference of objections to Railway Commissioners.—(1) If, after the consideration of any such objection (including an objection relating to any matter within the discretion of the Board of Trade (*a*)) the person who has made it is not satisfied with the mode in which the objection is dealt with he may, by notice in writing to the Board of Trade given within the time limited in that behalf by the Board, require the Board to refer the objection to the Railway and Canal Commissioners (*b*) and the Board shall so refer the objection accordingly.

(2) The Commissioners (*b*) shall consider whether any objection so referred to them is reasonable or not, and if they determine that the objection is reasonable the rule to which the objection relates shall not be made.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

(*b*) ***Railway and Canal Commissioners.*** The jurisdiction of the Commissioners was transferred to the Transport Tribunal by the Transport Act 1947, s. 75 and Sch. 11, and the Commission was abolished by the Railway and Canal Commission (Abolition) Act 1949.

By the Transport Act 1962, s. 57 (7) any objection or application referable to the Transport Tribunal under this Act is to be referred instead to a referee appointed by the Minister of Transport (as to whom, see note (*a*) to s.1). In Northern Ireland the jurisdiction of the Railway and Canal Commissioners is now vested in the Transport Tribunal for Northern Ireland.

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4. Questions to be kept in view in considering objections.—The Board of Trade (*a*) in considering any objection to a draft rule, and the Commissioners (*b*), in considering any objection referred to them, shall, amongst other matters, have regard to the question whether the requirements of the rule would materially interfere with the trade of the country, or with the necessary operations of any railway company (*c*).

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

(*b*) ***Commissioners.*** See note (*b*) to s. 3.

(*c*) ***Railway company.*** For definition, see s. 16.

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5. Making of rules.—(1) The Board of Trade (*a*), after the consideration of objections and suggestions, shall (except when they withdraw the rules) send a copy of the rules as proposed to be made to each objector, and shall fix a limit of time,

not being less than one month, within which any notice requiring an objection to be referred to the Commissioners (*b*) is to be given to the Board.

(2) If no such notice is given to the Board of Trade (*a*) within the time so limited, the Board may make the rules as proposed to be made; but if any such notice is given within that time the Board shall not make the rules until the Commissioners (*b*) have given their decision on the objection, and have decided against it.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.
(*b*) ***Commissioners.*** See note (*b*) to s. 3.

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6. Power to refer objections to referee.—*The Board of Trade shall, on being satisfied that it is the general desire of the objectors, refer to a referee appointed by the Board of Trade any objections which the Board are required to refer to the Railway and Canal Commissioners and thereupon the referee shall take the same proceedings, and have regard to the same matters, and his decision shall have the same effect, as if the objections had been referred to the Commissioners.*

This section was repealed, except in relation to Northern Ireland, by the Transport Act 1962, ss. 93 (1), 95 (1), Sch. 12.

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7. Application of rules.—Rules made under this Act may apply either generally, or to any particular railway (*a*) or class of railways (*a*), and may provide for the exemption from their operation of any specified railways (*a*) or class of railways (*a*),

(*a*) ***Railway.*** For definition, see s. 16.

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8. Power to make an order or give a direction in place of a rule.—Where, in the opinion of the Board of Trade (*a*), the requirements of the case would be better met by a specific order or direction than by a general rule, the Board of Trade (*a*) may make such an order or direction in the same manner as they may make a rule under this Act, and subject to the same provisions, and the provisions of this and any other Act

shall apply as if the order or direction were a rule under this Act.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

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9. Power to extend time.—The Board of Trade (*a*) may extend the time fixed by them under this Act for the making of objections or suggestions (*b*) with respect to draft rules, or the giving of a notice requiring an objection to be referred (*c*) to the Commissioners (*d*), in the case of any objection, suggestion, or notice, if it is shown to their satisfaction that the extention of time is justified by the special circumstances of the case.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.
(*b*) ***Making of objections or suggestions.*** See s. 2.
(*c*) ***Notice requiring an objection to be referred.*** See s. 3.
(*d*) ***Commissioners.*** See note (*b*) to s. 3.

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10. Application to rescind or vary rules.—(1) Any person affected (*a*) by any rule made under this Act, which has been in operation for a period exceeding three months, may apply to the Board of Trade (*b*) to make a rule rescinding or varying the same. Such application shall be made in writing and shall be accompanied by a statement of the grounds upon which it is made.

(2) If any such application is made within eighteen months after the date on which the rule in respect of which the application is made has come into operation, and the Board of Trade (*b*) decline to entertain the application, the Board of Trade (*b*) shall, if requested by the person making the application, refer it to the Railway and Canal Commissioners (*c*), and the Commissioners (*c*) shall consider and decide whether the application is reasonable or not, as if it were an objection to a rule under this Act, and if they decide that the application is reasonable, the Board of Trade (*b*) shall propose a rule to meet it.

(*a*) ***Person affected.*** See note (*c*) to s. 2.
(*b*) ***Board of Trade.*** See note (*a*) to s. 1.
(*c*) ***Railway and Canal Commissioners.*** See note (*b*) to s. 3.

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11. Penalties.—(1) If any railway company (*a*) or other company or person acts in contravention of, or fails to comply with, any rule under this Act, then—

(a) the company or person shall be liable for each offence on conviction under the Summary Jurisdiction Acts (*b*) to a fine not exceeding fifty pounds, or in the case of a continuing offence (*c*) to a fine not exceeding ten pounds for every day during which the offence continues after conviction; or

(b) *on the application of the Board of Trade, compliance with the rule may be enforced by the Railway and Canal Commissioners as if the rule were an order made by those Commissioners in the exercise of their statutory jurisdiction.*

(2) A summary conviction for an offence under this section shall be subject to an appeal to a court of quarter sessions (*e*) in manner provided by the Summary Jurisdiction Acts.

The words in italics were repealed, except in relation to Northern Ireland, by the Transport Act 1962, s. 93 (1), 95 (1), Sch. 12.

(*a*) ***Railway company.*** For definition, see s. 16.

(*b*) ***Summary Jurisdiction Acts.*** These Acts have been largely repealed and replaced by the Magistrates' Courts Acts 1952 and 1957.

(*c*) ***Continuing offence.*** The six months' period of limitation prescribed by s. 104 of the Magistrates' Courts Act 1952 does not apply to continuing offences (see 25 Halsbury's Laws (3rd Edn.), p. 166, note (*a*)).

(*d*) ***Board of Trade.*** See note (*a*) to s. 1.

(*e*) ***Quarter sessions.*** The jurisdiction of quarter sessions is now vested in the Crown Court by the Courts Act 1971, s. 8 and Sch. 1.

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12. (*Repealed by the Transport Act* 1947, *s.* 128 *and Sched.* 15, *Part I.*)

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13. Inspection and notices of accidents.—(1) The powers of the Board of Trade (*a*) for the inspection of railways (*b*) shall include power to inspect any railway (*b*) for the purpose of ascertaining whether there is any ground for proceeding under this Act, or whether there has been any contravention of or default in compliance with any rule made under this Act,

(2) The duty of a railway company (*c*) to give notice of accidents (*d*) shall apply to accidents attended with loss of life or personal injury to any person in the employment of the company on any line, or siding having a junction with the railway (*b*) of the railway company (*c*), but not belonging to or in the occupation of any railway company (*c*) in like manner as it applies to such accidents when occurring on the railway (*b*) of the company, and the provisions relating to the notice of such accidents shall have effect accordingly.

(3) (*Repealed by the Notice of Accidents Act* 1906, s. 7 *and Schedule.*)

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

(*b*) ***Railway.*** For definition, see s. 16.

(*c*) ***Railway company.*** For definition, see s. 16.

(*d*) ***Duty to give notice of accidents.*** This subsection extends the duty to give notice of accidents imposed by the Regulation of Railways Act 1871, s. 6. That section, as extended by this subsection, was modified by the Road and Rail Traffic Act 1933, s. 43 (1) and the giving of notice of accidents is now governed by the Railways (Notices of Accidents) Order 1965 (S.I. 1965 No. 2119).

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14. Issuing debenture stock to meet expenses incurred under this Act.—Where the requirements of any rules under this Act involve any expenditure by a railway company (*a*) which would properly be chargeable to capital account, the company may furnish to the Board of Trade (*b*) an estimate of the expenditure, and thereupon the Board of Trade (*b*) shall, on the application of the company, fix and determine the sum which is properly chargeable to capital account, and the company may issue debentures or debenture stock ranking pari passu with any existing debentures or debenture stock of the company, bearing interest at a rate not exceeding five per cent. per annum, to an amount not exceeding the sum so fixed and determined, and any money raised under the provisions of this section shall be applied in carrying out the requirements of the rules, and to no other purpose whatsoever, and no other authority, save the certificate of the Board of Trade (*b*), shall be requisite to authorise and validate the issue of the debentures or debenture stock.

(*a*) ***Railway company.*** For definition, see s. 16.

(*b*) ***Board of Trade.*** See note (*a*) to s. 1.

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15. Staff, inquiries, and experiments.—(1) The Board of Trade (*a*) may (with the concurrence of the Treasury as to number and salary) appoint or employ such persons as appear to them to be required for carrying this Act into effect, and may hold such inquiries, and make such experiments as they think expedient for that purpose.

(2) Subject to the provisions of this Act the remuneration of any such persons, and the expenses incurred by the Board in relation to any inspection, inquiry, or experiment under this Act shall (to an amount approved by the Treasury) be defrayed out of moneys provided by Parliament.

(3) It shall be the duty of every railway company (*b*) to give all reasonable facilities (subject to the due working of their traffic) for conducting any experiments made by the Board of Trade (*a*) for the purpose of this Act, but such experiments shall be made without risk or expense to the railway company (*b*) except as may be otherwise agreed, and except in case of default on the part of the railway company (*b*) in conducting the experiments.

(4) Where under this Act any objections are referred to a referee *instead of to the Railway and Canal Commissioners*, section three of the Board of Trade Arbitrations, etc. Act 1874 shall apply as if the referee were appointed on an application made in pursuance of a special Act, and the objectors were parties to the application within the meaning of that section.

(5) Where the Board of Trade (*a*) hold a special inquiry with reference to an objection to a proposed rule on the application of the objector, the person appointed to hold the inquiry may, if on the inquiry it appears to him that the circumstances were not such as to render a special inquiry necessary, order the objector to pay the whole or any part of the costs certified by the Board to have been incurred by them in holding the special inquiry, and any amount so ordered to be paid may be recovered as a debt due to the Crown (*c*).

The words in italics were repealed, except as to Northern Ireland, by the Transport Act 1962, ss. 93 (1), 95 (1), Sch. 12.

(*a*) ***Board of Trade.*** See note (*a*) to s. 1.

(*b*) ***Railway company.*** For definition, see s. 16.

(*c*) ***Debt due to the Crown.*** The special forms of procedure formerly available for the recovery of a debt due to the Crown were abolished

by the Crown Proceedings Act 1947, s. 13, Sch. 1. All civil proceedings by or against the Crown are now governed by the provisions of the Crown Proceedings Act 1947.

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16. Definition of "railway" and "railway company".—In this Act—

The expression "railway" means any railway used for the purposes of public traffic whether passenger, goods, or other traffic, and includes any works of the railway company connected with the railway; and

The expression "railway company" includes a company or person working a railway under lease or otherwise.

General note. By the Transport Act 1947, s. 12 and Sch. 3, the undertakings of the companies listed in the schedule vested in the British Transport Commission on 1st January 1948. See s. 14 (4) of that Act as to the transfer to the commission of the statutory obligation of the railway companies. By the Transport Act 1962, the railway functions of the British Transport Commission was transferred to the British Railways Board and the London Transport Board (now the London Transport Executive).

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17. Obligation of railway company under terms of lease or agreement.—If any rule made under this Act imposes an obligation on a railway company (*a*) inconsistent with the terms of any lease or agreement under which the railway (*b*) of that company is worked, the railway company (*a*) shall not be under any liability for any breach of or default in complying with the terms of any such lease or agreement, so far as that breach or default is a necessary consequence of compliance with the rule.

(*a*) ***Railway company.*** For definition, see s. 16.
(*b*) ***Railway.*** For definition, see s. 16.

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18. Provision against double notices, double inspections, etc.—Nothing in this Act shall require notice of accidents to be given in cases where such a notice is required to be given under any Act relating to factories (*a*) or mines (*b*), or authorise any inspection, inquiry, or investigation to be made

where an inspection, inquiry, or investigation may be made with respect to the same matter for the same purpose under any other Act by, or by any officer of, a Government Department.

(*a*) ***Factories.*** See the Factories Act 1961, s. 80.
(*b*) ***Mines.*** See the Mines and Quarries Act 1954, s. 116.

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19. Application to Scotland and Ireland.—(1) In the application of this Act to railways (*a*) in Scotland and Ireland respectively, references to the Edinburgh or Dublin Gazette (*b*) shall, as the case may require, be substituted for references to the London Gazette.

(2) In the application of this Act to railways in Scotland, the following modifications shall be made:—

The expression "Summary Jurisdiction Acts" means the Summary Jurisdiction (Scotland) Acts;

The summary jurisdiction conferred by this Act shall be exercised solely by the sheriff, and shall be held to be civil within the meaning of the twenty-eighth section of the Summary Procedure Act 1864 (*c*). The sheriff shall upon request of any party to the cause take notes of the evidence, and any party, if dissatisfied with the sheriff's judgement as erroneous either in point of law or of fact, may appeal thereagainst to either division of the Court of Session, which appeal shall be heard summarily by the said division, whose judgment shall be final. The Court of Session may, if it thinks fit, by act of sederunt regulate the form and time of presentation of such appeals.

(*a*) ***Railway.*** For definition, see s. 16.
(*b*) ***Dublin Gazette.*** By the General Adaptation of Enactments (Northern Ireland) Order 1921 (S.R. & O. 1921 No. 1804) references to the Dublin Gazette are to be construed as references to the Belfast Gazette.
(*c*) ***Summary Procedure Act 1864, s. 28.*** Now repealed by the Summary Jurisdiction (Scotland) Act 1908, s. 3.

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20. Short title.—This Act may be cited as the Railway Employment (Prevention of Accidents) Act 1900.

SCHEDULE

Section 1

1. Brake levers on both sides of wagons.
2. Labelling wagons.
3. Movement of wagons by propping and tow roping.
4. Steam or other power brakes on engines.
5. Lighting of stations or sidings where shunting operations are frequently carried on after dark.
6. Protection of point rods and signal wires, and position of ground levers working points.
7. Position of offices and cabins near working lines.
8. Marking of fouling points.
9. Construction and protection of gauge glasses.
10. Arrangement of tool boxes and water gauges on engines.
11. Working of trains without brake vans upon running lines beyond the limits of stations.
12. Protection to permanent way men when relaying or repairing (*a*) permanent way.

(*a*) ***Relaying or repairing.*** As to what constitutes relaying or repairing, see the cases cited in note (*a*) to reg. 9 of the Prevention of Accidents Rules 1902, below.

THE PREVENTION OF ACCIDENTS RULES 1902

(S. R. & O. 1902 No. 616)

Made on the 8th August 1902 *by the Board of Trade under section* 1 (1) *of the Railway Employment* (*Prevention of Accidents*) *Act* 1900.

1. When it is necessary in the ordinary course of business that any label or direction as to destination or consignee shall be placed upon any waggon, the Company on whose line of railway such waggon is about to be used shall see that such label or direction is placed on both sides of such waggon. No railway company shall receive from any person for conveyance on its railway any waggon not labelled in accordance with this rule.

This rule shall not apply to mineral traffic in train loads for journeys not involving marshalling during or on the completion of the journey.

2. After the expiration of twelve months from the coming into operation of these rules, the movement of vehicles by means of a prop or pole, being the operation commonly known as "propping," shall not take place, except in cases where no other reasonably practicable means can be provided for dealing with the traffic.

After the expiration of the same period, tow-roping, that is to say, the effecting the movement of vehicles on a railway by means of towing with a rope of chain, attached to a locomotive, or a vehicle moving on an adjacent line, shall not be allowed, except in cases where no other reasonably practicable means can be provided for dealing with the traffic.

The North Wales Narrow Gauge Railway Company is exempted from the operation of this rule so far as relates to tow-roping.

3. All engines and tenders must, within two years from the coming into operation of these rules, be fitted with sufficient power brakes, in addition to hand brakes.

Engines used exclusively for shunting purposes shall be exempted from the operation of this rule, provided that they are fitted with sufficiently powerful hand brakes.

4. All stations or sidings where shunting operations are frequently carried on after dark must be sufficiently lighted.

5. Where point rods and signal wires are in such position as to be a source of danger to persons employed on a railway whilst in the execution of their duty, such point rods and signal wires must, within two years from the coming into operation of these rules, be sufficiently covered or otherwise guarded.

Within the same period ground levers working points must be so placed that men when working them are clear of adjacent lines, and shall be placed in a position parallel to the adjacent lines, or in such other position and be of such form (*a*), as to cause as little obstruction as possible to persons employed on the railway whilst in the execution of their duty.

(*a*) ***In such other position and of such form.*** The obligation under this part of rule 5 is that ground levers shall be either parallel to the adjacent lines or that they shall be in such other position etc., as to cause as little obstruction as possible, and in a case where the ground lever is parallel to the adjoining lines (which means with its operating arm parallel to the line) the obligation has been complied with, notwithstanding that if placed in some other position it would have caused less

obstruction to persons employed whilst in the execution of their duty. See *Hicks* v. *British Transport Commission*, [1958] 2 All E.R. 39, C.A.

6. All boiler gauge glasses on locomotive engines or on stationary steam boilers used in the working of railways must, within three years from the coming into operation of these rules, be protected by a covering or guard sufficient to guard against accident to persons employed on the railway through the gauge glasses breaking.

7. All tool boxes used for the purpose of storing tools and other things, necessary in the working of locomotives when running, must, within two years from the coming into operation of these rules, be so arranged that the contents may be obtained by the men while the engine is in motion without undue risk of injury.

Water gauges or similar devices must, within three years from the coming into operation of these rules, be provided on locomotive engines or tenders to indicate the amount of water in the tanks, and such gauges and similar devices shall be placed in such a position as to be visible and accessible to the men without incurring undue risk of injury.

8. After the coming into operation of these rules, all trains working upon running lines beyond the limits of stations shall be provided with brake vans or other suitable vehicles for the use of the men in charge of such trains, which shall be so attached as to be conveniently used by them, and also with due regard to safety in working the trains.

The Festiniog Railway Company is exempted from the operation of this rule (*a*).

(*a*) ***Exemptions.*** Certain trains on the Taff Vale Railway were also exempted from this rule (S.R. & O. 1907 No. 696).

9. With the object of protecting men working singly or in gangs on or near lines of railway in use for traffic for the purpose of relaying or repairing (*a*) the permanent way (*b*) of such lines, the railway companies shall, after the coming into operation of these rules, in all cases where any danger is likely to arise (*c*), provide persons (*d*) or apparatus for the purpose of maintaining a good look-out or for giving warning against any train or engine approaching such men so working, and the persons employed for such purpose shall be expressly

instructed (*e*) to act for such purpose, and shall be provided with all appliances necessary to give effect to such look-out.

(*a*) ***Relaying or repairing.*** In *London and North Eastern Rail. Co.* v. *Berriman*, [1946] A.C. 278; [1946] 1 All E.R. 255, the House of Lords held, by a majority, that, although the connections between the signal box and the points or signals formed part of the permanent way, a fitter engaged in the routine oiling of these connections was not "repairing" the permanent way, a term which was to be given its ordinary meaning of putting right what has gone wrong. The rule only applies while the work of relaying or repairing is in progress, since clause 12 of the Schedule to the Act empowers a rule to be made only for "protection to permanent way men when relaying or repairing". Thus no effect can be given to any wider meaning of the words in rule 9, "working . . . for the purpose of relaying or repairing". Accordingly, the rule does not apply where preliminary work is being undertaken, such as the inspection of the line in order to determine which lengths of rail require to be renewed, see *Judson* v. *British Transport Commission*, [1954] 1 All E.R. 624, C.A.

As to what work may constitute relaying or repairing, see also *Vincent* v. *Southern Rail. Co.*, [1927] A.C. 430 (repairing signal apparatus); *Hutchinson* v. *London and North Eastern Rail. Co.*, [1942] 1 K.B. 481; [1942] 1 All E.R. 330, C.A. (adjusting level of track by packing ballast); *Reilly* v. *British Transport Commission*, *Woods* v. *same*, [1956] 3 All E.R. 857 (tightening point nose bolts); *Cade* v. *British Transport Commission*, [1959] A.C. 256, [1958] 2 All E.R. 615, H.L. (tightening loose bolt in fishplate); *Ferguson* v. *North British Rail. Co.*, 1915. S.C. 566 (replacing wedges in rail chairs); *Redpath* v. *London and North Eastern Rail. Co.*, 1944 S.C. 154 (tamping down ballast).

(*b*) ***Permanent way.*** This is not a term of art and must be given its ordinary meaning; see *London and North Eastern Rail. Co.* v. *Berriman*, cited in note (*a*), *supra*.

(*c*) ***Danger . . . likely to arise.*** The words "in all cases where any danger is likely to arise" are to be given their ordinary and natural meaning and there are no grounds for saying that the rule is to be construed as meaning an abnormal or unusual or exceptional danger; *Hutchinson* v. *London and North Eastern Rail. Co.*, [1942] 1 K.B. 481; [1942] 1 All E.R. 330, C.A., approved and applied in *Cade* v. *British Transport Commission*, [1959] A.C. 256; [1958] 2 All E.R. 615, H.L. Whether, in the circumstances of a particular case, any danger is likely to arise is a question of degree and of fact; *Cade* v. *British Transport Commission*. See also, *Reilly* v. *British Transport Commission*, *Woods* v. *same*, [1956] 3 All E.R. 857.

(*d*) ***Provide persons, etc.*** The duty to provide lookouts is an absolute one and the company does not comply with the rule by making regulations under which the foreman or ganger is entrusted with the duty of providing a lookout; *Vincent* v. *Southern Rail. Co.*, [1927] A.C. 430. Where, however, a foreman or ganger entrusted with the duty of appointing a lookout does not do so and is himself injured in consequence, some degree of contributory negligence may be attributed to him; see *Keany* v. *British Railways Board*, [1968] 1 W.L.R. 879;

[1968] 2 All E.R. 532; the rule contemplates more than one lookout where necessary; *Dyer* v. *Southern Rail. Co.*, [1948] 1 K.B. 608; [1948] 1 All E.R. 516; *Redpath* v. *London and North Eastern Rail. Co.*, 1944 S.C. 154.

(*e*) ***Expressly instructed.*** The persons appointed to act as look-outs may be members of the gang (*Vincent* v. *Southern Rail. Co.*, [1927] A.C. 430) but they must have no other duties to perform and must understand that their duty is to give an effective warning to each member of the working party; *Redpath* v. *London and North Eastern Rail. Co.*, 1944 S.C. 154.

10. In any case where it is shown to the Board of Trade that for any sufficient cause the time within which any of the above rules or regulations have to be carried into effect should be extended, the Board of Trade may from time to time grant such extension upon such terms and conditions as they may think fit.

THE PREVENTION OF ACCIDENTS RULES 1911

(S. R. & O. 1911 No. 1058)

Dated 7th November 1911, *made by the Board of Trade under section* 1 (1) *of the Railway Employment* (*Prevention of Accidents*) *Act* 1900.

1. All waggons constructed after the expiration of six months from the coming into operation of this Rule, for use on any railway, shall be fitted by the owners thereof on both sides with brake levers complying with the conditions set out in the Schedule Number 1 to this Rule.

2. Within the periods prescribed in Clause (3) all waggons now existing or constructed before the expiration of the six months above mentioned for use on any railway and not so fitted, shall be fitted by the owners thereof on both sides with brake levers complying with the said conditions.

3. The periods prescribed for the purposes of Clause (2) shall be from the date of this Rule:

10 years for waggons of Companies or persons owning under 3,000 waggons.

15 years for waggons of Companies or persons owning 3,000 and under 20,000 waggons.

20 years for waggons of Companies or persons owning 20,000 waggons and over.

In any case where it is shown to the Board of Trade that for any sufficient cause the time within which any of the above provisions have to be carried into effect should be extended, the Board of Trade may from time to time grant such extension upon such terms and conditions as they may think fit. (*a*)

(*a*) ***Periods of time.*** The periods of time under this clause were finally extended to 31st December 1938 by S.R. & O. 1926 No. 355 and S.R. & O. 1931 No. 945.

4. The waggons specified in the Schedule Number II hereto are exempted from the operation of this Rule.

5. The Rule shall come into operation as from the date hereof, and may be cited as the Prevention of Accidents Rules 1911.

SCHEDULE ONE

1. The levers to be of like pattern, and to be so placed that each shall be to the right of a man facing the side of the waggon.

2. Each lever to be so fitted that the brake can be conveniently applied with one hand.

3. The levers to be so fitted that the brakes can be released only from the side on which they have been applied.

4. The levers to be "press down and lift up," and to be provided in the "off" position with a stop.

5. Articles 3 and 4 of this Schedule shall not apply to brakes of which the design has been approved by the Board of Trade.

SCHEDULE TWO

Exemptions from the Rule.

(a) Waggons used upon railways of a gauge less than 4 feet 8½ inches.
(b) Chaldron waggons of a carrying capacity of 5 tons or less.
(c) Waggons of a carrying capacity of over 20 tons.
(d) Boiler waggons.
(e) All waggons fitted with the Dean and Churchward brake, as described in Specification Number 202, of 1902, if arranged as a cross-cornered brake.

(f) Any waggons with regard to which compliance with this Rule is, in the opinion of the Board of Trade, unnecessary or impracticable.

Provided that all waggons exempted under (c), (d) and (f) are fitted on both sides with such other appliances as will enable sufficient brake power to be conveniently applied from either side, if, in the opinion of the Board, such other appliances are necessary.

PART V
OFFSHORE MINERAL WORKINGS INSTALLATIONS

SUMMARY

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INTRODUCTION TO THE MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

This Act makes provision for the safety, health and welfare of persons on offshore installations for exploiting or exploring mineral resources in territorial waters and in those areas of the continental shelf designated under the Continental Shelf Act 1964 as being areas in which the United Kingdom has, in accordance with the Geneva Convention on the High Seas of 1958, rights with respect to the sea bed and sub-soil and their natural resources.

The Act, which came into force, with the exception of ss. 4 and 5, on 1st May 1972 and, as respects ss. 4 and 5, on 31st August 1972, enables the Secretary of State to make regulations governing the registration, construction and survey of offshore installations, requires the appointment of a manager for each installation with the powers and duties specified in the Act and gives the Secretary of State power to make regulations for safety. It should be noted, however, that by virtue of s. 3 of the Continental Shelf Act 1964 (as extended by s. 8 of this Act) the criminal and civil law of the United Kingdom is applied to the installations to which this Act applies, so that in an appropriate case existing safety legislation, such as the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963, will also apply.

It is expressly provided by s. 11 that breach of the Act or of regulations made under it gives rise to civil liability for personal injury caused by the breach.

MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

(1971 C. 61)

ARRANGEMENT OF SECTIONS

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An Act to provide for the safety, health and welfare of persons on installations concerned with the underwater exploitation and exploration of mineral resources in the waters in or surrounding the United Kingdom, and generally for the safety of such installations and the prevention of accidents on or near them.

[27th July 1971]

1. Application of Act.—(1) This Act shall apply to the underwater exploitation and underwater exploration of mineral resources—

(a) in or under the shore or bed of waters to which this Act applies, other than inland waters, and

(b) in or under the bed of such inland waters as may for the time being be specified for the purposes of this paragraph by Order in Council.

(2) In this Act—

(a) "waters to which this Act applies" means the waters in or adjacent to the United Kingdom (*a*), up to the

seaward limits of territorial waters (*b*) and the waters in any designated area (*c*) within the meaning of the Continental Shelf Act 1964,

(b) "inland waters" means waters within the United Kingdom (*a*), other than estuaries and tidal rivers.

(3) For purposes of this Act "underwater exploitation" or "underwater exploration" means exploitation or exploration from or by means of any floating or other installation which is maintained in the water, or on the foreshore or other land intermittently covered with water, and is not connected with dry land by a permanent structure providing access at all times and for all purposes; and, subject to the provisions of section 12 of this Act, in this Act—

(a) "exploration" means exploration with a view to exploitation; and

(b) "offshore installation" means any installation which is maintained, or is intended to be established, for underwater exploitation or exploration to which this Act applies.

(4) The power of making Orders in Council under this section shall include power to vary or revoke any Order in Council made under this section.

(*a*) ***United Kingdom.*** By s. 2 (2) of the Royal and Parliamentary Titles Act 1927, "The United Kingdom" means Great Britain and Northern Ireland. Great Britain means England and Scotland (Union with Scotland Act 1706, art. 1) and England includes Wales and Berwick-on-Tweed (Wales and Berwick Act 1746, s. 3). The United Kingdom does not include the Channel Islands or the Isle of Man (Interpretation Act 1889, s. 18 (1)).

(*b*) ***Territorial waters.*** See 39 Halsbury's Laws (3rd Edn.) p. 556.

(*c*) ***Designated area.*** By s. 1 (7) of the Continental Shelf Act 1964 a designated area is an area designated by Order in Council as an area within which that Act is to have effect. See the Continental Shelf (Designation of Areas) Order 1964 (S.I. 1964 No. 697) and the Continental Shelf (Designation of Additional Areas) Orders 1965 (S.I. 1965 No. 1531) and 1968 (S.I. 1968 No. 891).

The designated areas over which the High Court, the Court of Session and the High Court of Northern Ireland respectively have jurisdiction are specified by the Continental Shelf (Jurisdiction) Order 1968 (S.I. 1968 No. 892) as amended by S.I. 1971 No. 721.

2. Registration of offshore installations.—(1) The Secretary of State may make regulations for the registration of offshore installations (*a*).

(2) Regulations under this section (*b*) may make provision—

(a) for all matters relevant to the maintenance of a register of offshore installations (*a*);

(b) without prejudice to paragraph (a) above, for the cases in which an installation is to be or may be exempted from registration, for the period for which any registration or exemption is to remain effective without renewal, the alteration or cancellation in any prescribed circumstances of registration or exemptions or of any conditions attached thereto, the persons by whom and manner in which applications in connection with any registration or exemption are to be made, and the information and evidence to be furnished in connection with any such application;

(c) for the marking or other means of identification of any installation, whether registerable or exempted from registration;

(d) for the issue of certificates of registration or exemption, and the custody, surrender, production or display of the certificates or copies of them;

(e) for requiring the payment of fees in connection with the making of applications under the regulations, the issue of certificates or other matters;

(f) for matters arising out of the termination of any registration or exemption, or any conditions attached thereto,

(g) for any other incidental matters.

(*a*) ***Offshore installations.*** For definition, see s. 12 (1).

(*b*) ***Regulations.*** See the Offshore Installations (Registration) Regulations 1972 (S.I. 1972 No. 702), p. 555.

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3. Construction and survey regulations for offshore installations.—(1) The Secretary of State may make regulations—

(a) requiring offshore installations (*a*) or parts of offshore installations (*a*) to be certified by such persons and in such manner as may be provided by the regulations

to be, in respect of such matters affecting safety as may be so provided, fit for the purpose or purposes specified by the regulations;

(b) imposing requirements as to the survey, testing and inspection of installations or parts of installations in respect of matters covered or required to be covered by a certificate of fitness;

(c) imposing any prohibition or restriction as respects installations or parts of installations which, in any respect, fail to comply with any provisions of the regulations.

(2) Regulations under this section may make provision—

(a) for the issue of certificates of fitness, and the custody, surrender, production or display of the certificates or copies of them;

(b) for requiring the payment of fees in connection with the making of applications under the regulations, the carrying out of surveys or tests, the issue of certificates or other matters;

(c) for matters arising out of the termination or modification of any certificate of fitness;

(d) for any other incidental matters.

(3) The regulations may provide for exempting, or authorising the Secretary of State to exempt, any installation or part of an installation from all or any of the provisions of the regulations, either in a particular case, or in a specified class or description of cases.

(4) It shall be the duty of the owner (*b*) of the offshore installation (*a*), and of the installation manager (*c*) and of the concession owner (*d*), to ensure that the provisions of regulations under this section are complied with, and, if regulations under this section are contravened in any respect in relation to an offshore installation (*a*) when it is within waters to which this Act applies (*e*), the owner of the offshore installation (*a*), the installation manager (*c*) and the concession owner (*d*) shall each be guilty of an offence under this section, and shall be liable—

(a) on summary conviction (*f*) to a fine not exceeding £400;

(b) on conviction on indictment (*g*) to imprisonment for a term not exceeding two years, or to a fine, or both.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).

(*b*) ***Owner.*** For definition, see s. 12 (1).

(*c*) ***Installation manager.*** For definition, see s. 12 (1).

(*d*) ***Concession owner.*** For definition, see s. 12 (1).

(*e*) ***Waters to which this Act applies.*** For definition, see s. 1 (2) (a).

(*f*) ***Summary conviction.*** See the Magistrates' Courts Acts 1952 and 1957, as amended by the Criminal Justice Act 1967.

(*g*) ***Conviction upon indictment.*** Indictable offences are triable by a Crown Court; see the Courts Act 1971, s. 6. No limit is placed upon the fine which may be imposed upon conviction upon indictment.

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4. Masters of offshore installations.—(1) Every offshore installation (*a*), so long as it is in waters to which this Act applies (*b*), shall be under the charge of a person appointed to be or act as manager of the installation, and the owner (*c*) of the installation shall appoint to be installation manager (*d*)—

(a) a person who, to the best of the knowledge and belief of the owner (*c*), has the skills and competence suitable for the appointment; and

(b) another or others to act where necessary in place of the installation manager (*d*);

and shall inform the Secretary of State of any appointment under this subsection by giving notice in the prescribed (*e*) form and containing the prescribed (*e*) particulars.

(2) The Secretary of State may, if he thinks fit, make regulations (*f*) prescribing requirements to be fulfilled as respects an installation manager (*d*) appointed under paragraph (a) or paragraph (b) of subsection (1) above, including requirements as to qualifications, experience, health or age; and the regulations may make different provision for managers of different types of installations or managers whose responsibilities differ in other respects, and different provision for managers appointed under the said paragraphs (a) and (b) respectively.

(3) The owner (*c*) may, under subsection (1) (a) above, appoint two or more persons to be managers in rotation, and the persons appointed under subsection (1) (b) above shall act where necessary in place of any of them.

(4) If at any time the owner (*c*) is satisfied that an installation manager (*d*) appointed in pursuance of subsection (1) above does not have the requisite skills and competence, he

shall terminate the appointment as soon as practicable (*g*), and shall give the Secretary of State notice in the prescribed (*e*) form of the action taken by him.

(5) It shall be the duty of the owner (*c*), in order to ensure that an installation manager (*d*) appointed under subsection (1) (a) above is on the installation when it is manned, from time to time to place a person so appointed on the installation, and to ensure that he remains there until relieved, or so long as it is manned.

(6) If the owner fails to comply, or to ensure compliance with the provisions of this section, he shall be guilty of an offence under this section, and liable on summary conviction to a fine not exceeding £400.

(7) The operation of this section may be excluded in whole or in part in relation to any class or description of installation by regulations under this Act, or in relation to any particular installation by directions of the Secretary of State given in such manner and to such persons as he thinks appropriate.

(8) In this Act references to the manager of an offshore installation (*a*) or to an installation manager (*d*) are to be taken, except in so far as the context otherwise requires, as references to the person for the time being in charge of the installation and appointed as required by paragraph (a) or (b) of subsection (1) above.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).
(*b*) ***Waters to which this Act applies.*** For definition, see s. 12 (1).
(*c*) ***Owner.*** For definition, see s. 12 (1).
(*d*) ***Installation manager.*** For definition, see s. 12 (1).
(*e*) ***Prescribed.*** For definition, see s. 12 (1).
(*f*) ***Regulations.*** The Offshore Installations (Managers) Regulations 1972 (S.I. 1972 No. 703) p. 561, have been made under this and other sections.
(*g*) ***Practicable.*** See note (*f*) to s. 6 of the Offices, Shops and Railway Premises Act 1963.

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5. Masters of offshore installations, further provisions.—(1) The manager of an offshore installation (*a*) shall not be absent from the installation at any time when it is manned, except in case of sudden sickness or other cause beyond his control, or for other sufficient reason, and a person failing to comply with this subsection shall be guilty of an

offence under this section, and liable on summary conviction to a fine not exceeding £400.

(2) Except as otherwise provided by this Act, the manager of an installation shall have in relation to it general responsibility for matters affecting safety, health or welfare or, where connected with safety, health or welfare, the maintainance of order and discipline, and for the discharge of that responsibility shall exercise authority over all persons in or about the installation:

Provided that this subsection shall not extend to any matters for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(3) If a person subject to the authority of the manager of an offshore installation (*a*) wilfully (*b*) disobeys a lawful command given him by the manager in exercise of that authority, he shall be liable on summary conviction to a fine not exceeding £50.

(4) The manager of an offshore installation shall not permit the installation to be used in any manner, or permit any operation to be carried out on or from the installation, if the seaworthiness or stability of the installation is likely to be endangered by its use in that manner, or by the carrying out of that operation or by its being carried out in the manner proposed, and it shall be the duty of the owner (*c*) of the installation to ensure that the provisions of this subsection are complied with by the installation manager (*d*).

If an installation manager (*d*) or owner (*c*) fails to comply, or ensure compliance, with this subsection he shall be guilty of an offence under this section, and liable—

(a) on summary conviction, to a fine not exceeding £400;
(b) on conviction on indictment to imprisonment for a term not exceeding two years, or to a fine, or both.

(5) Where at an offshore installation (*a*) there is an emergency or apprehended emergency endangering the seaworthiness or stability of the installation or otherwise involving a risk of death or serious personal injury, the installation manager (*d*) may take or require to be taken any such measures as are necessary or expedient to meet or avoid the emergency; and no regulation or condition having effect by virtue of this Act shall apply to prohibit or restrict the taking of any such measures by virtue of this subsection.

(6) If the installation manager (*d*) has reasonable cause to believe (*e*) that it is necessary or expedient for the purpose of securing the safety of an offshore installation (*a*) or persons in or about it, or maintaining order and discipline among those persons, the installation manager (*d*) may cause any of those persons to be put ashore in the United Kingdom (*f*); and where any of those persons has done or is about to do any act endangering or likely to endanger the safety of the installation or persons in or about it or the maintenance of order and discipline among those persons, or the installation manager (*d*) with reasonable cause (*e*) suspects him of having done or being about to do any such act, the installation manager (*d*) may take or cause to be taken such other reasonable measures against him, by restraint of his person or otherwise, as the installation manager (*d*) thinks necessary or expedient:

Provided that this subsection shall not extend to any matters for which another person is responsible as master, captain or person in charge of any vessel, aircraft or hovercraft.

(7) A person shall not be kept under restraint by virtue of subsection (6) above for longer than twenty-four hours unless—

(a) the intention is that he shall be put ashore in the United Kingdom (*f*) in accordance with that subsection at the earliest opportunity; and

(b) within those twenty-four hours or as soon as practicable (*g*) afterwards notice of his being kept under restraint and of the reason for it is sent to the prescribed (*h*) authority in the United Kingdom (*f*).

(8) The manager of an offshore installation (*d*) shall notify the owner (*c*) as soon as practicable of any event which occurs at the installation and which the owner (*c*) is by any regulation or condition having effect by virtue of this Act required to notify to the Secretary of State.

If a person fails to comply with the provisions of this subsection he shall be guilty of an offence under this section, and liable on summary conviction to a fine not exceeding £100.

(9) The operation of this section may be excluded in whole or in part in relation to any class or description of installation by regulations under this Act, or in relation to any particular installation by directions of the Secretary of State given in such manner and to such persons as he thinks appropriate.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).

(*b*) ***Wilfully.*** See note (*g*) to s. 68 of the Offices, Shops and Railway Premises Act 1963.

(*c*) ***Owner.*** For definition, see s. 12 (1).

(*d*) ***Installation manager.*** For definition, see s. 12 (1).

(*e*) ***Reasonable cause to believe (suspect).*** There must in fact exist such reasonable grounds known to the manager; see *Nakkuda Ali* v. *M. F. de S. Jayaratne*, [1951] A.C. 66. See further, note (*f*) to s. 53 of the Offices, Shops and Railway Premises Act 1963, p. 162.

(*f*) ***United Kingdom.*** See note (*a*) to s. 1.

(*g*) ***Practicable.*** See note (*f*) to s. 6 of the Offices, Shops and Railway Premises Act 1963, p. 21.

(*h*) ***Prescribed.*** For definition, see s. 12 (1).

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6. Safety regulations.—(1) The Secretary of State may make regulations (*a*) for the safety, health and welfare of persons on offshore installations (*b*) in waters to which this Act applies (*c*), and generally, and whether or not by way of supplementing the preceding sections of this Act, for the safety of such installations and the prevention of accidents on or near them.

(2) The regulations may have effect as respects—

(a) persons whether or not present in the course of their employment;

(b) the transport of persons and things to or from an installation;

(c) vessels, aircraft or hovercraft in the neighbourhood of an installation; and

(d) any operation or work whether on or near an installation, or in the water, or on or below the shore or bed of the sea or other waters.

(3) Without prejudice to the generality of the preceding provisions of this section, the regulations may provide for any of the matters set out in the Schedule to this Act, and may contain such supplemental or incidental provisions as appear to the Secretary of State to be expedient.

(4) The Secretary of State may appoint as inspectors to discharge the functions conferred by the regulations, and generally to assist the Secretary of State in the execution of this Act, such number of persons appearing to him to be qualified for the purpose as he may from time to time consider necessary or expedient, and may make to or in respect of any person so

appointed such payments by way of remuneration, allowance or other payments as the Secretary of State may with the approval of the Minister for the Civil Service determine.

(*a*) ***Regulation.*** See the Offshore Installations (Logbooks and Registration of Death) Regulations 1972 (S.I. 1972 No. 1542), p. 565.
(*b*) ***Offshore installation.*** For definition, see s. 12 (1).
(*c*) ***Waters to which this Act applies.*** For definition, see s. 1 (2).

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7. Regulations: general provisions.—(1) Before making regulations under this Act the Secretary of State shall consult (*a*) with organisations in the United Kingdom (*b*) appearing to him to be representative of those persons who will be affected by the regulations.

(2) Subject to subsection (3) below, regulations under this Act—

(a) may provide for the creation of offences and for their punishment on summary conviction or on conviction on indictment; and

(b) may afford, in respect of any description of offence created by the regulations, such defence, if any, as may be specified in the regulations.

(3) The punishment for an offence created by regulations under this Act shall be—

(a) on summary conviction a fine not exceeding £400;

(b) on conviction on indictment imprisonment for a term not exceeding two years, or a fine, or both;

but without prejudice to any further restriction on the punishments which can be awarded contained in the regulations, and without prejudice to the exclusion of proceedings on indictment by the regulations.

(4) The operation of any regulations made under this Act may be excluded in whole or in part in relation to any class or description of installation by the regulations, or in relation to any particular installation by directions of the Secretary of State given in such manner and to such persons as he thinks appropriate.

(5) Any exemption or exclusion by regulations under this Act, or by directions of the Secretary of State under this Act,

may be made subject to the imposition of conditions specified by the regulations or directions.

(6) Where in pursuance of this section a person is exempted or excluded from the requirements of any provision of this Act, or of regulations under this Act, but subject to a condition, and the condition is not observed, the exemption or exclusion shall not have effect, and proceedings may be brought in respect of any breach of duty as if the exemption or exclusion had not had effect.

(7) Regulations made under this Act may make different provision for different circumstances, and in particular—

(a) may make provision as respects installations which are registered vessels which is different from that made for other installations, and

(b) may make provision for installations in transit which is different from provision made for installations on station.

(8) Regulations made under this Act shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(*a*) ***Consult.*** The essence of consultation is the communication of a genuine invitation, extended with a receptive mind, to give advice; see *Rollo* v. *Minister of Town and Country Planning*, [1948] 1 All E.R. 13; *Agricultural, Horticultural and Forestry Industry Training Board* v. *Aylesbury Mushrooms, Ltd.*, [1972] 1 All E.R. 280.

(*b*) ***United Kingdom.*** See note (*a*) to s. 1.

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8. Application of existing law to offshore installations in territorial waters and designated areas.—(1) Section 3 of the Continental Shelf Act 1964 (application of criminal and civil law to installations outside territorial waters) shall have effect as if any references in that section to an installation in a designated area included references to any offshore installation (*a*) either in territorial waters (*b*) of the United Kingdom (*c*) or in a designated area (*d*).

(2) So far as relates to questions arising out of acts or omissions taking place on, under or above—

(a) an offshore installation (*a*) in territorial waters (*b*) of the United Kingdom (*c*), or

(b) territorial waters (*b*) of the United Kingdom (*a*) within five hundred metres of an offshore installation (*a*),

subsection (2) of the said section 3 (power to confer jurisdiction on courts in any part of the United Kingdom (*c*)) shall apply as if the words "in a designated area, or in any part of such an area" were omitted.

(3) It is hereby declared that, notwithstanding that the said section 3 may affect individuals or bodies corporate outside the United Kingdom (*c*), it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom (*c*).

(4) So far as relates to any provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of offshore installations (*a*), section 59 of the Civil Aviation Act 1949 (extra-territorial effect) shall apply to all aircraft, and not only to British aircraft registered in the United Kingdom (*c*) and shall apply to the doing of anything in relation to any aircraft by any person, irrespective of nationality or, in the case of a body corporate, of the law under which it was incorporated.

(5) This section, and the said section 3 of the Continental Shelf Act 1964, shall apply to installations notwithstanding that they are for the time being in transit.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).
(*b*) ***Territorial waters.*** See note (*b*) to s. 1.
(*c*) ***United Kingdom.*** See note (*a*) to s. 1.
(*d*) ***Designated area.*** See note (*c*) to s. 1.

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9. Offences: general provisions.—(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent (*a*) or connivance (*b*) of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

In this subsection "director", in relation to a body corporate established by or under any enactment for the purpose of

carrying on under public ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

(2) In proceedings for an offence under this Act an averment in any process of the fact that anything was done or situated within waters to which this Act applies (*c*) shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment.

(3) In proceedings for an offence under section 3, section 4 or section 5 of this Act, it shall be a defence for the accused to prove—

(a) that he has used all due diligence (*d*) to enforce the execution of this Act, and of any relevant regulation made under this Act, and

(b) that any relevant contravention was committed without his consent (*a*), connivance (*b*) or wilful (*e*) default.

(4) Proceedings for any offence under this Act may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

(5) A constable (*f*) shall on any offshore installation (*g*) in waters to which this Act applies (*c*) have all the powers, protection and privileges which he has in the area for which he acts as constable (*f*).

This subsection is without prejudice to any other enactment or rule or law affording any power, protection or privilege to constables (*f*).

(*a*) ***Consent.*** In this context "consent" would seem to mean true consent with knowledge; see *Lamb* v. *Wright & Co.*, [1924] 1 K.B. 857; [1924] All E.R. Rep. 220; "a man cannot consent to what he does not know".

(*b*) ***Connivance.*** See note (*g*) to s. 4 of the Agriculture (Poisonous Substances) Act 1952.

(*c*) ***Waters to which this Act applies.*** For definition, see s. (1) (2) (*a*).

(*d*) ***All due diligence.*** See note (*c*) to s. 67 of the Offices, Shops and Railway Premises Act 1963, p. 174.

(*e*) ***Wilful.*** See note (*g*) to s. 68 of the Offices, Shops and Railway Premises Act 1963, p. 176.

(*f*) ***Constable.*** For the meaning of "constable", see 30 Halsbury's Laws (3rd Edn.), p. 43 *et seq.*; for the powers, protection and privileges of constables, see *ibid.*, p. 127 *et seq.*

(*g*) ***Offshore installation.*** For definition, see s. 12 (1).

10. Prosecutions.—(1) Subject to the provisions of this section, this section has effect as respects—

(a) any offence alleged to have been committed on, under or above an offshore installation (*a*) in territorial waters (*b*) or in a designated area (*c*), or on, under or above any waters within five hundred metres of such an installation; or

(b) any offence under this Act alleged to have been committed in territorial waters (*b*) or in a designated area (*c*); or

(c) any offence under section 5 of the Continental Shelf Act 1964 (discharge of oil); or

(d) any offence committed on or as respects an aircraft which is not a British aircraft registered in the United Kingdom (*d*), being an offence created by virtue of section 8 (4) of this Act.

(2) An offence shall not be one within subsection (1) above if it is an offence under, or under any provision having effect under—

(a) the Merchant Shipping Acts 1894 to 1971, or any enactment to be construed as one with the Merchant Shipping Act 1894; or

(b) the Customs and Excise Act 1952, or any enactment to be construed as one with that Act; or

(c) the Oil in Navigable Waters Acts 1955 to 1971, or any enactment to be construed as one with the Oil in Navigable Waters Act 1955; or

(d) except where it is created by virtue of section 8 (4) of this Act, the Civil Aviation Acts 1949 to 1968, or any enactment to be construed as one with the Civil Aviation Act 1949.

(3) No proceedings shall be instituted in England and Wales for any offence within subsection (1) above except—

(a) in the case of an offence under this Act, by the Secretary of State or by a person authorised in that behalf by the Secretary of State; or

(b) in the case of any offence, by or with the consent of the Director of Public Prosecutions:

Provided that this subsection shall not apply to an offence if prosecution of that offence in England and Wales requires the consent of the Attorney General.

(4) No proceedings shall be instituted in Northern Ireland for any offence within subsection (1) above except—

(a) in the case of an offence under this Act, by the Secretary of State or by a person authorised in that behalf by the Secretary of State; or

(b) in the case of any offence, by or with the consent of the Attorney General for Northern Ireland.

(5) Subsections (3) and (4) above shall not prevent the issue or execution of a warrant for the arrest of any person in respect of an offence, or the remanding in custody or on bail of any person charged with an offence.

(6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) shall not apply to any proceedings for an offence within subsection (1) above.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).
(*b*) ***Territorial waters.*** See note (*b*) to s. 1.
(*c*) ***Designated area.*** See note (*c*) to s. 1.
(*d*) ***United Kingdom.*** See note (*a*) to s. 1.

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11. Civil liability for breach of statutory duty.—(1) This section has effect as respects—

(a) a duty imposed on any person by any provision of this Act, or

(b) a duty imposed on any person by any provision of regulations made under this Act which expressly applies the provisions of this section.

(2) Breach of any such duty shall be actionable so far, and only so far, as it causes personal injury, and references in section 1 of the Fatal Accidents Act 1846, as it applies in England and Wales, and in Northern Ireland, to a wrongful act, neglect or default shall include references to any breach of a duty which is so actionable.

(3) Subsection (2) above is without prejudice to any action which lies apart from the provisions of this Act.

(4) Neither section 9 (3) of this Act, nor any defences afforded by regulations made in pursuance of section 7 (2) (b) of this Act, shall afford a defence in any civil proceedings, whether brought by virtue of this section or not.

(5) So far as the provisions of this section impose a liability on a concession owner (*a*), those provisions and the other provisions of this Act to which they relate shall bind the Crown (*b*), and accordingly, for the purposes of those provisions, and of any regulations or conditions having effect under any of those provisions, persons in the service of the Crown shall be taken to be employed whether or not they would be so taken apart from this subsection:

Provided that this subsection shall not give any right of action to a person as being a member of the armed forces of the Crown.

(6) Nothing in the last preceding subsection shall authorise proceedings to be brought against Her Majesty in her private capacity, and this subsection shall be construed as if section 38 (3) of the Crown Proceedings Act 1947 (interpretation of references in that Act to Her Majesty in her private capacity) were contained in this Act.

(7) In this section "personal injury" includes any disease and any impairment of a person's physical or mental condition and includes any fatal injury.

(*a*) ***Concession owner.*** For definition, see s. 12 (1).

(*b*) ***The Crown.*** See the Crown Proceedings Act 1947 and 11 Halsbury's Laws (3rd Edn.) p. 8, *et seq.*

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12. Interpretation.—(1) In this Act, unless the context otherwise requires—

"concession owner" means the person having the right to exploit or explore the mineral resources in connection with which the offshore installation is, or has been, or is to be used,

"designated area" has the same meaning as in the Continental Shelf Act 1964,

"installation manager" has the meaning given by section 4 (8) of this Act,

"offence under this Act" includes an offence under regulations made under this Act,

"offshore installation" has the meaning given by section 1 (3) of this Act, but subject to subsections (2) and (3) below,

"owner", in relation to an offshore installation, means the person who has registered the installation pursuant to regulations under section 2 of this Act or, if there is no such person, the person for the time being having the management of the installation, or of its main structure,

"prescribed" means prescribed by regulations under this Act,

"underwater exploitation" and "underwater exploration" have the meaning given by section 1 (3) of this Act.

(2) References in this Act to an offshore installation include references to any part of an offshore installation capable of being manned by one or more persons, but regulations under this Act may provide that any provision of this Act shall not apply to such a part of an installation, or shall apply subject to such modifications or exceptions as may be prescribed by the regulations.

(3) References in this Act to an offshore installation do not include an installation which at the relevant time consists exclusively of a pipe-line, whether or not any part of it previously formed part of an offshore installation.

(4) It is hereby declared that, notwithstanding that this Act may affect individuals or bodies corporate outside the United Kingdom (*a*), it applies to any individual whether or not he is a British subject, and to any body corporate whether or not incorporated under the law of any part of the United Kingdom (*a*).

(5) Any reference in this Act to a contravention of a provision of this Act or of regulations made under this Act includes a reference to a failure to comply with such a provision.

(6) Any reference in this Act to any enactment or Act of Parliament includes a reference to an enactment or Act of the Parliament of Northern Ireland.

(7) Except where the context otherwise requires, any reference in this Act to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment.

(*a*) ***United Kingdom.*** See note (*a*) to s. 1.

13. Financial provisions.—(1) There shall be paid out of money provided by Parliament—

(a) any expenses incurred by the Secretary of State under this Act, and

(b) any increase in money so payable under any other Act which is an increase attributable to this Act.

(2) Any receipts of the Secretary of State under this Act shall be paid into the Consolidated Fund.

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14. Short title, commencement and saving.—(1) This Act may be cited as the Mineral Workings (Offshore Installations) Act 1971.

(2) This Act shall come into force on such date as the Secretary of State may by order in a statutory instrument appoint (*a*), and an order under this subsection may appoint different dates for different provisions of this Act, or for different purposes.

(3) Nothing in this Act shall be taken to restrict the powers of the Parliament of Northern Ireland to make laws; and any laws made by that Parliament with respect to any matter with respect to which it has that power shall have effect notwithstanding anything in this Act.

(*a*) ***By order . . . appoint.*** By the Mineral Workings (Offshore Installations) Act 1971 (Commencement) Order 1972 (S.I. 1972 No. 644) the Act, with the exception of ss. 4 and 5, came into force on 1st May 1972; ss. 4 and 5 came into force on 31st August 1972.

Section 6

SCHEDULE

Subject Matter of Regulations

1.—(1) Measures to ensure the safety of the installation, and of any other structures associated with the operations carried out from the installation.

(2) Measures to ensure safety when an installation or any part of an installation is being assembled or dismantled in the sea or other waters.

2. The movement of, and precautions to be taken by, vessels, aircraft and hovercraft in the neighbourhood of offshore installations (*a*).

3. Provisions as to the manner in which or occasions on which any operation or work is to be or may be carried out, or as to the safety or suitability of any place where it is carried out.

4.—(1) Provisions as to the equipment, facilities or materials which are to be or may be supplied or used, whether the provision has reference to sufficiency, to suitability, to safety during use or while not in use, or to any other matter;

(2) The application of—

(a) the Anchors and Chain Cables Act 1967 (*b*);

(b) the Employers' Liability (Compulsory Insurance) Act 1969 (*c*), or any corresponding enactment in force in Northern Ireland;

subject to such modifications or extensions as may be prescribed by the regulations.

(3) Any provision corresponding to anything in the Acts mentioned in sub-paragraph (2) above.

5.—(1) Limits on hours of employment in any specified operation or in any specified circumstances.

(2) The employment at installations of persons who are under the age of eighteen, or who have not received the prescribed instruction or training.

6. Training.

7. Emergency equipment and emergency procedures.

8.—(1) Accidents, injuries and disease.

(2) Medical treatment and medical stores.

(3) Accommodation, provisioning and water.

Inspectors and inquiries

9. Powers and duties to be exercised by, and facilities to be accorded to, inspectors appointed by the Secretary of State under this Act, and other persons acting at the direction of the Secretary of State, and in particular—

(a) powers to board, and to obtain access to all parts of, any offshore installation (*a*), to obtain information and to inspect and take copies from any log book or other document;

(b) powers to test equipment and, in special circumstances, to dismantle, test to destruction or take possession of any article of equipment;

(c) powers to require, in connection with the survey or inspection of any installation, part of an installation or equipment, the carrying out of procedures and the conduct of tests by such persons as may be prescribed by the regulations;

(d) rights to require conveyance to and from any offshore installation (*a*), including conveyance of any equipment required by an inspector for testing, or any equipment of which he has taken possession in special circumstances;

(e) duties to provide inspectors and others with reasonable accommodation and means of subsistence while on any offshore installation;

(f) any powers exercisable in case of immediate or apprehended danger.

10.—(1) Casualties or other accidents involving loss of life or danger to life, and in particular—

(a) the making of special reports by inspectors; and

(b) the holding of public inquiries.

(2) In the case of any public inquiry held in pursuance of regulations under this Act, provision—

(a) conferring on the person holding the inquiry, and any person assisting him in the inquiry, powers of entry and inspection;

(b) conferring on any such person powers of summoning witnesses to give evidence or produce documents;

(c) powers to take evidence on oath and administer oaths or require the making of declarations;

(d) authorising the Secretary of State to make payments to the person holding the inquiry, to any assessor appointed to assist him and to witnesses summoned to the inquiry;

(e) as to the persons by whom, and the manner in which, costs of any such inquiry, including the remuneration of the person or persons holding the inquiry, are to be defrayed.

(3) The provision as respects costs under sub-paragraph (2) (e) above may include—

(a) provision for the treatment of any such costs as expenses of the Secretary of State under this Act;

(b) provision requiring any such costs to be defrayed by any person who appears to the person or persons holding the

inquiry to be, by reason of any act or default on his part or on the part of any servant or agent of his, responsible in any degree for the occurrence of the accident.

Supplemental

11.—(1) The keeping of an official log book, and of other records.

(2) The creation of any right to inspect, or take extracts from, any such records, and the admissibility in evidence of, or of certified extracts of, any such records.

12. The making of returns and the giving of information, and in particular the making of returns to the Registrar General of Shipping and Seamen of deaths, including presumed deaths; and the duties of the Registrar General as respects such returns.

13. The display and posting of copies of, or of digests of, this Act and of regulations made under this Act.

14. The punishment of forgery or falsification of documents, and of other offences as respects forged, or falsified documents, where the documents are, or purport to be, made under or for the purposes of the regulations.

15. The regulations may, in prescribing standards of safety, or in imposing other requirements, refer to, and make obligations depend on, the provisions of any recognised industrial code of practice as for the time being in force.

(*a*) ***Offshore installation.*** For definition, see s. 12 (1).

(*b*) ***Anchors and Chain Cables Act 1967.*** This Act provides for the testing and marking of anchors and chain cables.

(*c*) ***Employer's Liability (Compulsory Insurance) Act 1969.*** This Act provides that employers in Great Britain shall insure against liability for bodily injury or disease sustained by their employees arising out of or in the course of their employment in Great Britain.

THE OFFSHORE INSTALLATIONS (REGISTRATION) REGULATIONS 1972

(S.I. 1972 No. 702)

Dated 3rd *May* 1972, *made by the Secretary of State under sections* 2, 7 *and* 12 (2) *of the Mineral Workings* (*Offshore Installations*) *Act* 1971.

Citation, commencement and interpretation

1. These Regulations may be cited as the Offshore Installations (Registration) Regulations 1972 and shall come into operation on 1st June 1972.

2.—(1) For the purposes of these Regulations—

"mobile installation" means an offshore installation which can be moved from place to place without major dismantling or modification, whether or not it has its own motive power; and

"fixed installation" means an offshore installation which is not a mobile installation.

(2) Nothing in these Regulations shall apply to dredging installations which are registered as vessels (whether in the United Kingdom or elsewhere).

(3) References in these Regulations to an offshore installation shall by virtue of section 12 (2) of the Act include references to a part of an offshore installation capable of being manned by one or more persons only where the part does not form or is not intended to form part of an installation already registered under these Regulations.

(4) References in these Regulations to the relevant waters are references to the waters to which the Act applies.

(5) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Register and fees relating to offshore installations

3.—(1) A Register of Offshore Installations shall be maintained at the offices of the Department of Trade and Industry and applications for the registration or reregistration of offshore installations, for the amendment of entries in the Register and for the issue or amendment of certificates of registration and notifications required by any provision of these Regulations to be given to the Secretary of State shall be addressed to him at those offices.

(2) Where application is duly made to register an offshore installation, the Secretary of State shall cause particulars of the installation to be entered in the Register and two copies of a certificate of registration to be issued; and when application is duly made to reregister an installation he shall cause it to be reregistered and two copies of a fresh certificate of registration to be issued accordingly:

Provided that the Secretary of State may decline to cause an installation to be registered or reregistered if it appears to him—

(a) that the person or persons applying are not in a position to discharge the duties imposed on the owner by or under the Act, or

(b) that the name or other designation submitted for registration is likely to be confused with that of any other installation already registered under these Regulations.

(3) Such amendments to the Register and to certificates of registration shall be made as the Secretary of State may from time to time consider necessary.

(4) The Department of Trade and Industry may from time to time issue forms for use in connection with applications and the furnishing of information under these Regulations.

(5) There shall be payable in respect of an application to register or reregister an offshore installation under these Regulations or for the issue of a further copy of a certificate of registration the relevant fee specified in the Schedule hereto.

Duty to secure registration of offshore installations

4. On or after 30th June 1972—

(a) no *fixed installation* shall be established in the *relevant waters*,

(b) no *mobile installation* shall be brought into those waters with a view to its being stationed there, and

(c) no *fixed* or *mobile installation* shall be maintained in those waters, unless it is registered pursuant to these Regulations:

Provided that the Secretary of State may grant exemption from the application of this Regulation until 31st August 1972 in relation to any installation if application to register it was made before 30th June 1972.

5.—(1) An application for the first registration of an offshore installation shall include the following particulars—

(a) the name and address of the person or persons seeking to register it;

(b) where no address furnished pursuant to head (a) is an address in the United Kingdom, an address in the United Kingdom to which communications for the owner may be sent;

(c) a name or other designation for the installation,

(d) particulars of any other registration of the installation (whether as a vessel or otherwise and whether in the United Kingdom or elsewhere);

(e) an indication of the nature and the function or proposed function of the installation;

(f) an indication whether the installation is a *mobile* or a *fixed installation* and, in the case of a *mobile installation*, whether it has its own motive power;

(g) if the application relates to a part of an installation, particulars of any major additions expected to be made;

(h) an indication of the location at which the installation is stationed or intended to be stationed in the *relevant waters*;

(i) an indication of the period for which it is expected the installation will be stationed at the location mentioned in head (h); and

(j) in the case of a *mobile installation*, its tonnage.

(2) An application to register an offshore installation shall include sufficient information to identify the installation and particulars of the respects (if any) in which any particulars previously supplied about that installation are no longer correct.

Obligation to notify the Secretary of State of changed particulars

6.—(1) The owner of an offshore installation shall notify the Secretary of State forthwith—

(a) if the installation is converted from a *mobile installation* to a *fixed installation*, or vice versa;

(b) if the installation is dismantled, abandoned or destroyed;

(c) if the installation is combined with another installation or is divided so as to constitute two separate installations;

(d) in the case of an installation not on station in the *relevant waters* at the date of registration, of its arrival on station there;

(e) if the installation is removed to a new station in the *relevant waters* or removed to a place outside those waters;

(f) if the person or any of the persons in whose name the installation is registered cease to be in a position to discharge the duties imposed on the owner by or under the Act;

(g) if any other person or persons acquire rights enabling him or them to discharge or join in the discharge of the duties imposed on the owner by or under the Act; or

(h) if any error is discovered in any information furnished to the Secretary of State pursuant to these Regulations or if any other event occurs which makes the information so furnished incorrect in any material respect.

(2) Any notification made pursuant to paragraph (1) shall include sufficient information for the registered particulars to be amended where appropriate.

Cancellation and expiration of registration

7. The Secretary of State may cancel the registration of an installation if he learns that it has been dismantled, abandoned, destroyed or combined with another installation, or if it appears to him that any person or persons in whose name the installation is registered are no longer in a position to discharge the duties imposed on the owner by or under the Act or that any other person or persons have acquired rights enabling him or them to discharge or join in the discharge of those duties.

8. Unless previously cancelled, registration under these Regulations shall remain effective for a period of 25 years in the case of a *fixed installation* and for a period of 10 years in the case of a *mobile installation*.

Display of information

9. One copy of the current certificate of registration issued under these Regulations shall be kept posted on board the offshore installation to which it relates in such a position that it can be conveniently read.

10.—(1) Save where the nature of the structure makes it impracticable, an offshore installation registered in accordance with these Regulations shall display its registered name or other designation in such a manner as to make the installation readily identifiable on approach by sea or air.

(2) No offshore installation shall display any name, letters or figures likely to be confused with a registered name or other designation.

Offences and penalties

11.—(1) A contravention of Regulation 4 shall be an offence for which the owner of the relevant installation and the concession owner shall each be liable on summary conviction to a fine not exceeding £200.

(2) A contravention of any requirement of Regulation 6, 9 or 10 of these Regulations shall be an offence for which the owner of the relevant installation shall be liable on summary conviction to a fine not exceeding £200.

(3) A contravention of any requirement of Regulation 4, 9 or 10 of these Regulations shall be an offence for which the installation manager in charge of the relevant installation at the time of the contravention shall be liable on summary conviction to a fine not exceeding £100.

(4) A person who wilfully makes or signs a false statement for the purposes of these Regulations shall (without prejudice to any other penalty) be liable on summary conviction to a fine not exceeding £200.

(5) It shall be a defence in any proceedings for an offence under paragraphs (1) to (3) of this Regulation for the person charged to prove:—

(a) that he exercised all due diligence (*a*) to prevent the commission of the offence; and

(b) that the relevant contravention was committed without his consent, connivance (*b*) or wilful (*c*) default.

(*a*) ***All due diligence.*** See note (*c*) to s. 67 of the Offices, Shops and Railway Premises Act 1963, p. 174

(*b*) ***Connivance.*** See note (*g*) to s. 4 of the Agriculture (Poisonous Substances) Act 1952, p. 370.

(*c*) ***Wilful.*** See note (*g*) to s. 68 of the Offices, Shops and Railway Premises Act 1963, p. 176.

SCHEDULE

FEES

	£
On application for the first registration of an offshore installation	100
On application for reregistration following the expiration or cancellation of a previous registration	50
On application for a further copy of a certificate of registration	2

THE OFFSHORE INSTALLATIONS (MANAGERS) REGULATIONS 1972

(S.I. 1972 No. 703)

Dated 3rd May 1972, made by the Secretary of State under sections 4, 5, 6, 7 and 12 (1) of the Mineral Workings (Offshore Installations) Act 1971.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Offshore Installations (Managers) Regulations 1972 and shall come into operation on 31st August 1972.

(2) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Notice of appointment and termination of appointment

2.—(1) The notice which under section 4 (1) of the Act the owner of an installation is required to give to the Secretary of State regarding the appointment of an installation manager or of a person to act where necessary in place of the manager shall be given in writing in the form set out in Schedule 1 hereto and the particulars to be contained in the notice shall be the particulars required to complete that form in relation to the appointment.

(2) The notice which under subsection (4) of section 4 of the Act the owner of an installation is required to give to the Secretary of State as respects the termination of an appointment under that subsection shall be given in writing in the form set out in Schedule 2 hereto.

3.—(1) The installation manager for the time being in charge of an offshore installation shall ensure that a notice of his appointment is kept posted on board the installation in such a position that it can be conveniently read.

(2) In the event of a failure to comply with this Regulation the installation manager shall be liable on summary conviction to a fine not exceeding £50.

Notice of restraint

4. The authority to whom notice shall be given pursuant to section 5 (7) of the Act of the fact that a person has been kept under restraint and of the reasons for it shall be the Secretary of State for Trade and Industry.

Exclusions from the obligations of sections 4 and 5 of the Act

5. Sections 4 and 5 of the Act shall have no operation in relation to installations registered as vessels (whether so registered in the United Kingdom or elsewhere) which are dredging installations or which are in transit to or from a station, or in relation to installations which are unmanned.

SCHEDULE 1

Form of Notification of Appointment of an Installation Manager

MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

Notice of Appointment Under Section 4 (1)

NOTE: For convenience of notification and recording, this form should be completed in respect of one appointee only. If it is desired to notify particulars of other appointments in respect of the same offshore installation, separate forms should be used for each appointment, but information need not be duplicated.

To the Secretary of State for Trade and Industry

Notice is hereby given that(1)

.....was on(2).....

appointed

*to be manager

*to be a person to act where necessary in place of the manager of offshore installation(3).....

pursuant to the requirements of section 4 (1) of the Mineral Workings (Offshore Installations) Act 1971.

(1) insert name of appointee.

(2) Insert date

(3) Insert registered name of other designation or the installation or if no name or other desig-

nation has yet been registered under the Act other particulars sufficient to identify the installation.

(4) Give name of superseded appointee.

(5) Give brief particulars.

†The appointee succeeds(4).....

whose appointment* [ceases]* [ceased] on(2).....

The appointee is aged..... and the qualifications, skills and experience which are considered to make him a suitable person for the appointment are as follows:—(5)

.....

.....

.....

†The appointee is one of two or more persons appointed to act as manager and the general nature of the rotation arrangement and the manner in which it is determined who is in charge when more than one is appointed are as follows:—(5)

.....

.....

.....

†The appointee is one of two or more persons appointed to act in place of the manager(s) and the arrangement whereby it is determined whether this appointee or another acts in place of the manager(s) is as follows:—(5)

.....

.....

.....

(6) Give name of installation owner.

(7) e.g. Director or secretary of a body corporate.

Dated.....signed.....

on behalf of(6).....status of signatory(7).....

(*) Delete as appropriate. (†) Delete if inappropriate

SCHEDULE 2

FORM OF NOTIFICATION OF STATUTORY TERMINATION OF AN APPOINTMENT PURSUANT TO SECTION 4 (4) OF THE MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

MINERAL WORKINGS (OFFSHORE INSTALLATIONS) ACT 1971

Notice of Termination of Appointment Under Section 4 (4)

To the Secretary of State for Trade and Industry

Notice is hereby given that the appointment

of(1).....made on(2).....

under section 4 (1) of the Mineral Workings (Offshore Installations) Act 1971 in relation to the offshore installation(3) .....was on(4) .....

..... terminated with effect from(5).....

.....

pursuant to the requirements of section 4 (4) of the Act.

Dated..... signed.....

on behalf of(6)..... status of signatory(7).....

(1) Insert name of appointee.
(2) Insert date of appointment.
(3) Insert registered name or other designation of the installation or if no name or other designation has yet been registered under the particulars sufficient to identify the installation.
(4) Insert date of termination.
(5) Insert relevant date.
(6) Give name of installation owner.
(7) e.g. Director or secretary of a body corporate.

THE OFFSHORE INSTALLATIONS (LOGBOOKS AND REGISTRATION OF DEATH) REGULATIONS 1972

(S.I. 1972 No. 1542)

Dated 16th October 1972, *made by the Secretary of State under sections* 6 *and* 7 *of, and paragraphs* 11 *and* 12 *of the Schedule to, the Mineral Workings (Offshore Installations) Act* 1971.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Offshore Installations (Logbooks and Registration of Death) Regulations 1972 and shall come into operation on 30th November 1972.

(2) In these Regulations—

"installation logbook" means a logbook obtained from the Department of Trade and Industry; and

"manager" includes, where no manager is appointed pursuant to section 4 of the Act, any person made responsible by the owner for safety, health and welfare on board an offshore installation.

(3) These Regulations shall not apply to installations registered as vessels (whether so registered in the United Kingdom or elsewhere) which are dredging installations or which are in transit to or from a station, or in relation to installations which are unmanned.

(4) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Logbooks

2.—(1) An *installation logbook* shall be maintained on every offshore installation at all times when the installation is in waters to which the Act applies:

Provided that in the case of a fixed installation under construction or in course of assembly or dismantlement it shall be sufficient compliance with this Regulation to maintain the *installation logbook* on an attendant vessel.

(2) An *installation logbook* shall be maintained on an offshore installation notwithstanding that another logbook may be required to be maintained on it as a registered vessel.

3.—(1) There shall be entered in every *installation logbook* before any other entry is made in the book—

(a) the registered name or other designation of the relevant installation;

(b) the name of the owner and the address to which communications for him are to be sent;

(c) the name of the person or persons appointed as *manager*;

and if at any time while the logbook is in use these entries are no longer correct they shall be amended appropriately.

(2) Entries shall be made in the *installation logbook* regarding every occurrence affecting or likely to affect the safety of the installation or the safety, health and welfare of persons on or working from the installation or involving the installation and endangering persons in its neighbourhood and in particular, but without prejudice to the generality of the foregoing, of—

(a) the assumption and relinquishment of responsibility by *managers*, manning changes, visits by vessels, aircraft and hovercraft and, in the case of a mobile offshore installation, of its movements and locations;

(b) adverse weather conditions, collisions, structural changes and major repairs, surveys and any other occurrence relevant to the safety, seaworthiness or stability of the installation;

(c) safety drills, accidents and injuries to persons, and the occurence of disease and death;

(d) emergencies and apprehended emergencies and measures taken to meet or avoid them, whether relating to the installation or to personnel;

(e) the placing under restraint of any person pursuant to section 5 (6) of the Act;

(f) any visit of an inspector appointed under section 6 (4) of the Act or other person acting at the direction of the Secretary of State and any action taken as a result of investigations made or notices served by such inspector or other person.

(3) Entries in an *installation logbook* shall be in the English language and shall be signed by the *manager*. Every entry shall be made and signed within 24 hours of the time at which the occurrence the subject of the entry took place or as soon as practicable thereafter and shall include the time at which the occurrence took place and the time at which the entry was made and signed.

(4) A *manager* upon relinquishing charge of an installation shall make in the logbook a declaration that all the requisite entries for the period during which he has been in charge have been duly made and deliver the logbook to the person taking charge as *manager* or, if no one is succeeding him, to the owner.

4.—(1) No entry in an *installation logbook* shall be erased or rendered illegible and no page or part of a page of such a book shall be removed therefrom or mutilated.

(2) An existing entry in an *installation logbook* shall not be amended or cancelled except by a further entry.

5. Where an entry is made in an *installation logbook* recording that a person has been placed under restraint on an installation the owner of the installation shall as soon as practicable notify the Secretary of State for Trade and Industry of the relevant occurrence.

6.—(1) A single *installation logbook* shall not be used for the making of entries for a period exceeding six months.

(2) An *installation logbook* which is full or which has been in use for six months or which relates to an installation removed from waters to which the Act applies or which for any other reason is not to be further used shall as soon as practicable be sent to the Secretary of State for permanent retention by him.

Records of persons at an installation

7.—(1) At all times when there is an obligation to maintain an *installation logbook* on any installation there shall also be maintained on the installation a separate continuous record of the persons on or working from the installation which shall include:—

(a) the full names of every such person;

(b) the date and time of his arrival and, if he is no longer on or working from the installation, of his departure;

(c) the reason for his presence there;

(d) the name and address of his employer;

Provided that in the case of a fixed installation under construction or in course of assembly or dismantlement it shall be sufficient compliance with this Regulation to maintain such record on an attendant vessel.

(2) The owner of the installation shall require the *manager* to notify him or a person designated by him at least once in every 24 hours of the persons then on or working from the installation and of all changes among the persons on or working therefrom which have taken place since he was last so notified and to provide him with any other information necessary to enable him to maintain the record referred to in paragraph (3).

(3) The owner of the installation shall maintain at a place ashore in the United Kingdom a record of the persons on or working from the installation and such record shall include the information specified in paragraph (1) together with the nationality, the date of birth and the usual residence of those persons and the name, address and relationship of their next-of-kin (if any).

(4) The owner of the installation shall, on demand, produce to the Secretary of State a copy of the record of persons required to be maintained by the *manager* of the installation pursuant to paragraph (1) or, if this is not practicable, a copy of the record of persons required to be maintained by the owner pursuant to paragraph (3), being in either case a copy certified by the owner or a person authorised by him as a true copy.

Registration of deaths and persons lost

8. Where any person—

(a) dies on an offshore installation or is lost from an installation in circumstances such that it is reasonable to believe that he has died; or

(b) dies in or on a lifeboat, liferaft or other emergency survival craft belonging to an offshore installation or is lost therefrom in such circumstances as aforesaid; or

(c) otherwise dies or is lost in such circumstances as aforesaid in the neighbourhood of an offshore installation while engaged in any operation connected with the installation;

and the death or loss is not required to be registered under the Merchant Shipping Act 1894 or under any regulations made under section 72 of the Merchant Shipping Act 1970 (which relates to returns of births and deaths in ships), a return of death in the form set out in the Schedule hereto shall be made in accordance with Regulation 9.

9.—(1) Where an obligation to make a return of death arises, the *manager* of the relevant installation shall complete and sign Part I of a form of return and despatch the form to the owner of the installation as soon as is practicable and in any event within 10 days of his becoming aware of the death or loss to which the return relates.

(2) An installation owner receiving from a *manager* a form of return of death with Part I completed shall within 10 days thereof complete Part II of the form and send the form duly signed by him or on his behalf to the Registrar General of Shipping and Seamen.

(3) Without prejudice to the preceding provisions of this Regulation and to the provisions of Regulation 12, a return of death which is not made within the times specified in this Regulation for the making thereof shall not be invalid by reason only that it is not made within those times.

10. When a person dies or is lost in circumstances in which an obligation to make a return of death arises under Regulation 8, the owner of the relevant installation shall as soon as is practicable and in any event within 48 hours of first becoming aware of the death or loss—

(a) if he was the employer of the dead or missing person, notify any person known to him to be, or nominated to him as, the next-of-kin of such person; or

(b) if he was not his employer, notify any person known to him to have been the employer of that person at the time of his death or loss.

11.—(1) When the Registrar General of Shipping and Seamen receives a return made pursuant to Regulation 9 he shall send a copy of that return certified by him or a person authorised by him as being a true copy thereof—

(a) where the deceased was immediately before his death ordinarily resident in Scotland or Northern Ireland, to the Registrar General of Births, Deaths and Marriages for Scotland or the Registrar General for Northern Ireland, as the case may be; and

(b) in any other case, to the Registrar General of Births, Deaths and Marriages for England and Wales.

(2) If the Registrar General of Shipping and Seamen is satisfied that there is an error or omission in any return received by him as aforesaid, he may, in accordance with evidence of the true state of affairs relating to the return, send corrected or supplementary particulars in respect thereof to the appropriate Registrar General.

(3) A Registrar General who duly receives any such certified copy as aforesaid shall record information contained therein in the register kept by him called the marine register, together with such additional information as appears to him desirable for the purpose of ensuring the completeness and correctness of the register.

Offences and penalties

12.—(1) A contravention of any requirement of Regulation 2 (1), 3, 6 (1), 7 (1) or 9 (1) shall be an offence for which the *manager* of the relevant installation at the time of the contravention shall be liable on summary conviction to a fine not exceeding £100.

(2) A contravention of any requirement of Regulation 2 (1), 5, 6, 7, 9 (2) or 10 shall be an offence for which the owner of the relevant installation shall be liable on summary conviction to a fine not exceeding £100.

(3) A contravention of any requirement of Regulation 4 shall be an offence for which the person occasioning the contravention shall be liable on summary conviction to a fine not exceeding £100.

(4) If any person wilfully refuses to give any information necessary for the maintenance of the records required to be maintained by Regulation 7, he shall be liable on summary conviction to a fine not exceeding £50.

(5) If any person wilfully enters false information in a log-book or record required to be maintained by Regulation 7 or makes any false certificate in any return of death or, knowing such certificate to be false, sends the same as true to any person, he shall be liable on summary conviction to a fine not exceeding £400.

(6) It shall be a defence in any proceedings for an offence under paragraphs (1) and (2) of this Regulation for the person charged to prove:—

(a) that he exercised all due diligence (*a*) to prevent the commission of the offence; and

(b) that the relevant contravention was committed without his consent, connivance (*b*) or wilful (*c*) default.

(*a*) ***All due diligence.*** See note (*c*) s. 67 of the Offices, Shops and Railway Premises Act 1963, p. 174.
(*b*) ***Connivance.*** See note (*g*) to s. 4 of the Agriculture (Poisonous Substances) Act 1952, p. 370.
(*c*) ***Wilful.*** See note (*g*) to s. 68 of the Offices, Shops and Railway Premises Act 1963, p. 176.

SCHEDULE

FORM TO BE COMPLETED IN RESPECT OF THE DEATH OR LOSS OF A PERSON PURSUANT TO REGULATION 9.

PART I

1. Name or other designation of offshore installation.....
2. Date of death or loss.....
3. Place of death of loss (a).....
4. Full names of deceased or person lost (*b*) .....
5. Sex.....
6. Capacity in which engaged or other reason for presence at the installation .....

7. Cause of death or loss (*c*) .....

I certify that the particulars entered above are true to the best of my knowledge and belief:

Signature of installation manager furnishing information.....

Name of installation manager furnishing information (*b*).....

Date of signing.....

PART II (*d*)

8. Date of birth.....

9. Usual place of residence.....

10. Nationality of deceased or person lost.....

11. Name and address of next-of-kin.....

.....

12. Relationship of next-of-kin.....

I certify that the particulars entered above are true to the best of my knowledge and belief:

Signature of installation owner furnishing information or person on his behalf.....

.....

Name of installation owner furnishing information.....

Status of signatory.....

Date of signing.....

NOTES

(*a*) To be given by geographical co-ordinates.

(*b*) Forenames in full, followed by surname, all in block capitals.

(*c*) To be accompanied by the certificate of a qualified medical practitioner as to the cause of death or a statement of the reason why such a certificate is not available.

(*d*) This part of the form to be completed so far as information available to the owner permits.

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William Clowes & Sons, Limited, London, Beccles and Colchester